LAWS AND RESOLUTIONS

OF THE STATE OF MONTANA

Enacted by the

FIFTY-EIGHTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 6, 2003, through April 26, 2003

and the

FIFTY-SEVENTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
August 5, 2002, through August 10, 2002

and

Held at Helena, the Seat of Government
September 13, 2002

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OFFICERS AND MEMBERS OF THE MONTANA SENATE 2003

50 Members

29 Republicans 21 Democrats

OFFICERS

President ..... Bob Keenan

President Pro Tempore ..... Walt McNutt

Majority Leader ..... Fred Thomas

Majority Whip ..... Corey Stapleton

Minority Leader ..... Jon Tester

Minority Whip ..... Jon Ellingson

Secretary of the Senate ..... Rosana Skelton

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Anderson, Sherm	PO Box 311, Deer Lodge MT 59722-0311	28	R
Bales, Keith	HC 39 Box 33, Otter MT 59062-9703	1	R
Barkus, Gregory	PO Box 2647, Kalispell MT 59903-2467	39	R
Black, Jerry	445 O'haire Blvd, Shelby MT 59474-1950	44	R
Bohlinger, John	2712 Virginia Ln, Billings MT 59102-1037	7	R
Butcher, Edward	PO Box 89, Winifred MT 59489-0089	47	R
Cobb, John	PO Box 388, Augusta MT 59410-0388	25	R
Cocchiarella, Vicki	535 Livingston Ave, Missoula MT 59801-8003	32	D
Cooney, Mike	713 Pyrite Ct, Helena MT 59601-5877	26	D
Cromley, Brent	PO Box 2545, Billings MT 59103-2545	9	D
Curtiss, Aubyn	PO Box 216, Fortine MT 59918-0216	41	R
Depratu, Robert	PO Box 1217, Whitefish MT 59937-1217	40	R
Ellingson, Jon	141 N Ave E, Missoula MT 59801-6011	33	D
Elliott, Jim	100 Trout Creek Rd, Trout Creek MT 59874-9609	36	D
Esp, John	PO Box 1024, Big Timber MT 59011-1024	13	R
Gebhardt, Kelly	PO Box 724, Roundup MT 59072-0724	4	R
Glaser, William	1402 Indian Creek Rd, Huntley MT 59037	8	R
Grimes, Duane	4 Hole in the Wall, Clancy MT 59634-9516	20	R
Hansen, Ken	PO Box 686, Harlem MT 59526-0686	46	D
Harrington, Dan	1201 N Excelsior Ave, Butte MT 59701-8505	19	D
Johnson, Royal	2915 Illinois St, Billings MT 59102-0814	5	R
Keenan, Bob	PO Box 697, Bigfork MT 59911-0697	38	R
Kitzenberg, Sam	130 Bonnie St Apt 1, Glasgow MT 59230-2101	48	R
Laible, Rick	529 Moose Hollow Rd, Victor MT 59875-9303	30	R
Mahlum, Dale	10955 Us Highway 93 N, Missoula MT 59808-9227	35	R
Mangan, Jeff	1223 7th Ave N, Great Falls MT 59401-1613	23	D
McCarthy, Bea	1906 Ogden St, Anaconda MT 59711-1706	29	D
McGee, Daniel	1925 Pinyon Dr, Laurel MT 59044-9381	11	R
McNutt, Walter	110 12th Ave SW, Sidney MT 59270-3614	50	R
Nelson, Linda	469 Griffin Rd, Medicine Lake MT 59247-9708	49	D
O'Neil, Jerry	985 Walsh Rd, Columbia Falls MT 59912-9044	42	R
Pease, Gerald	PO Box 556, Lodge Grass MT 59050-0556	3	D
Perry, Gary	3325 W Cedar Meadow Ln, Manhattan MT 59741	16	R
Roush, Glenn	PO Box 185, Cut Bank MT 59427-0185	43	D
Ryan, Don	2101 7th Ave S, Great Falls MT 59405-2821	22	D
Schmidt, Trudi	4029 6th Ave S, Great Falls MT 59405-3746	21	D

Shea, Debbie	100 Moon Ln, Butte MT 59701-3975	18	D
Sprague, Mike	174 Erickson Ct S, Billings MT 59105-2347	6	R
Squires, Carolyn	2111 S 10th St W, Missoula MT 59801-3412	34	D
Stapleton, Corey	3614 Crater Lake Ave, Billings MT 59102-7732	10	R
Stonington, Emily	15042 Kelly Canyon Rd, Bozeman MT 59715-9625	15	D
Story, Robert	133 Valley Creek Rd, Park City MT 59063-8040	12	R
Tash, Bill	240 Vista Dr, Dillon MT 59725-3111	17	R
Taylor, Mike	PO Box 152, Proctor MT 59929-0152	37	R
Tester, Jon	709 Son Ln, Big Sandy MT 59520-8443	45	D
Thomas, Fred	3566 Holly Ln, Stevensville MT 59870-6634	31	R
Toole, Ken	PO Box 1462, Helena MT 59624-1462	27	D
Tropila, Joseph	209 2nd St NW, Great Falls MT 59404-1301	24	D
Wheat, Michael	930 Stonegate Dr, Bozeman MT 59715-2109	14	D
Zook, Tom	HC 40 Box 6591, Miles City MT 59301-9806	2	R

OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES
2003

100 Members

53 Republicans 47 Democrats

OFFICERS

Speaker ..... Doug Mood
Speaker Pro Tempore ..... Jeff Laszloffy
Majority Leader ..... Roy Brown
Majority Whips ..... John Brueggeman, Cindy Younkin
Minority Leader ..... David Wanzenried
Minority Whips ..... Tim Dowell, Monica Lindeen
Chief Clerk of the House ..... Marilyn Miller

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Andersen, Joan	RR 1 Box 1012, Fromberg MT 59029-9701	23	R
Ballantyne, Norman	PO Box 293, Valier MT 59486-0293	86	D
Balyeat, Joe	6909 Rising Eagle Rd, Bozeman MT 59715-8621	32	R
Barrett, Debby	17600 MT Highway 324, Dillon MT 59725-9657	34	R
Becker, Arlene	1440 Lewis Ave, Billings MT 59102-4240	18	D
Bergren, Bob	1132 26th Ave W, Havre MT 59501-8609	90	D
Bitney, Rod	PO Box 10501, Kalispell MT 59904-0501	77	R
Bixby, Norma	PO Box 1165, Lame Deer MT 59043-1165	5	D
Bookout-Reinicke, Sylvia	PO Box 327, Alberton MT 59820-0327	71	R
Branae, Gary	415 Yellowstone Ave, Billings MT 59101-1730	17	D
Brown, Dee	PO Box 444, Hungry Horse MT 59919-0444	83	R
Brown, Roy	PO Box 22273, Billings MT 59104-2273	14	R
Brueggeman, John	321 Lakeview Dr, Polson MT 59860-9317	74	R
Buzzas, Rosalie	233 University Ave, Missoula MT 59801-4351	65	D
Callahan, Tim	3409 5th Ave S, Great Falls MT 59405-3543	43	D
Carney, Eileen	PO Box 1193, Libby MT 59923-1193	82	D
Clark, Edith	PO Box 34, Sweetgrass MT 59484-0034	88	R
Clark, Paul	20 Fox Ln, Trout Creek MT 59874-9510	72	D
Cohenour, Jill	2610 Colt Dr, East Helena MT 59635-3442	51	D
Cyr, Larry	1260 W Alu minum St, Butte MT 59701-2102	37	D
Devlin, Ronald	PO Box 186, Terry MT 59349-0186	3	R
Dickenson, Sue	620 Riverview Dr E, Great Falls MT 59404-1637	47	D
Dowell, Tim	46 W View Dr, Kalispell MT 59901-3364	78	D
Erickson, Ron	3250 Pattee Canyon Rd, Missoula MT 59803-1703	64	D
Everett, George	1344 Helena Flats Rd, Kalispell MT 59901-6548	84	R
Facey, Tom	418 Plymouth St, Missoula MT 59801-4133	67	D
Fisher, Stanley	76 Golf Terrace Dr, Bigfork MT 59911-6252	75	R
Forrester, Gary	2527 Gardiner St # R8, Billings MT 59101-6702	16	D
Franklin, Eve	4021 4th Ave S, Great Falls MT 59405-3633	42	D
Fritz, Nancy Rice	1817 Daniel Dr, Missoula MT 59802-4926	69	D
Fuchs, Daniel	395 Windsor Cir N, Billings MT 59105-2409	15	R
Gallik, Dave	120 E Lyndale Ave, Helena MT 59601-2911	52	D
Gallus, Steve	2319 Harvard Ave, Butte MT 59701-3854	35	D
Galvin-Halcro, Kathleen	101 Riverview Dr E, Great Falls MT 59404-1547	48	D
Gibson, Carol	2518 Broadwater Ave, Billings MT 59102-4608	20	D
Gillan, Kim	750 Judicial Ave, Billings MT 59105-2130	11	D
Golie, George	316 20th Ave S, Great Falls MT 59405-4131	44	D
Gutsche, Gail	1530 Cooper St, Missoula MT 59802-2220	66	D

Haines, Dick	5935 St Fran cis Dr, Missoula MT 59803-2945	63	R
Harris, Christopher	519 N Black Ave, Bozeman MT 59715-3612	30	D
Hawk, Ray	NW 4878 Hoblitt Ln, Flor ence MT 59833-6832	62	R
Hedges, Don ald	70 Singletree Rd, An te lope MT 59211	97	R
Hurwitz, Dan	PO Box 585, White Sul phur Springs MT 59645-0585	40	R
Jack son, Verdell	555 Wag ner Ln, Kalispell MT 59901-8079	79	R
Ja cob son, Hal	4813 Us High way 12 W, Hel ena MT 59601-9694	54	D
Jayne, Joey	299 Lumpry Rd, Arlee MT 59821-9747	73	D
Jent, Larry	1201 S 3rd, Bozeman MT 59715-5503	29	D
Ju neau, Carol	128 9th Ave SE, Brown ing MT 59417-0055	85	D
Kasten, Dave	HC 77 Box A-14, Brockway MT 59214-9701	99	R
Kaufmann, Chris tine	PO Box 1566, Hel ena MT 59624-1566	53	D
Keane, Jim	2131 Wall St, Butte MT 59701-5527	36	D
Lake, Bob	PO Box 2096, Ham il ton MT 59840-2096	60	R
Lam bert, Carol	PO Box 2, Broadus MT 59317-0002	1	R
Lange, Mi chael	208 Fair Park Dr, Bill ings MT 59102-5734	19	R
Laslovich, Jesse	112 Moun tain View St, An a conda MT 59711-1616	57	D
Laszloffy, Jeff	3165 High way 212 S, Lau rel MT 59044-8911	22	R
Law son, Bob	PO Box 686, Whitefish MT 59937-0686	80	R
Lehman, Larry	PO Box 184, Power MT 59468-0184	87	R
Lenhart, Ralph	PO Box 1225, Glendive MT 59330-1225	2	D
Lewis, Dave	5871 Col lins Rd, Hel ena MT 59602-9584	55	R
Lindeen, Monica	1626 Heath St, Hunt ley MT 59037-9137	7	D
Maedje, Rick	PO Box 447, Fortine MT 59918-0447	81	R
Malcolm, Bruce	2319 High way 89 S, Em i grant MT 59027-6023	25	R
Matthews, Gary	1708 Main St, Miles City MT 59301-3652	4	D
McKenney, Joe	1140 18th Ave SW, Great Falls MT 59404-3426	49	R
Mendenhall, Scott	281 McKeown Ln, Card well MT 59721-9611	39	R
Mood, Doug	PO Box 42, Seeley Lake MT 59868-0042	58	R
Mor gan, Penny	3401 Waterloo Cir, Bill ings MT 59101-8000	21	R
Musgrove, John	810 8th St, Havre MT 59501-4127	91	D
Newman, Brad	514 N Henry Ave, Butte MT 59701-8720	38	D
Noennig, Mark	3441 Powderhorn Cir, Bill ings MT 59102-0332	9	R
Olson, Alan	18 Halfbreed Creek Rd, Roundup MT 59072-6524	8	R
Olson, Bernie	161 Lakeside Bou le vard, Lakeside MT 59922-9723	76	R
Parker, John	PO Box 558, Great Falls MT 59403-0558	45	D
Pattison, Jeff	123 Cain Rd, Glas gow MT 59230	95	R
Pe ter son, Jim	Route 1 Box 2, Buf falo MT 59418-9501	94	R
Raser, Holly	4304 Spurgin Rd, Missoula MT 59804-4520	70	D
Rice, Di ane	PO Box 216, Har ri son MT 59735-0216	33	R
Ripley, Rick	8920 MT High way 200, Wolf Creek MT 59648-8639	50	R
Rob erts, Don	5414 Wal ter Hagen Dr, Bill ings MT 59106-1007	10	R
Rome, Allen	748 Dana Ln, Gar ri son MT 59731-9737	56	R
Ross, Jack	129 N Stillwater Rd, Absarokee MT 59001-6235	24	R
Ryan, Brennan	PO Box 123, Stockett MT 59480-0123	41	D
Sales, Scott	5200 Bostwick Rd, Bozeman MT 59715-7721	27	R
Schrumpf, Clarice	1317 Yel low stone Ave, Bill ings MT 59102-5337	12	R
Shockley, Jim	PO Box 608, Vic tor MT 59875-0608	61	R
Sinrud, John	284 Fron tier Dr, Bozeman MT 59718-7975	31	R
Small-East man, Ve ron ica	One Mile South west, Lodge Grass MT 59050-0262	6	D
Smith, Frank	PO Box 729, Pop lar MT 59255-0729	98	D
Steinbeisser, Don ald	RR 1 Box 3400, Sid ney MT 59270-9620	100	R
Stoker, Ron	332 N Gold Creek Loop, Ham il ton MT 59840-9730	59	R
Thomas, Bill	HC 81 Box 7, Hob son MT 59452-9701	93	R
Wagman, Pat	202 S 9th St, Livingston MT 59047-2906	26	R
Waitschies, Karl	PO Box A-18, Peer less MT 59253	96	R
Wanzenried, Da vid	903 Sky Dr, Missoula MT 59804-3121	68	D
Weiss, Sandy	PO Box 1173, Bill ings MT 59103-1173	13	D
Wil son, Bill	1305 2nd Ave N, Great Falls MT 59401-3217	46	D
Windy Boy, Jon a than	PO Box 269, Box El der MT 59521-0269	92	D
Witt, John	2555 Rus sell Rd, Carter MT 59420-8230	89	R
Younkin, Cindy	1115 N Spruce Dr, Bozeman MT 59715-5948	28	R

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30 *(House Bill No. 167; Schrumpf)* GENERALLY REVISING PUBLIC RECORDS MANAGEMENT LAWS; REVISING THE DEFINITION OF "PUBLIC RECORDS" WITH RESPECT TO THE RETENTION AND STORAGE OF STATE AND LOCAL GOVERNMENT MATERIALS; AUTHORIZING THE STORAGE OF PERMANENT PUBLIC RECORDS AT LOCATIONS OTHER THAN THE STATE ARCHIVES OR STATE RECORDS CENTER; REQUIRING EACH STATE AGENCY TO DESIGNATE AN AGENCY RECORDS CUSTODIAN; AND AMENDING SECTIONS 2-6-202, 2-6-206, 2-6-211, 2-6-213, AND 2-6-401, MCA. . . . 43

31 *(House Bill No. 38; Olson)* REMOVING MISDEMEANOR CRIMINAL PENALTIES AND INCREASING CIVIL PENALTIES FOR LOBBYISTS AND LOBBYIST PRINCIPALS IN NONCOMPLIANCE WITH TIMELY FILING OF REPORTS; PROVIDING FOR A HEARING WHEN A CIVIL PENALTY IS IMPOSED FOR LATE FILING OF REPORTS; EXPANDING THE DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES REGARDING VIOLATIONS OF LOBBYING LAWS; EXTENDING THE PERIOD TO BRING AN ACTION; AMENDING SECTIONS 5-7-108,

5-7-209, AND 5-7-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 45

32 *(House Bill No. 136; Fisher)* ELIMINATING THE ALLOCATION AND STATUTORY APPROPRIATION OF INTEREST INCOME FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE OFFICE OF ECONOMIC DEVELOPMENT FOR BUSINESS RECRUITMENT AND RETENTION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE 48

33 *(House Bill No. 175; Clark)* CLARIFYING THE EXECUTIVE BRANCH OVERSIGHT DUTIES OF THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 75-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 50

34 *(House Bill No. 207; Laslovich)* CHANGING THE GENERAL ASSESSMENT DAY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE FOR SUPPLEMENTAL ASSESSMENTS FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL CERTIFY TOTAL TAXABLE VALUE TO EACH TAXING AUTHORITY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE AN ESTIMATE OF TOTAL TAXABLE VALUE WITHIN THE JURISDICTION OF A TAXING AUTHORITY BY THE SECOND MONDAY IN JULY UPON RECEIPT OF A REQUEST FROM THE TAXING AUTHORITY; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER A CERTIFIED COPY OF THE PROPERTY TAX RECORD TO ALL CITIES OF THE THIRD CLASS AND TOWNS WITHIN EACH COUNTY THAT MAKE WRITTEN REQUEST FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER TO THE COUNTY SUPERINTENDENT AND TO EACH CITY OR TOWN CLERK A STATEMENT SHOWING THE SEPARATE TOTAL ASSESSED VALUE AND THE TOTAL TAXABLE VALUE OF ALL PROPERTY IN THE DISTRICT, CITY, OR TOWN FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE BOARD OF COMMISSIONERS OF EACH IRRIGATION DISTRICT ORGANIZED UNDER TITLE 85, CHAPTER 7, PARTS 1 AND 15, MCA, SHALL ASCERTAIN AND LEVY THE AMOUNT TO BE RAISED THAT YEAR FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DIRECTORS OF A CONSERVATION DISTRICT SHALL PROVIDE THE DEPARTMENT OF REVENUE AND COUNTY TREASURER OR TREASURERS A STATEMENT OF THE SPECIAL ASSESSMENTS TO BE COLLECTED FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; AMENDING SECTIONS 7-6-4410, 15-8-201, 15-8-204, 15-10-202, 20-9-122, 85-7-2104, AND 85-9-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES. 52

35 *(House Bill No. 232; Devlin)* REVISING LAWS GOVERNING COUNTY, MUNICIPAL, AND SPECIAL DISTRICT CAPITAL IMPROVEMENT FUNDS; INCREASING TO $500,000 THE LIMITATION ON COUNTY ROAD AND BRIDGE IMPROVEMENT FUNDS; AMENDING SECTIONS 7-6-616, 7-7-2101, 7-14-2506, 7-21-3406, 7-21-3413, AND 7-33-2111, MCA; REPEALING SECTION 7-21-3414, MCA; AND PROVIDING AN EFFECTIVE DATE 55

36 *(House Bill No. 96; Devlin)* REPEALING THE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE TAX CREDIT; REPEALING SECTIONS 15-53-201, 15-53-202, AND 15-53-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 57

37 *(House Bill No. 115; Bookout-Reinicke)* INCREASING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION FROM 19 MEMBERS TO 27 MEMBERS AND CHANGING THE MAKEUP OF THE COMMISSION'S MEMBERSHIP; PROVIDING THAT THE COMMISSION ACTS AS AN ALL-HAZARD ADVISORY BOARD TO THE DIVISION OF DISASTER AND EMERGENCY SERVICES; AND AMENDING SECTION 10-3-1204, MCA 58

38 *(House Bill No. 143; Lambert)* LIMITING THE LIABILITY OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD WITH RESPECT TO ACTS OR OMISSIONS OF AND INCORRECT REPORTING BY EMPLOYERS OR OTHER REPORTING AGENCIES; AMENDING SECTION 19-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 59

39 *(House Bill No. 233; Waitschies)* CLARIFYING THE TAX CREDIT FOR THE INSTALLATION OF A GEOTHERMAL SYSTEM BY REMOVING AN ERRONEOUS INTERNAL REFERENCE; AMENDING SECTION 15-32-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 60

40 *(House Bill No. 47; Clark)* PROVIDING AN ADDITIONAL METHOD FOR CREATION OF A HERD DISTRICT; AND AMENDING SECTION 81-4-301, MCA 61

41 *(House Bill No. 88; Kasten)* GENERALLY REVISING THE LAWS GOVERNING DEDICATED REVENUE PROVISIONS; REVISING THE PROCEDURE FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; PROVIDING FOR THE DEPOSIT OF 50 PERCENT OF FEDERAL TAYLOR GRAZING FUNDS IN THE STATE GENERAL FUND TO BE USED FOR THE ELEMENTARY EDUCATION BASE FUNDING PROGRAMS OF A COUNTY; ELIMINATING THE SEPARATE STATUTORY PROCESS FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; AMENDING SECTIONS 17-1-501, 17-1-502, 17-1-505, 17-3-222, AND 20-9-331, MCA; REPEALING SECTIONS 17-1-601, 17-1-602, AND 17-1-603, MCA; AND PROVIDING AN EFFECTIVE DATE 62

42 *(House Bill No. 93; Lawson)* REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES ALLOWING FOR THE EARLY REREGISTRATION OF A MOTOR VEHICLE; AND AMENDING SECTION 61-3-315, MCA 66

43 *(House Bill No. 168; Callahan)* CREATING A PERFORMANCE ASSURANCE STATE SPECIAL REVENUE ACCOUNT FOR PAYMENTS MADE BY TELECOMMUNICATIONS CARRIERS SUBJECT TO A PERFORMANCE ASSURANCE PLAN; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 67

44 *(House Bill No. 208; Shockley)* CLARIFYING THAT PARENTAL RIGHTS MAY BE TERMINATED WITHOUT REQUIRING A TREATMENT PLAN IF TWO MEDICAL DOCTORS OR CLINICAL PSYCHOLOGISTS SUBMIT TESTIMONY THAT THE PARENT CANNOT ASSUME THE ROLE OF PARENT WITHIN A REASONABLE TIME; AMENDING SECTION 41-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 68

45 *(House Bill No. 209; Shockley)* CONFORMING THE EFFECT OF A LIEN RESULTING FROM FILING A TRANSCRIPT OF A JUDGMENT IN ANOTHER COUNTY TO THE LIEN RESULTING FROM THE DOCKETING OF A JUDGMENT; AMENDING SECTION 25-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 70

46 *(House Bill No. 112; Pattison)* ALLOWING VEHICLES TO PASS SCHOOL BUSES THAT ARE STOPPED TO RECEIVE OR DISCHARGE SCHOOL CHILDREN IN DESIGNATED SCHOOL BUS TURNOUTS; SPECIFYING THE REQUIREMENTS NECESSARY TO DESIGNATE A SCHOOL BUS TURNOUT; AND AMENDING SECTIONS 61-8-301, 61-8-351, AND 61-8-715, MCA 70

47 *(House Bill No. 151; Olson)* ALLOWING ELECTION JUDGES TO BE PAID MORE THAN MINIMUM WAGE; AND AMENDING SECTION 13-4-106, MCA. 73

48 *(House Bill No. 217; Brueggeman)* ELIMINATING THE TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT IN FISCAL YEARS 2004 AND 2005; INCREASING THE AMOUNT TRANSFERRED IN FISCAL YEAR 2006 TO ACCOUNT FOR THE PERCENTAGE INCREASES LOST AS A RESULT OF NOT RECEIVING FUNDS IN FISCAL YEARS 2004 AND 2005; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE. . 73

49 *(House Bill No. 238; Andersen)* EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN REQUIREMENTS FOR SHORT-TERM LEASE OF A WATER APPROPRIATION RIGHT FOR CERTAIN DUST ABATEMENT ACTIVITIES; EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN PUBLIC NOTICE REQUIREMENTS; REQUIRING THAT A LOCAL GOVERNMENT ENTITY POST A COPY OF THE LEASE AGREEMENT AT THE POINT OF DIVERSION WHEN WATER IS DIVERTED UNDER A SHORT-TERM LEASE AGREEMENT; AMENDING SECTION 85-2-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 75

50 *(House Bill No. 248; Balyeat)* ENCOURAGING HUNTING AND FISHING BY MONTANA YOUTH BY PROVIDING THAT THE FIRST TIME A RESIDENT YOUTH WHO IS 12 YEARS OF AGE OR OLDER AND LESS THAN 18 YEARS OF AGE APPLIES FOR A HUNTING LICENSE, THE YOUTH IS ENTITLED TO RECEIVE A YOUTH COMBINATION SPORTS LICENSE FREE OF CHARGE; AMENDING SECTION 87-2-805, MCA; AND PROVIDING AN EFFECTIVE DATE. 77

51 *(House Bill No. 406; Waitschies)* PERMITTING THE DEPARTMENT OF REVENUE TO DEPOSIT MONEY IT HAS RECEIVED WITHIN A REASONABLE TIME AFTER RECEIPT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 78

52 *(Senate Bill No. 7; Butcher)* CREATING AND REVISING DEFINITIONS OF CERTAIN LOCAL, STATE, TRIBAL, AND FEDERAL OFFICIALS TO PROVIDE EXEMPTIONS UNDER LOBBYING LAWS; REVISING DEFINITIONS OF "LOBBYING", "LOBBYING FOR HIRE", AND "PAYMENT TO INFLUENCE OFFICIAL ACTION"; EXTENDING THE TIME TO HEAR AN APPEAL FOR A DENIED LICENSE TO LOBBY; PROVIDING EXEMPTIONS TO PAYMENT OF THE LOBBYIST LICENSE FEE; AMENDING SECTIONS 5-7-102 AND 5-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 79

53 *(House Bill No. 22; Kaufmann)* GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING TRAFFIC CONTROL DEVICES AND PEDESTRIAN CONTROL SIGNALS; ESTABLISHING VEHICLE

OPERATOR REQUIREMENTS WHEN LANE USE CONTROL SIGNALS ARE IN PLACE; AMENDING SECTIONS 61-8-201, 61-8-202, 61-8-203, 61-8-207, 61-8-208, 61-8-209, AND 61-8-210, MCA; AND REPEALING SECTION 61-8-205, MCA 82

54 *(House Bill No. 51; Clark)* GENERALLY REVISING THE LICENSURE OF PERSONAL-CARE FACILITIES; CHANGING THE NAME OF "PERSONAL-CARE FACILITY" TO "ASSISTED LIVING FACILITY" FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; REVISING THE REQUIREMENTS FOR THE TYPES OF RESIDENTS SERVED BY ASSISTED LIVING FACILITIES; PROVIDING FOR A NEW CATEGORY C THAT CLASSIFIES COGNITIVELY IMPAIRED RESIDENTS WHO ARE SERVED BY ASSISTED LIVING FACILITIES FOR LICENSURE PURPOSES; AND AMENDING SECTIONS 39-3-406, 50-5-101, 50-5-225, 50-5-226, 50-5-227, 50-5-1202, 50-8-101, 52-1-104, 52-3-811, 53-6-101, AND 87-2-802, MCA 87

55 *(House Bill No. 80; Jackson)* ALLOWING THE REDUCED FARM RATE GVW FEE TO BE APPLICABLE TO VEHICLES HAULING TIMBER HARVESTED ON A RANCH, FARM, ORCHARD, OR DAIRY TO MARKET; AMENDING SECTION 61-10-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 105

56 *(House Bill No. 114; Jent)* GENERALLY REVISING LAWS RELATING TO THE CAPITOL COMPLEX ADVISORY COUNCIL; CLARIFYING THAT THE DEPARTMENTS OF ADMINISTRATION AND FISH, WILDLIFE, AND PARKS SHARE THE COSTS ASSOCIATED WITH COUNCIL OPERATIONS; REQUIRING THE COUNCIL TO ADOPT AN ART AND MEMORIAL PLAN; REVISING CRITERIA FOR NAMING A STATE BUILDING, SPACE, OR ROOM IN THE CAPITOL COMPLEX AFTER AN INDIVIDUAL OR DISPLAYING A BUST, STATUE, MEMORIAL, MONUMENT, OR ART DISPLAY COMMEMORATING AN INDIVIDUAL OR EVENT; PERMITTING THE DEPARTMENT OF ADMINISTRATION TO APPROVE TEMPORARY DISPLAYS IN THE CAPITOL COMPLEX OR ON THE CAPITOL COMPLEX GROUNDS; CHANGING THE AGENCY RESPONSIBLE FOR MAINTAINING AN INVENTORY OF ART AND MEMORIALS IN THE CAPITOL COMPLEX; PROVIDING FOR THE LONG-TERM PLACEMENT OF CERTAIN ITEMS IN THE CAPITOL OR ON THE CAPITOL COMPLEX GROUNDS; ENTRUSTING CERTAIN ITEMS TO THE MONTANA HISTORICAL SOCIETY; AND AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-807, AND 2-17-812, MCA 105

57 *(House Bill No. 121; Clark)* PROVIDING THAT CERTAIN INCOME FROM THE MONTANA STATE HOSPITAL AND MONTANA MENTAL HEALTH NURSING CARE CENTER BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 53-1-413, MCA; AND PROVIDING AN EFFECTIVE DATE 109

58 *(Senate Bill No. 136; Butcher)* CLARIFYING THAT A PUBLIC OFFICER MAY PARTICIPATE IN THE PROCEEDINGS OF OR ENGAGE IN ACTIVITIES ON BEHALF OF ORGANIZATIONS OR ASSOCIATIONS OF LOCAL GOVERNMENT OFFICIALS; AMENDING SECTION 2-2-121, MCA; AND PROVIDING AN EFFECTIVE DATE 110

59 *(House Bill No. 108; Olson)* ELIMINATING THE PROHIBITION ON CORPORATE CONTRIBUTIONS AND EXPENDITURES ON BALLOT ISSUES; AMENDING SECTION 13-35-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 112

60 *(House Bill No. 181; Thomas)* PROVIDING FOR THE REGULATION AND CERTIFICATION OF PERSONS AND ENTITIES THAT EUTHANIZE ANIMALS; ALLOWING A CERTIFIED AGENCY TO APPLY FOR

REGISTRATION TO POSSESS CONTROLLED SUBSTANCES FOR THE PURPOSE OF EUTHANIZING ANIMALS; ALLOWING A CERTIFIED EUTHANASIA TECHNICIAN TO ADMINISTER CONTROLLED SUBSTANCES UNDER THE AGENCY'S LAWFUL POSSESSION WHEN THE AGENCY AND TECHNICIAN ARE CERTIFIED BY THE BOARD OF VETERINARY MEDICINE; PROVIDING AN EXEMPTION FOR CERTIFIED AGENCIES, CERTIFIED EUTHANASIA TECHNICIANS, AND SUPPORT PERSONNEL FROM OVERSIGHT BY THE BOARD OF PHARMACY WHEN POSSESSING OR ADMINISTERING APPROVED CONTROLLED SUBSTANCES FOR EUTHANASIA; PROVIDING AN EXEMPTION TO THE PRACTICE OF VETERINARY MEDICINE FOR CERTIFIED AGENCIES AND CERTIFIED EUTHANASIA TECHNICIANS WHO ARE CONDUCTING ANIMAL EUTHANASIA; AMENDING SECTIONS 37-7-103 AND 37-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE 113

61 *(Senate Bill No. 164; Mangan)* REMOVING A CONFLICT BETWEEN STATUTES TO CLARIFY THAT A SHELTER CARE FACILITY MAY NOT HOLD A YOUTH IN A PHYSICALLY RESTRICTING MANNER; AMENDING SECTION 41-5-1801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 117

62 *(Senate Bill No. 195; Grimes)* REQUIRING THE MONTANA HISTORICAL SOCIETY TO COMMISSION A SCULPTURE FOR LONG-TERM PLACEMENT IN THE SENATE CHAMBERS; REQUIRING THE LEWIS AND CLARK BICENTENNIAL COMMISSION TO SECURE OUTSIDE FUNDING FOR THE SCULPTURE; AND CREATING A SENATE ADVISORY GROUP TO ADVISE THE MONTANA HISTORICAL SOCIETY ON COMMISSIONING OF THE SCULPTURE 118

63 *(House Bill No. 128; Rice)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION TO CREATE A NOXIOUS WEED MANAGEMENT TRUST FUND; PROVIDING FOR THE PROTECTION OF THE TRUST IN THE AMOUNT OF $10 MILLION UNLESS APPROPRIATED BY A VOTE OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE; AND PROVIDING FOR THE APPROPRIATION OF INTEREST, INCOME, AND A PORTION OF THE PRINCIPAL 119

64 *(House Bill No. 36; Lawson)* REVISING THE LAWS GOVERNING CREDIT UNIONS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DETERMINE THE SCHEDULE FOR CREDIT UNION EXAMINATIONS; ELIMINATING THE MAKEUP REQUIREMENTS FOR REGULAR RESERVE ACCOUNTS AND GRANTING THE DEPARTMENT DISCRETION TO REQUIRE CREDIT UNIONS TO ESTABLISH A REGULAR RESERVE ACCOUNT; REPEALING THE DEFINITION OF RISK ASSETS; AMENDING SECTIONS 32-3-203 AND 32-3-702, MCA; AND REPEALING SECTION 32-3-704, MCA 120

65 *(House Bill No. 45; Lawson)* REVISING LAWS CONCERNING ESCROW BUSINESSES; REQUIRING APPLICANTS FOR AN ESCROW BUSINESS LICENSE TO POST A BOND IN AN AMOUNT TO BE SET BY THE DEPARTMENT OF ADMINISTRATION BY RULE; ESTABLISHING THE AMOUNT OF THE INITIAL LICENSE FEE AS $350 AND THE AMOUNT OF THE ANNUAL LICENSE RENEWAL FEE AS $100; PROVIDING THAT FUNDS AVAILABLE FOR WITHDRAWAL FROM AN ESCROW ACCOUNT AS A MATTER OF RIGHT MUST BE

DISBURSED WITHIN 5 BUSINESS DAYS; AND AMENDING SECTIONS 32-7-109, 32-7-110, AND 32-7-117, MCA 121

66 *(House Bill No. 59; Erickson)* PERMITTING REVISIONS OF INCOME TAX RETURNS FOR THE ELDERLY RESIDENTIAL PROPERTY TAX CREDIT TO BE MADE WITHIN 5 YEARS FOLLOWING THE DUE DATE FOR A CLAIM FOR THE CREDIT; DELETING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE MAINTAIN RECORDS OF REQUESTS FOR EXTENSIONS; AMENDING SECTION 15-30-174, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 123

67 *(House Bill No. 65; Matthews)* GENERALLY REVISING DENTISTRY AND DENTAL HYGIENE LAWS; EXCLUDING STUDENTS OF AN ACCREDITED DENTAL HYGIENE PROGRAM FROM LICENSING REQUIREMENTS WHILE PERFORMING SUPERVISED FREE DENTAL HYGIENE SERVICES; EXCLUDING STUDENTS OF AN ACCREDITED PROGRAM WHO ARE SEEKING A D.D.S. OR D.M.D. DEGREE FROM LICENSING REQUIREMENTS IF THEY ARE PRACTICING DENTISTRY WHILE SUPERVISED AND WITHOUT CHARGE; EXCLUDING DENTAL RESIDENTS IN ADVANCED EDUCATION PROGRAMS FROM LICENSING REQUIREMENTS WHILE PERFORMING FREE CLINICAL SERVICES WITHIN THE ADVANCED EDUCATION PROGRAM; ALLOWING CERTAIN NONPRACTICING AND RETIRED DENTISTS AND DENTAL HYGIENISTS TO PROVIDE SERVICES FOR INDIGENT AND UNINSURED PERSONS IN UNDERSERVED OR CRITICAL NEED AREAS AND WAIVING THEIR RENEWAL AND LATE FEES; PROVIDING RULEMAKING AUTHORITY PERTAINING TO VOLUNTEER DENTISTS AND DENTAL HYGIENISTS; AMENDING SECTION 37-4-103, MCA; AND PROVIDING AN EFFECTIVE DATE. . 124

68 *(House Bill No. 106; Erickson)* GENERALLY REVISING LAWS DEALING WITH THE DEPARTMENT OF REVENUE'S RELATIONSHIP TO PROBATE ADMINISTRATION; AMENDING SECTIONS 72-3-607, 72-3-609, 72-3-1006, 72-4-303, 72-4-305, AND 72-16-906, MCA; REPEALING SECTION 72-16-920, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 126

69 *(House Bill No. 149; Hedges)* REVISING THE CRIMINAL SENTENCE REVIEW PROCESS; ALLOWING THE REVIEW DIVISION OF THE SUPREME COURT TO MEET IN VARIOUS LOCATIONS; ALLOWING THE CHIEF JUSTICE OF THE SUPREME COURT TO DESIGNATE A REPLACEMENT FOR A MEMBER OF THE REVIEW DIVISION THAT IS UNABLE TO SERVE; ALLOWING A PERSON SENTENCED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO APPLY FOR SENTENCE REVIEW; REQUIRING CERTAIN NOTICES TO BE GIVEN TO A DEFENDANT'S COUNSEL; CLARIFYING LANGUAGE; REQUIRING THE DECISION OF THE REVIEW DIVISION TO BE SENT TO THE COUNTY ATTORNEY AND DEFENSE COUNSEL; AMENDING SECTIONS 46-18-901, 46-18-902, 46-18-903, 46-18-904, AND 46-18-905, MCA; AND PROVIDING AN EFFECTIVE DATE 129

70 *(House Bill No. 353; Laszloffy)* NAMING THE CITY OF LAUREL, MONTANA, AS THE OFFICIAL SITE OF THE MONTANA STATE FIREFIGHTERS' MEMORIAL 131

71 *(House Bill No. 364; Bergren)* CLARIFYING THAT THE CONSTITUTIONAL PROVISION RESTRICTING THE EXPENDITURE OF REVENUE FROM SPECIAL LEVIES ON AGRICULTURAL COMMODITIES APPLIES TO ALL FEES ASSESSED BY THE DEPARTMENT OF AGRICULTURE FOR LICENSES, REGISTRATIONS,

INSPECTIONS, AND OTHER PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 132

72 *(Senate Bill No. 41; Tropila)* CHANGING THE DESIGNATION OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM AN INDEPENDENT INSTITUTION TO A STATE-SUPPORTED SPECIAL SCHOOL; AMENDING SECTION 20-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 132

73 *(Senate Bill No. 42; Tropila)* REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A SYSTEM FOR TRACKING HEARING IMPAIRED OR VISUALLY IMPAIRED CHILDREN; AND AMENDING SECTION 20-8-102, MCA. 133

74 *(Senate Bill No. 43; Tropila)* CHANGING THE FEE FOR SERVICES COLLECTED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM A MANDATORY FEE TO AN OPTIONAL FEE; AND AMENDING SECTION 20-8-102, MCA. 134

75 *(House Bill No. 194; Barrett)* GENERALLY REVISING PROVISIONS RELATED TO THE FORMS AND INFORMATION THAT MUST BE FILED WITH THE SECRETARY OF STATE BY A BUSINESS, CORPORATION, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY; PROVIDING RULEMAKING AUTHORITY TO REQUIRE USE OF STANDARDIZED FORMS; SPECIFYING THE REINSTATEMENT APPLICATION PROCESS FOR LIMITED PARTNERSHIPS; ELIMINATING THE REQUIREMENT FOR A COPY TO BE FILED WITH THE ORIGINAL FOR CERTAIN FILINGS; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PROVIDE A SECOND RENEWAL NOTIFICATION TO LIMITED LIABILITY PARTNERSHIPS; CLARIFYING THAT THE COMPLETE STREET ADDRESS MUST BE PROVIDED WITH CERTAIN FILINGS; ELIMINATING THE REQUIREMENT TO PROVIDE THE NAME OF THE CURRENT REGISTERED AGENT WHEN FILING A CHANGE OF OFFICE OR AGENT; REVISING WHO SHALL SIGN A RESOLUTION CERTIFYING A CORPORATE NAME; PROVIDING THAT THE SECRETARY OF STATE DELIVER A CONFIRMATION LETTER RATHER THAN THE DOCUMENT COPY WHEN A DOCUMENT HAS BEEN RECEIVED; REQUIRING THAT A FILING FOR REINSTATEMENT INCLUDE COPIES OF ALL ANNUAL REPORTS NOT PREVIOUSLY FILED; AND AMENDING SECTIONS 30-13-206, 30-13-207, 35-1-216, 35-1-217, 35-1-314, 35-1-1031, 35-1-1308, 35-1-1309, 35-2-310, 35-6-201, 35-8-105, 35-8-202, 35-8-210, 35-8-912, 35-12-601, 35-12-606, 35-12-611, 35-12-612, 35-12-1302, AND 35-12-1303, MCA 134

76 *(House Bill No. 392; Weiss)* ELIMINATING THE INTERIM UNIVERSAL ACCESS PROGRAM FOR ADVANCED TELECOMMUNICATIONS SERVICES; REPEALING SECTIONS 69-3-856, 69-3-857, 69-3-858, 69-3-859, 69-3-861, AND 69-3-862, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 146

77 *(House Bill No. 601; Ripley)* REQUIRING TOWER ROCK TO REMAIN STATE-OWNED PROPERTY AS A GIFT TO FUTURE GENERATIONS OF MONTANANS IN HONOR OF THE LEWIS AND CLARK EXPEDITION 147

78 *(House Bill No. 29; Olson)* CLARIFYING THAT PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM MAY REDUCE THE PERIOD OF INCARCERATION BUT NOT THE LENGTH OF A SENTENCE; REQUIRING ADVICE FROM THE PROSECUTING ATTORNEY FOR PARTICIPATION IN THE BOOT CAMP

INCARCERATION PROGRAM BY CERTAIN INMATES; AND AMENDING SECTIONS 53-30-402 AND 53-30-403, MCA 147

79 *(House Bill No. 77; Jent)* PROVIDING A PROCEDURE FOR DNA TESTING OF A PERSON CONVICTED OF A FELONY WHO IS SERVING A TERM OF INCARCERATION; AND REQUIRING THE STATE TO PRESERVE SCIENTIFIC IDENTIFICATION EVIDENCE THAT THE STATE HAS REASON TO BELIEVE CONTAINS DNA MATERIAL AND THAT IS OBTAINED IN CONNECTION WITH A FELONY FOR WHICH A CONVICTION IS OBTAINED 148

80 *(House Bill No. 101; Jent)* CLARIFYING THAT A NONRESIDENT MAY NOT APPLY FOR OR PURCHASE FOR A NONRESIDENT'S USE A RESIDENT WILDLIFE CONSERVATION LICENSE OR HUNTING OR FISHING LICENSE OR PERMIT AND PROVIDING A PENALTY FOR VIOLATION OF THIS PROVISION; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES BY TELEPHONE, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; PROVIDING THAT LICENSES NEED NOT BE SUBSCRIBED TO OR COUNTERSIGNED BY THE PERSON ISSUING THE LICENSE; REVISING THE LAWS GOVERNING MISDEMEANOR AND FELONY POSSESSION OF HUNTING LICENSES; ESTABLISHING THE OFFENSE OF MISDEMEANOR AND FELONY POSSESSION OF FISHING LICENSES AND PERMITS; AUTHORIZING THE DEPARTMENT TO ADOPT RULES THAT PRESCRIBE ELIGIBILITY STANDARDS FOR LICENSES OR PERMITS OBTAINED BY TELEPHONE, BY MAIL, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; CLARIFYING THAT A PERSON MAY NOT CARRY A LICENSE OR PERMIT OBTAINED IN VIOLATION OF APPLICABLE LAW OR RULE; ALLOWING A PERSON WHO WISHES TO RECEIVE A BOWHUNTING LICENSE TO COMPLETE A NATIONAL BOWHUNTER EDUCATION FOUNDATION PROGRAM OR ANOTHER BOWHUNTER EDUCATION PROGRAM APPROVED BY THE DEPARTMENT; AMENDING SECTIONS 87-2-103, 87-2-105, 87-2-106, 87-2-107, AND 87-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE 151

81 *(House Bill No. 116; Kaufmann)* ESTABLISHING A DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 156

82 *(House Bill No. 137; Lange)* REPEALING THE TERMINATION DATE FOR THE REQUIREMENT THAT AT LEAST 50 PERCENT OF FISHING LICENSE FUNDS ALLOCATED FOR FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES BE USED FOR OPERATION AND MAINTENANCE AND BE PRIORITIZED AND EXPENDED FOR WEED MANAGEMENT, STREAMBANK RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REPEALING SECTION 4, CHAPTER 428, LAWS OF 1995, AND SECTION 1, CHAPTER 109, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 158

83 *(House Bill No. 150; Lawson)* EXEMPTING PROVIDERS OF COMPANIONSHIP SERVICES OR RESPITE CARE FOR THE AGED OR INFIRM FROM WAGE AND HOUR REQUIREMENTS TO CONFORM TO FEDERAL LAW; EXEMPTING THE PROVISION OF COMPANIONSHIP SERVICES OR RESPITE CARE TO THE AGED OR INFIRM FROM MINIMUM WAGE AND OVERTIME, UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION INSURANCE IF THE PERSON PROVIDING THE SERVICE IS EMPLOYED DIRECTLY BY THE FAMILY OR A LEGAL GUARDIAN; AND AMENDING SECTIONS 39-3-406, 39-51-204, AND 39-71-401, MCA 158

84 *(House Bill No. 187; Gallus)* GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING REGULATION OF FISH; DESIGNATING YELLOW PERCH AND CRAPPIE AS GAME FISH; AUTHORIZING A PURCHASER OF A RESIDENT TEMPORARY FISHING LICENSE TO PURCHASE A PADDLEFISH TAG; PROVIDING THAT A SCIENTIFIC COLLECTION PERMITTEE MAY NOT COLLECT FISH USING ANY EXPLOSIVE; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE TAKING OF WHITEFISH WITH SPEARS OR GIGS; REVISING THE LAWS GOVERNING REGULATION OF FISHING TO CHANGE THE TERM "DEPARTMENT" TO "COMMISSION" TO MAKE THE LAW CONSISTENT WITH THE DUTY OF THE COMMISSION TO ESTABLISH FISHING RULES; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AUTHORIZE TAKING BLACK BASS IN FLATHEAD LAKE; ELIMINATING THE AUTHORITY TO AUTHORIZE SNAGGING OF COHO (SILVER SALMON) AND AUTHORIZING THE SNAGGING OF CHINOOK SALMON; EXPANDING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT AND THE COMMISSION TO REGULATE COMMERCIAL FISH OPERATIONS; AMENDING SECTIONS 87-2-101, 87-2-306, 87-2-806, 87-3-204, 87-3-205, 87-4-601, 87-4-609, AND 87-4-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 168

85 *(House Bill No. 321; Younkin)* PROVIDING FOR MEDICAL ASSISTANTS; PROVIDING A DEFINITION OF "MEDICAL ASSISTANT"; PROVIDING FOR EXEMPTION FROM LICENSING REQUIREMENTS; PROVIDING FOR PHYSICIAN OR PODIATRIST SUPERVISION OF AND RESPONSIBILITY FOR A MEDICAL ASSISTANT; REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ADOPT GUIDELINES BY ADMINISTRATIVE RULE REGARDING THE PERFORMANCE OF ADMINISTRATIVE AND CLINICAL TASKS; AMENDING SECTIONS 37-3-102, 37-3-103, 37-3-303, AND 37-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 177

86 *(House Bill No. 366; Clark)* ALLOWING THE TRUSTEES OF CERTAIN SCHOOL DISTRICTS TO HOLD QUARTERLY MEETINGS INSTEAD OF FOUR MEETINGS IN SPECIFIC MONTHS; AMENDING SECTION 20-3-322, MCA; AND PROVIDING AN EFFECTIVE DATE. 180

87 *(House Bill No. 511; Everett)* AUTHORIZING A GOVERNING BODY TO ADOPT OR REVISE CERTAIN ZONING REGULATIONS THAT ARE CONSISTENT WITH A MASTER PLAN THAT WAS ADOPTED BEFORE OCTOBER 1, 1999, AND THAT DOES NOT MEET THE REQUIREMENTS OF A GROWTH POLICY AND SPECIFYING THAT THE ADOPTION OR REVISION MUST BE MADE BEFORE OCTOBER 1, 2006; AUTHORIZING THE REPEAL AND REVISION OF A MASTER PLAN FOLLOWING THE PROCEDURES IN LAW FOR REPEAL AND REVISION OF A GROWTH POLICY; AMENDING SECTIONS 76-1-604, 76-2-201, 76-2-203, 76-2-206, 76-2-303, AND 76-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 181

88 *(House Bill No. 636; Forrester)* REVISING LAWS GOVERNING TOW TRUCKS AND THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; ESTABLISHING CERTIFICATION REQUIREMENTS FOR TOW TRUCK OPERATORS TO QUALIFY FOR PARTICIPATION IN THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING DEFINITIONS; IDENTIFYING MANUFACTURER'S BOOM RATINGS FOR TOW TRUCK CLASSIFICATION; REQUIRING THE ESTABLISHMENT OF THE TOW TRUCK COMPLAINT RESOLUTION COMMITTEE AND ASSIGNING RESPONSIBILITIES TO THE COMMITTEE; SPECIFYING THE AMOUNT OF INSURANCE A

COMMERCIAL TOW TRUCK OPERATOR MUST CARRY; REQUIRING THAT PROOF OF INSURANCE BE SENT TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING REQUIREMENTS FOR A TOW TRUCK OPERATOR'S FENCED LOT; ALLOWING THE HIGHWAY PATROL TO CHARGE A FEE FOR THE INSPECTION DECAL; SPECIFYING THE KIND OF INFORMATION THAT QUALIFIED TOW TRUCK OPERATORS MUST PROVIDE; ESTABLISHING THE PROCEDURE FOR MULTIPLE TOW TRUCK OPERATORS TO BE ON A ROTATION LIST FROM A SINGLE STORAGE OR IMPOUNDMENT FACILITY; ALLOWING ONLY ONE TOW TRUCK OPERATION FOR EACH OWNER TO BE PLACED ON A ROTATION LIST; ESTABLISHING REQUIREMENTS FOR SATELLITE TOW TRUCK OPERATIONS; REQUIRING LOCAL LAW ENFORCEMENT AGENCIES TO COMPLY WITH THE ROTATION SYSTEM PROVISIONS; REQUIRING THAT LISTS OF ROTATION SYSTEM CALLS BE MADE AVAILABLE; AND AMENDING SECTIONS 61-8-903, 61-8-904, 61-8-905, 61-8-906, 61-8-907, 61-8-908, 61-8-910, AND 69-12-102, MCA 184

89 *(Senate Bill No. 51; Bohlinger)* AUTHORIZING THE BOARD OF HOUSING TO INCREASE THE TOTAL AMOUNT OF ITS OUTSTANDING NOTES AND BONDS FROM $975 MILLION TO $1.5 BILLION; PROVIDING FOR SEMIANNUAL INSTALLMENT PAYMENTS ON SERIAL BONDS; AND AMENDING SECTION 90-6-111, MCA. 191

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91 *(House Bill No. 411; Gallus)* PROVIDING FOR THE TRANSFER OF RIVER-USE DAYS TO THE NEW OWNER OF A FISHING OUTFITTER BUSINESS; AMENDING SECTION 37-47-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 193

92 *(House Bill No. 471; Wanzenried)* EXPANDING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION AND THE CHIEF INFORMATION OFFICER REGARDING OVERSIGHT OF INFORMATION TECHNOLOGY PURCHASES; SETTING RESTRICTIONS ON STATE FINANCING OF INFORMATION TECHNOLOGY PURCHASES; ALLOWING BONDS TO BE USED ON A LIMITED BASIS FOR INFORMATION TECHNOLOGY PURCHASES; AMENDING SECTION 2-17-512, MCA; AND PROVIDING AN EFFECTIVE DATE 193

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99 *(House Bill No. 427; Gutsche)* REVISING LAWS RELATING TO AIR QUALITY; CLARIFYING CERTAIN AIR QUALITY PERMIT APPLICATIONS THAT ARE SUBJECT TO DEPARTMENT OF ENVIRONMENTAL QUALITY ACTION WITHIN 60 DAYS AFTER THE DEPARTMENT'S RECEIPT OF THE APPLICATION; PROVIDING THAT THE DEPARTMENT HAS 75 DAYS FROM THE RECEIPT OF CERTAIN AIR QUALITY PERMIT APPLICATIONS TO TAKE ACTION; REQUIRING THAT THE DEPARTMENT PREPARE A SINGLE ENVIRONMENTAL REVIEW FOR CERTAIN PERMIT APPLICATIONS; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT A RULE THAT PROVIDES FOR A 30-DAY PUBLIC COMMENT PERIOD ON CERTAIN PERMIT APPLICATIONS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 208

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102 *(Senate Bill No. 3; Harrington)* ELIMINATING THE REQUIREMENT THAT THE CLERKS OF THE DISTRICT COURTS AND THE CLERK OF THE SUPREME COURT COMPILE AND MAKE AVAILABLE CERTAIN INFORMATION RELATING TO SENTENCING IN CRIMINAL CASES; REPEALING SECTION 46-18-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 220

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104 *(Senate Bill No. 17; McGee)* PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE FOR ALL LEGISLATION ENACTED DURING A SPECIAL SESSION UNLESS A DIFFERENT TIME IS PRESCRIBED IN THE ENACTING LEGISLATION; AMENDING SECTION 1-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 222

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116 *(Senate Bill No. 49; Shea)* PROHIBITING THE DISCLOSURE OF MILITARY DISCHARGE CERTIFICATES TO UNAUTHORIZED INDIVIDUALS; AMENDING SECTIONS 2-6-401 AND 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 383

117 *(Senate Bill No. 88; Bales)* PROVIDING INSTRUCTION FOR THE RENUMBERING AND CODIFICATION OF SECTION 85-2-521, MCA, CONCERNING REQUIREMENTS FOR COAL BED METHANE WELLS 384

118 *(Senate Bill No. 94; Stonington)* PROVIDING FOR THE MULTIAGENCY CHILDREN'S SERVICES SYSTEM OF CARE INITIATIVE FOR HIGH-RISK CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE TO BUILD STATE AND COMMUNITY CAPACITY TO SUPPORT THE APPROPRIATE CARE AND TREATMENT OF HIGH-RISK CHILDREN IN THE LEAST RESTRICTIVE AND MOST APPROPRIATE SETTING; AMENDING SECTIONS 52-2-301, 52-2-302, 52-2-303, 52-2-304, AND 52-2-308, MCA; REPEALING SECTIONS 52-2-305, 52-2-306, AND 52-2-307, MCA; AND PROVIDING AN EFFECTIVE DATE. 384

119 *(House Bill No. 79; Jackson)* PROVIDING THAT AN INDIVIDUAL OR A NONPROFIT ORGANIZATION IS NOT LIABLE FOR CIVIL DAMAGES RESULTING FROM THE INDIVIDUAL'S OR ORGANIZATION'S PLACEMENT OF A SIGN OR MARKER WARNING OF A HAZARD IN WATER THAT IS UNDER THE JURISDICTION OF THE STATE AND THAT IS LEGALLY ACCESSIBLE TO THE PUBLIC; PROVIDING CRITERIA FOR THE PLACEMENT OF THE SIGNS OR MARKERS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO INFORM THE PUBLIC OF THE PLACEMENT, USE, AND SIGNIFICANCE OF WATER HAZARD SIGNS AND MARKERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 388

120 *(House Bill No. 178; Fritz)* AUTHORIZING AN EMPLOYER TO EMPLOY A CERTIFIED TEACHER, SPECIALIST, OR ADMINISTRATOR WHO HAS BEEN RECEIVING A RETIREMENT ALLOWANCE FOR AT LEAST 12 MONTHS TO BE REEMPLOYED WITHOUT THE LOSS OR INTERRUPTION OF TEACHER RETIREMENT BENEFITS; DEFINING "EMPLOYER"; REQUIRING AN EMPLOYER TO REPORT MONTHLY EMPLOYMENT DATA TO THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM; REQUIRING A REPORT BY THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM TO THE 2005 LEGISLATURE; AMENDING SECTION 19-20-804, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 389

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126 *(House Bill No. 32; Golie)* ALLOWING THE HUNTING OF MOUNTAIN LIONS DURING WINTER OPEN SEASON WITH THE AID OF A DOG OR DOGS; ALLOWING THE HUNTING OF BOBCATS DURING TRAPPING SEASON WITH THE AID OF A DOG OR DOGS; ESTABLISHING A TRAINING SEASON DURING WHICH MOUNTAIN LIONS AND BOBCATS MAY BE PURSUED WITH A DOG OR DOGS; CREATING A CLASS D-3 RESIDENT HOUND TRAINING LICENSE AND ESTABLISHING THE CONDITIONS AND FEE FOR THE LICENSE; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 402

127 *(House Bill No. 55; Facey)* EXPANDING THE AUTHORITY OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ADOPT RULES RESTRICTING NONRESIDENT MOUNTAIN LION HUNTERS IN ALL HUNTING DISTRICTS THAT QUALIFY AND ELIMINATING THE TERMINATION DATE FOR THIS AUTHORITY; AMENDING SECTION 87-1-301, MCA; AND REPEALING SECTION 3, CHAPTER 575, LAWS OF 2001 403

128 *(House Bill No. 89; Olson)* EXTENDING THE SCHEDULE FOR COMPLETING TOTAL MAXIMUM DAILY LOADS FOR STREAMS LISTED IN 1997; AND AMENDING SECTION 75-5-703, MCA 406

129 *(House Bill No. 97; Jent)* DEFINING "TAXIDERMIST"; INCREASING THE ANNUAL TAXIDERMIST'S LICENSE FEE FROM $15 TO $50; AND AMENDING SECTION 87-4-201, MCA. 408

130 *(House Bill No. 135; Andersen)* AUTHORIZING A SCHOOL DISTRICT TO USE ITS TUITION FUND TO PAY THE COSTS FOR A RESIDENT STUDENT WHO ENROLLS IN A DAY-TREATMENT PROGRAM UNDER AN APPROVED INDIVIDUALIZED EDUCATION PROGRAM AT A PRIVATE, NONSECTARIAN SCHOOL LOCATED IN OR OUTSIDE OF THE STUDENT'S RESIDENT DISTRICT; AMENDING SECTION 20-5-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 409

131 *(House Bill No. 142; Devlin)* REQUIRING THE STATE OFFICIAL RESPONSIBLE FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT TO CONSULT WITH ANY LOCAL GOVERNMENT THAT MAY BE DIRECTLY IMPACTED BY A PROJECT; AMENDING SECTIONS 75-1-104 AND 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 411

132 *(House Bill No. 198; Lambert)* CLARIFYING THE LANGUAGE IN STATEMENTS OF IMPLICATION FOR BALLOT MEASURES; PROVIDING THAT STATEMENTS OF IMPLICATION MUST BE WRITTEN SO THAT A POSITIVE VOTE INDICATES SUPPORT FOR THE MEASURE AND A NEGATIVE VOTE INDICATES OPPOSITION TO THE MEASURE; AND AMENDING SECTION 13-27-312, MCA 415

133 *(House Bill No. 215; Brueggeman)* STANDARDIZING THE FEE FOR REINSTATEMENT OF A DRIVER'S LICENSE OR DRIVING PRIVILEGE AFTER SUSPENSION OR REVOCATION BY INCREASING THE FEE FOR REINSTATEMENT AFTER CERTAIN SUSPENSIONS OR REVOCATIONS FROM $25 TO $100; EXEMPTING THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE FROM THE STANDARDIZED REINSTATEMENT FEE; AMENDING SECTIONS 61-5-215 AND 61-5-216, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 416

134 *(House Bill No. 250; Morgan)* REVISING THE DESIGN OF LICENSE PLATES FOR RECIPIENTS OF A PURPLE HEART MEDAL; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 417

135 *(House Bill No. 311; Stoker)* INCLUDING EGGNOG IN THE DEFINITION OF "CLASS I MILK" INSTEAD OF IN THE DEFINITION OF "CLASS II MILK" TO CORRELATE WITH FEDERAL STANDARDS; REQUIRING THE DEPARTMENT OF LIVESTOCK TO ASSESS A FEE FOR ALL CLASSES OF MILK SOLD BY A PERSON LICENSED BY THE DEPARTMENT TO BE USED FOR THE ADMINISTRATION OF THE MILK INSPECTION AND MILK DIAGNOSTIC LABORATORY FUNCTIONS OF THE DEPARTMENT; PROVIDING THAT THE FEE MUST BE ESTABLISHED COMMENSURATE WITH COSTS OF THE PROGRAM; REQUIRING LICENSEES TO REPORT TO THE DEPARTMENT ON A MONTHLY BASIS THE VOLUME OF MILK PRODUCED; AMENDING SECTIONS 81-23-101 AND 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE. 428

136 *(House Bill No. 126; Fritz)* PROVIDING FOR THE DISPOSITION OF CIVIL FINES, COSTS, AND FEES RECOVERED UNDER CERTAIN CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; PROVIDING FOR THE USE OF THE MONEY TO FUND CONSUMER PROTECTION FUNCTIONS; AND PROVIDING AN EFFECTIVE DATE

137 *(House Bill No. 144; Harris)* REVISING CERTAIN UNDERGROUND STORAGE TANK LAWS; INCREASING THE TIME LIMIT FOR SUBMITTING CLEANUP EXPENSE REIMBURSEMENT REQUESTS; AMENDING DEFINITIONS; CHANGING THE ANNUAL TANK REGISTRATION FEES; REVISING REQUIREMENTS FOR COMPLIANCE INSPECTIONS AND PERMITS; AMENDING SECTIONS 75-11-307, 75-11-503, 75-11-505, AND 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 430

138 *(House Bill No. 164; Callahan)* REVISING CERTAIN PROVISIONS RELATED TO PERMANENT TOTAL DISABILITY BENEFITS; REMOVING THE PROVISIONS LIMITING A WORKER TO A MAXIMUM OF 10 BENEFIT ADJUSTMENTS AND LIMITING THE ADJUSTMENT PERCENTAGE INCREASE TO 3 PERCENT; AMENDING SECTION 39-71-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 437

139 *(House Bill No. 172; Gallik)* EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . .

140 *(House Bill No. 180; Clark)* ALLOCATING LIQUOR LICENSE FEES AND BEER AND WINE TAX REVENUE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; STATUTORILY APPROPRIATING FUNDS FOR DISTRIBUTION TO STATE-APPROVED PRIVATE AND PUBLIC CHEMICAL DEPENDENCY PROGRAMS FOR GRANTS AND FOR TREATMENT OF PERSONS WITH CO-OCCURRING SERIOUS MENTAL ILLNESS AND CHEMICAL DEPENDENCY; AMENDING SECTIONS 17-7-502, 53-24-108, 53-24-204, AND 53-24-206, MCA; AND PROVIDING AN EFFECTIVE DATE. 438

141 *(House Bill No. 240; Shockley)* PROVIDING THAT THE WRITTEN JUDGMENT IN A CRIMINAL CASE MUST BE ENTERED ON THE RECORD WITHIN 30 DAYS AFTER ORAL PRONOUNCEMENT OF THE DISPOSITION OF THE CASE; REQUIRING AN ORDER SIGNED BY THE SENTENCING JUDGE ON THE DATE OF ORAL PRONOUNCEMENT OF SENTENCE STATING THAT THE DEFENDANT IS SENTENCED TO THAT PLACE FOR IMPRISONMENT, COMMITMENT, PLACEMENT, OR EXECUTION, AS THE CASE MAY BE; PROVIDING THAT THE ORDER IS AUTHORITY FOR THAT PLACE TO HOLD THE DEFENDANT PENDING RECEIPT BY THAT PLACE OF A COPY OF THE WRITTEN JUDGMENT; AND AMENDING SECTIONS 46-18-116 AND 46-19-101, MCA 443

142 *(House Bill No. 246; Harris)* REQUIRING A PEACE OFFICER WHO IS ABOUT TO INTERROGATE A PERSON WHO IS IN CUSTODY TO GIVE THE PERSON THE MIRANDA WARNING 444

143 *(House Bill No. 280; Wanzenried)* ALLOWING FOR THE USE OF ORIGINAL MONTANA LICENSE PLATES ON MOTOR VEHICLES THAT ARE 25 YEARS OLD OR OLDER AND THAT ARE USED FOR GENERAL TRANSPORTATION PURPOSES; REQUIRING PERMANENT REGISTRATION OF GENERAL TRANSPORTATION COLLECTOR'S ITEM VEHICLES; DEFINING "GENERAL TRANSPORTATION COLLECTOR'S ITEM"; AND AMENDING SECTIONS 61-3-412 AND 61-3-562, MCA 445

144 *(House Bill No. 305; Peterson)* PROVIDING A STATUTORY DEFINITION OF "CURRENT TERM" AS USED IN MONTANA'S CONSTITUTIONAL PROVISION ON TERM LIMITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 448

145 *(House Bill No. 339; Pattison)* CLARIFYING WHICH COUNTIES MUST HAVE COUNTY AUDITORS AND WHICH COUNTIES MAY HAVE COUNTY AUDITORS; ALLOWING COMMISSIONERS IN CERTAIN COUNTIES THE DISCRETIONARY AUTHORITY TO PROVIDE FOR AN ELECTED OR APPOINTED COUNTY AUDITOR; AMENDING SECTION 7-6-2401, MCA; AND REPEALING SECTION 7-6-2402, MCA 448

146 *(House Bill No. 402; Parker)* INCREASING THE MAXIMUM IMPRISONMENT PENALTIES AND REQUIRING OFFENDER REGISTRATION FOR THE CRIME OF OPERATING AN UNLAWFUL CLANDESTINE ILLEGAL DRUG LABORATORY; AND AMENDING SECTIONS 45-9-132 AND 46-23-502, MCA 449

147 *(House Bill No. 436; Olson)* ELIMINATING COMPLIANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT FOR STATE LAND LEASES THAT ARE SUBJECT TO FURTHER PERMITTING REQUIREMENTS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 450

148 *(House Bill No. 455; Lake)* PROVIDING FOR THE INSPECTION AND REGULATION OF NONCOMMERCIAL FEEDS; CLARIFYING THAT THE DEPARTMENT OF AGRICULTURE HAS ACCESS TO PREMISES IN ADDITION TO COMMERCIAL ESTABLISHMENTS TO CONDUCT FEED INSPECTIONS FOR THE PURPOSE OF PROTECTING HUMAN AND ANIMAL HEALTH AND SAFETY; AMENDING SECTIONS 80-9-101 AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 451

149 *(House Bill No. 493; Branae)* EXEMPTING FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ARRANGEMENT" HEALTH CARE FACILITIES THAT PROVIDE THEIR OWN EMPLOYEES TO PERFORM SERVICES AT AND ON BEHALF OF OTHER HEALTH CARE FACILITIES AND AT AND ON BEHALF OF PRIVATE OFFICES OF OTHER LICENSED HEALTH CARE WORKERS; EXEMPTING HEALTH CARE FACILITIES FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ORGANIZATION"; AND AMENDING SECTION 39-8-102, MCA. 454

150 *(House Bill No. 562; Ballantyne)* REVISING THE LAWS RELATING TO A CUSTOMER'S TELECOMMUNICATIONS CARRIER; PROVIDING THAT AN ELECTRONIC SIGNATURE MAY BE USED TO AUTHORIZE A CHANGE IN A CUSTOMER'S TELECOMMUNICATIONS CARRIER OR TO AUTHORIZE A CHARGE FOR A SERVICE OR PRODUCT TO BE BILLED ON A CUSTOMER'S BILL; ELIMINATING THE REQUIREMENT THAT A TELECOMMUNICATIONS CARRIER OBTAIN A CUSTOMER'S AUTHORIZATION TO PROVIDE SERVICES TO THE CUSTOMER AS A RESULT OF ACQUIRING THE SUBSCRIBER BASE OF ANOTHER CARRIER; AMENDING SECTIONS 69-3-1302 AND 69-3-1303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 456

151 *(Senate Bill No. 16; Mangan)* REVISING THE LAWS RELATED TO SCHOOL BOUNDARY TRANSFERS; ESTABLISHING CRITERIA, A STANDARD OF PROOF, AND PROCEDURES FOR TERRITORY TRANSFER HEARINGS; AUTHORIZING AN APPEAL OF THE COUNTY SUPERINTENDENT'S DECISION TO THE DISTRICT COURT; AMENDING SECTIONS 20-3-205, 20-6-214, 20-6-215, 20-6-308, AND 20-6-322, MCA; REPEALING SECTIONS 20-6-213, 20-6-309, AND 20-6-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 458

152 *(Senate Bill No. 19; Grimes)* GENERALLY REVISING LAWS RELATING TO STATE ASSUMPTION OF DISTRICT COURT COSTS; CLARIFYING

JURORS' AND WITNESSES' WARRANT PAYMENT PROCESSES; REVISING THE APPOINTING AUTHORITY FOR COURT REPORTERS, JUVENILE PROBATION OFFICERS, AND YOUTH ASSESSMENT OFFICERS; CLARIFYING WORKERS' COMPENSATION REQUIREMENTS FOR INDEPENDENT CONTRACTOR COURT REPORTERS; ELIMINATING STATUTORY PROVISIONS RELATING TO JOB QUALIFICATIONS FOR JUVENILE PROBATION OFFICERS; AMENDING SECTIONS 3-5-510, 3-5-511, 3-5-601, 3-5-902, 3-15-204, 41-5-1701, 41-5-1703, 41-5-1706, AND 41-5-1707, MCA; REPEALING SECTION 41-5-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 463

153 *(Senate Bill No. 20; Grimes)* EXEMPTING COURT REPORTERS APPOINTED AS INDEPENDENT CONTRACTORS FROM THE MONTANA PROCUREMENT ACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 467

154 *(Senate Bill No. 68; Cromley)* PROVIDING THAT A CIRCUMSTANCE OR FACT USED TO ENHANCE A PENALTY OR AN AGGRAVATING CIRCUMSTANCE USED TO IMPOSE A DEATH PENALTY MUST BE PLEADED AND ADMITTED OR MUST BE FOUND BY THE TRIER OF FACT BEYOND A REASONABLE DOUBT; AND AMENDING SECTIONS 46-1-401, 46-18-302, 46-18-305, AND 46-18-310, MCA. 469

155 *(Senate Bill No. 71; Barkus)* REVISING THE DEFINITION OF "LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICE" WITH RESPECT TO ELIGIBILITY FOR AN INCOME TAX CREDIT; REMOVING THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S RULEMAKING AUTHORITY FOR ESTABLISHING EMISSION TESTING AND EMISSION CERTIFICATION STANDARDS FOR LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; AMENDING SECTIONS 15-32-102 AND 15-32-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 471

156 *(Senate Bill No. 144; Barkus)* GENERALLY REVISING STATE SECURITIES LAWS; MODIFYING THE INDIVIDUALS NOT INCLUDED IN THE DEFINITION OF "SALESPERSON"; PROVIDING FOR A CHARGE OF 50 CENTS FOR EACH PAGE FOR OBTAINING CERTAIN COPIES FROM THE SECURITIES COMMISSIONER; PROVIDING A $50 FEE FOR AN ISSUER FILING A NAME CHANGE FOR A SERIES, PORTFOLIO, OR OTHER SUBDIVISION OF AN INVESTMENT COMPANY OR SIMILAR ISSUER; REQUIRING THE FILING OF CERTAIN DOCUMENTS WITH RESPECT TO FEDERAL COVERED SECURITIES; AND AMENDING SECTIONS 30-10-103, 30-10-107, 30-10-209, AND 30-10-211, MCA 473

157 *(House Bill No. 156; Matthews)* REVISING THE ABILITY TO PLACE A YOUTH ADJUDICATED DELINQUENT FOR AN ACT THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT IN A STATE YOUTH CORRECTIONAL FACILITY; AND AMENDING SECTION 41-5-1513, MCA. 480

158 *(House Bill No. 176; Pattison)* PROVIDING FOR THE FUNDING OF ADMINISTRATIVE EXPENSES ASSOCIATED WITH REGIONAL DRINKING WATER SYSTEMS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; MODIFYING THE RESPONSIBILITY FOR ADMINISTRATION OF THE FUNDS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN EFFECTIVE DATE 482

159 *(House Bill No. 391; Balyeat)* CORRECTING INDIVIDUAL AND CORPORATE TAX LAW THAT RELATES TO FEDERAL TAX LAW,

INCLUDING THE TAX ON LUMP-SUM DISTRIBUTIONS, THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT, AND THE SMALL BUSINESS INVESTMENT TAX CREDIT; AMENDING SECTIONS 15-30-106, 15-32-402, AND 15-32-405, MCA; REPEALING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 483

160 *(House Bill No. 429; Kasten)* ESTABLISHING A PROPERTY TAX EXEMPTION STUDY COMMITTEE; PROVIDING AN APPROPRIATION TO THE COMMITTEE; AND PROVIDING EFFECTIVE DATES 484

161 *(House Bill No. 683; Brueggeman)* REVISING REQUIREMENTS FOR A CHANGE IN A WATER APPROPRIATION RIGHT; AUTHORIZING A CHANGE IN A WATER APPROPRIATION RIGHT WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A REPLACEMENT WELL FOR A MUNICIPAL WELL WHEN THE APPROPRIATION DOES NOT EXCEED 450 GALLONS A MINUTE; AUTHORIZING THE CONSTRUCTION OF CERTAIN REDUNDANT WELLS WITHOUT THE PRIOR APPROVAL OF THE DEPARTMENT, SUBJECT TO CERTAIN REQUIREMENTS; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 486

162 *(Senate Bill No. 45; Gebhardt)* INCREASING THE LIMIT ON CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES THAT MAY BE DIRECTLY NEGOTIATED BY A GOVERNMENTAL AGENCY; AMENDING SECTIONS 18-8-212 AND 85-1-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 499

163 *(Senate Bill No. 55; Keenan)* PROVIDING FOR A 3-MONTH COMMUNITY COMMITMENT UNLESS THERE HAS BEEN EVIDENCE OF A PREVIOUS INVOLUNTARY COMMITMENT FOR INPATIENT TREATMENT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTION 53-21-127, MCA 500

164 *(Senate Bill No. 56; Keenan)* LIMITING THE PERIOD OF CONFINEMENT FOR A PERSON FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT; REQUIRING THE COURT TO DETERMINE THE MAXIMUM PERIOD OF CONFINEMENT AND TO MAKE SPECIFIC FINDINGS REGARDING VICTIMS; AND AMENDING SECTIONS 46-14-214 AND 46-14-301, MCA. 502

165 *(Senate Bill No. 64; Keenan)* PROVIDING THAT NOTICE OF THE FILING OF PETITIONS FOR CIVIL COMMITMENT OF PERSONS ALLEGED TO SUFFER FROM A MENTAL DISORDER BE GIVEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND ANY MENTAL HEALTH FACILITY TO WHICH THE PETITIONS REQUIRE COMMITMENT; AMENDING SECTION 53-21-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 504

166 *(Senate Bill No. 87; Hansen)* REMOVING THE DEPARTMENT OF AGRICULTURE'S AUTHORITY TO MAKE GRANTS UNDER THE VERTEBRATE PEST MANAGEMENT PROGRAM; AMENDING SECTION 80-7-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 505

167 *(Senate Bill No. 102; McNutt)* INCREASING TO 40 YEARS FROM 10 YEARS THE ALLOWABLE LENGTH OF TIME THAT THE DEPARTMENT OF TRANSPORTATION MAY LEASE AIRPORTS OR SIMILAR PROPERTY; AND AMENDING SECTION 67-2-302, MCA . . 506

168 *(House Bill No. 30; Hurwitz)* AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO PERMIT THE INSTALLATION OF ELECTRONIC COMMUNICATION EQUIPMENT AND ELECTRONIC INFORMATIONAL KIOSKS ON A HIGHWAY RIGHT-OF-WAY, INCLUDING A CONTROLLED-ACCESS FACILITY; ALLOWING THE DEPARTMENT TO SET TERMS AND CONDITIONS FOR THE EQUIPMENT OR KIOSKS; ALLOWING A FEE AND PROVIDING FOR THE DEPOSIT OF THE FEE; AND AMENDING SECTION 60-5-110, MCA 507

169 *(House Bill No. 60; McKenney)* PROHIBITING THE GOVERNOR FROM DIRECTING A REDUCTION IN SPENDING FOR THE MONTANA SCHOOL FOR THE DEAF AND BLIND IN THE EVENT OF A PROJECTED GENERAL FUND BUDGET DEFICIT; AMENDING SECTION 17-7-140, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 508

170 *(House Bill No. 656; Bitney)* ELIMINATING THE SAFETY EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; AMENDING SECTIONS 39-71-1501, 39-71-1502, AND 39-71-1503, MCA; REPEALING SECTION 2-15-1708, MCA; AND PROVIDING AN EFFECTIVE DATE 509

171 *(Senate Bill No. 81; Cooney)* AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO AWARD AN HONORARY HIGH SCHOOL DIPLOMA TO CERTAIN VETERANS WHO DID NOT RECEIVE A DIPLOMA DUE TO MILITARY SERVICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 510

172 *(Senate Bill No. 190; Bohlinger)* ESTABLISHING CRITERIA FOR WHEN A LICENSED DENTAL HYGIENIST MAY PROVIDE DENTAL HYGIENE PREVENTATIVE SERVICES WITHOUT THE PRIOR AUTHORIZATION OR PRESENCE OF A LICENSED DENTIST; DEFINING "PUBLIC HEALTH FACILITY" AND "PUBLIC HEALTH SUPERVISION"; REQUIRING THE BOARD OF DENTISTRY TO ADOPT RULES DEFINING THE QUALIFICATIONS NECESSARY TO OBTAIN A LIMITED ACCESS PERMIT; REQUIRING A LICENSED DENTAL HYGIENIST PRACTICING UNDER PUBLIC HEALTH SUPERVISION TO OBTAIN A LIMITED ACCESS PERMIT AND TO FOLLOW CERTAIN GUIDELINES; AND AMENDING SECTION 37-4-405, MCA. 511

173 *(Senate Bill No. 202; Johnson)* ALLOWING THE BOARD OF PUBLIC EDUCATION TO USE A PORTION OF THE TEACHER CERTIFICATION FEE FOR ACTIVITIES IN SUPPORT OF THE BOARD'S CONSTITUTIONAL AND STATUTORY DUTIES; AND AMENDING SECTION 20-4-109, MCA 513

174 *(House Bill No. 154; Lenhart)* GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; REVISING THE POWERS OF THE BOARD; REVISING THE DUTIES OF EMPLOYERS; CLARIFYING METHODS OF PURCHASING SERVICE; CLARIFYING PROVISIONS ON ESTABLISHING AN ARRANGEMENT FOR PAYMENT OF EXCESS BENEFITS; CLARIFYING DATES RELATED TO PURCHASING OUT-OF-STATE PUBLIC TEACHING SERVICE; PROVIDING THAT BENEFITS MUST BE CORRECTED UPON DISCOVERY OF A FORGED SIGNATURE; PROVIDING THAT COST-OF-LIVING INCREASES MUST BE INCLUDED WITH RESPECT TO MAXIMUM BENEFIT AND MAXIMUM COMPENSATION LIMITS; REVISING THE WAITING PERIOD REQUIRED BEFORE RECEIVING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING PROVISIONS ON TRANSFERRING CREDIT FOR PART-TIME EMPLOYMENT; CLARIFYING PROVISIONS ON RESTORATION OF MEMBERSHIP; ALLOWING BENEFICIARIES TO HAVE CERTAIN

INSURANCE PREMIUMS WITHHELD FROM THEIR BENEFIT PAYMENTS; AMENDING SECTIONS 19-20-101, 19-20-201, 19-20-208, 19-20-212, 19-20-402, 19-20-414, 19-20-705, 19-20-710, 19-20-715, 19-20-718, 19-20-719, 19-20-805, 19-20-905, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 514

175 *(House Bill No. 621; Sinrud)* REMOVING THE DESIGNATION OF THE MONTANA CHIROPRACTIC LEGAL PANEL AS A STATE AGENCY; AMENDING SECTION 27-12-104, MCA; AND PROVIDING AN EFFECTIVE DATE 524

176 *(House Bill No. 635; Forrester)* REVISING LAWS RELATING TO ABANDONED, WRECKED, AND DISABLED VEHICLES; ALLOWING CERTAIN ABANDONED VEHICLES TO BE DISPOSED OF IN THE SAME MANNER AS JUNK VEHICLES; PERMITTING A QUALIFIED TOW TRUCK OPERATOR TO OBTAIN A CERTIFICATE OF RELEASE AND A CERTIFICATE OF OWNERSHIP FOR CERTAIN ABANDONED VEHICLES; PERMITTING A QUALIFIED OPERATOR TO OBTAIN A CERTIFICATE OF OWNERSHIP FOR CERTAIN WRECKED OR DAMAGED VEHICLES; AND AMENDING SECTIONS 61-12-402, 61-12-404, 61-12-405, AND 61-12-406, MCA 525

177 *(Senate Bill No. 23; Butcher)* PROVIDING THAT COMMODITY PRODUCERS HOLDING BAILMENT CONTRACTS HAVE A FIRST PRIORITY LIEN; AMENDING SECTION 80-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 528

178 *(Senate Bill No. 26; Mangan)* GENERALLY REVISING TITLE LOAN LAWS; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; ESTABLISHING A SPECIAL REVENUE ACCOUNT UNDER THE MONTANA TITLE LOAN ACT TO BE USED BY THE DEPARTMENT OF ADMINISTRATION IN ITS SUPERVISORY CAPACITY; DEFINING "TITLE LOAN"; CREATING A CIVIL PENALTY FOR CERTAIN ACTIONS BY TITLE LENDERS; ALLOWING TITLE LENDERS TO IMPOSE A SERVICE CHARGE FOR INSUFFICIENT FUNDS CHECKS; PROHIBITING A TITLE LENDER FROM HOLDING A TITLE FOR MORE THAN 30 CALENDAR DAYS WITHOUT PERFECTING THE TITLE LENDER'S SECURITY INTEREST; LIMITING CRIMINAL AND CIVIL REMEDIES OF TITLE LENDERS TO THOSE REMEDIES AVAILABLE UNDER THE MONTANA TITLE LOAN ACT; EXCLUDING TITLE LOANS FROM THE DEFINITION OF "CONSUMER LOANS"; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-802, 31-1-803, 31-1-811, 31-1-817, 31-1-825, 31-1-826, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE. 528

179 *(Senate Bill No. 36; Grimes)* REQUIRING A DISTRICT COURT TO REQUIRE A WATER COMMISSIONER, UPON APPOINTMENT, TO OBTAIN WORKERS' COMPENSATION INSURANCE; CLARIFYING THAT THE OWNERS AND USERS OF DISTRIBUTED WATER, INCLUDING PERMITTEES AND CERTIFICATE HOLDERS, ARE RESPONSIBLE FOR PAYING A PROPORTIONATE SHARE OF WORKERS' COMPENSATION INSURANCE PURCHASED BY A WATER COMMISSIONER; PROVIDING THAT A WATER COMMISSIONER APPOINTED BY A DISTRICT COURT IS NOT AN EMPLOYEE OF THE JUDICIAL BRANCH, A LOCAL GOVERNMENT, OR A WATER USER; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 532

180 *(Senate Bill No. 70; McNutt)* REQUIRING THAT UNIVERSAL SYSTEM BENEFITS PROGRAMS MONEY DEPOSITED IN STATE SPECIAL REVENUE ACCOUNTS BE EXPENDED IN THE UTILITY SERVICE

TERRITORY FROM WHICH THE MONEY WAS RECEIVED; REQUIRING THAT, IN ASSESSING UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING NEEDS, THE DEPARTMENTS OF ENVIRONMENTAL QUALITY AND PUBLIC HEALTH AND HUMAN SERVICES SOLICIT UTILITY AND PUBLIC COMMENT FROM THE UTILITY SERVICE TERRITORY FROM WHICH THE MONEY WAS RECEIVED; AMENDING SECTION 69-8-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 534

181 *(Senate Bill No. 117; Cobb)* PROVIDING THAT EXECUTIVE BRANCH AGENCY POLICIES, REGULATIONS, STANDARDS, AND STATEMENTS CONCERNING THE INTERNAL MANAGEMENT OF STATE GOVERNMENT AND NOT AFFECTING PRIVATE RIGHTS OR PROCEDURES AVAILABLE TO THE PUBLIC DO NOT CONSTITUTE RULES FOR PURPOSES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-102, MCA 535

182 *(Senate Bill No. 128; Mahlum)* AUTHORIZING THE DEPARTMENT OF JUSTICE TO ESTABLISH FEES FOR THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; PROVIDING FOR THE DEPOSIT AND USE OF THE FEES; CREATING AN EXCEPTION TO BUDGET AMENDMENT REQUIREMENTS TO ALLOW THE DEPARTMENT OF JUSTICE TO INCUR PERSONAL SERVICES COSTS AND OPERATIONAL COSTS IN CONNECTION WITH THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; AMENDING SECTION 17-7-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 537

183 *(Senate Bill No. 131; Barkus)* CREATING AN INTERMEDIARY RELENDING PROGRAM WITHIN THE BOARD OF INVESTMENTS; REQUIRING THAT LOAN PROCEEDS BE USED AS MATCHING FUNDS FOR UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT LOAN PROGRAMS AND OTHER FEDERAL PROGRAMS; PROVIDING TERMS FOR INTEREST RATES AND REPAYMENT; ALLOWING THE BOARD TO PURCHASE A PORTION OF SEASONED LOANS FROM A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION'S REVOLVING LOAN PROGRAM; AMENDING SECTION 17-6-302, MCA; AND PROVIDING AN EFFECTIVE DATE. . 539

184 *(Senate Bill No. 132; McNutt)* PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION TO IMPLEMENT THE 9-1-1 STATEWIDE EMERGENCY TELEPHONE SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 541

185 *(Senate Bill No. 160; Cobb)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP STRATEGIC PLANS; REQUIRING THE STRATEGIC PLAN TO CONTAIN PERFORMANCE MEASURES; DESCRIBING CRITERIA FOR PERFORMANCE MEASURES; DESCRIBING REQUIREMENTS FOR DATA COLLECTION AND REPORTING; ALLOWING THE LEGISLATIVE AUDIT DIVISION TO PROVIDE CERTAIN INFORMATION; OUTLINING LEGISLATIVE AND AGENCY USE OF PERFORMANCE MEASURES; AND PROVIDING AN EFFECTIVE DATE 542

186 *(Senate Bill No. 172; McNutt)* PROVIDING THAT A FINANCIAL INSTITUTION THAT ENTERS INTO AN AGREEMENT TO SHARE OR OPERATE ELECTRONIC TERMINALS DOES NOT FORFEIT ITS RIGHTS UNDER FEDERAL OR STATE LAW TO CHARGE CUSTOMERS FEES OR WAIVE ITS OTHER RIGHTS OR OBLIGATIONS THAT EXIST UNDER STATE LAW; AMENDING SECTION 32-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 544

187 *(Senate Bill No. 173; McNutt)* MODIFYING THE PROCESS FOR DETERMINING THE DEFINITION OF "SERVICE AREA" FOR FEDERAL UNIVERSAL SERVICE SUPPORT FOR RURAL TELEPHONE COMPANIES; AMENDING SECTION 69-3-840, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 545

188 *(Senate Bill No. 238; Mangan)* CLARIFYING THAT A YOUTH WHO HAS COMMITTED A STATUS OFFENSE MAY NOT BE PLACED IN SECURE DETENTION BY BECOMING A DELINQUENT YOUTH BY VIRTUE OF A PROBATION VIOLATION IN ORDER TO COMPLY WITH FEDERAL LAW; AMENDING SECTION 41-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 546

189 *(Senate Bill No. 257; Cooney)* REQUIRING ADDITIONAL NOTICE OF TIME DEADLINES TO THE COURT IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AND AMENDING SECTIONS 41-3-422 AND 41-3-432, MCA. 551

190 *(House Bill No. 182; Rome)* GENERALLY REVISING OUTDATED REFERENCES PERTAINING TO THE DEPARTMENT OF COMMERCE FOLLOWING ITS 2001 REORGANIZATION; CHANGING THE RESPONSIBILITY FOR MONUMENTATION AND RELATED SURVEY REQUIREMENTS TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REVISING RULEMAKING AUTHORITY FOR THE OFFICE OF ECONOMIC DEVELOPMENT; AMENDING SECTIONS 2-15-150, 23-5-631, 30-16-303, 50-60-313, 53-2-1203, 76-3-403, AND 90-1-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 555

191 *(House Bill No. 252; Hedges)* CLARIFYING THE APPLICATION OF CAMPAIGN LAWS TO SCHOOL DISTRICTS AND SPECIAL DISTRICTS; EXPANDING THE DEFINITION OF "SPECIAL DISTRICT"; AND AMENDING SECTION 13-37-206, MCA 561

192 *(Senate Bill No. 83; McGee)* AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH A DESIGN-BUILD CONTRACTING PILOT PROGRAM; SETTING A CAP ON THE TOTAL COST OF PROJECTS THAT MAY BE AUTHORIZED UNDER THE PROGRAM; REQUIRING THE DEPARTMENT TO REPORT ON THE PROGRAM TO THE GOVERNOR AND THE 2009 LEGISLATURE; CREATING A DESIGN-BUILD CONTRACTING BOARD; PROVIDING THE PROCEDURE FOR PROSPECTIVE CONTRACTORS TO SUBMIT A PROPOSAL; AMENDING SECTIONS 18-8-204, 18-8-205, 60-2-111, AND 60-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 561

193 *(Senate Bill No. 108; McNutt)* GENERALLY REVISING WORKERS' COMPENSATION LAWS; CLARIFYING THAT INSURANCE REQUIREMENTS APPLY ONLY TO WORKERS IN THIS STATE; REDUCING THE LENGTH OF THE INDEPENDENT CONTRACTOR EXEMPTION FROM 3 YEARS TO 2 YEARS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO MAINTAIN A 3-MONTH ADMINISTRATIVE COST BALANCE IN THE UNINSURED EMPLOYERS' FUND; PROVIDING A $200 PENALTY FOR UNINSURED EMPLOYERS WHO FAIL TO OBTAIN INSURANCE WITHIN 30 DAYS AFTER NOTICE OF THE REQUIREMENT TO OBTAIN WORKERS' COMPENSATION INSURANCE; PROVIDING FOR LATE FEES AND INTEREST WHEN AN EMPLOYER FAILS TO MAKE TIMELY PENALTY AND CLAIM REIMBURSEMENT PAYMENTS; ADDING LATE FEES AND INTEREST TO THE LIEN CREATED FOR AN EMPLOYER'S FAILURE TO PAY PENALTIES OR BENEFIT CLAIMS; PROVIDING A TIME LIMIT FOR PETITIONING THE WORKERS' COMPENSATION COURT AFTER THE MEDIATOR'S REPORT IS

MAILED; PROVIDING FOR RECOVERY OF COLLECTION FEES AND COSTS; CLARIFYING THE DEFINITION OF "PERSON WITH A DISABILITY"; CHANGING THE NOTICE DATE OF YEARLY INSURANCE PLAN ASSESSMENTS FROM APRIL 30 TO MAY 31 OF EACH YEAR; PROVIDING THAT FAILURE TO RECEIVE THE CONCURRENCE OF A REPRESENTATIVE OF THE SUBSEQUENT INJURY FUND FOR COMPROMISE SETTLEMENTS RELIEVES THE FUND OF LIABILITY; REQUIRING THE BOARD OF INVESTMENTS TO INVEST THE MONEY IN THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT; AMENDING SECTIONS 39-71-401, 39-71-503, 39-71-504, 39-71-506, 39-71-520, 39-71-901, 39-71-911, 39-71-915, AND 39-71-1004, MCA; AND PROVIDING AN EFFECTIVE DATE 566

194 *(Senate Bill No. 139; Shea)* REPLACING THE EXISTING INTERSTATE COMPACT ON JUVENILES WITH THE NEW INTERSTATE COMPACT ON JUVENILES; AMENDING SECTION 41-6-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE 576

195 *(Senate Bill No. 151; Mahlum)* GENERALLY REVISING THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; CLARIFYING THAT THE ACT APPLIES TO INSOLVENT INSURERS AS WELL AS IMPAIRED INSURERS; ESTABLISHING PROCEDURES FOR AN ASSOCIATION TO ELECT TO CONTINUE REINSURANCE; PROVIDING FOR THE DISTRIBUTION OF DEPOSITS PAID TO AN ASSOCIATION; CLARIFYING THE SCOPE OF COVERAGE OF THE ACT; REVISING DEFINITIONS; DEFINING "BENEFIT PLAN", "INSOLVENT INSURER", "MOODY'S CORPORATE BOND YIELD AVERAGE", "PLAN SPONSOR", "PRINCIPAL PLACE OF BUSINESS", "RECEIVERSHIP COURT", "STRUCTURED SETTLEMENT ANNUITY", AND "SUPPLEMENTAL CONTRACT"; REVISING REQUIREMENTS FOR ACCOUNTS MAINTAINED BY AN ASSOCIATION; CLARIFYING THE STANDING AND GENERAL POWERS OF AN ASSOCIATION; CLARIFYING MEETING AND NEGOTIATION REQUIREMENTS; CLARIFYING THE DUTIES AND POWERS OF THE INSURANCE COMMISSIONER; REVISING AN ASSOCIATION'S POWERS PRIOR TO AND DURING THE LIQUIDATION OF A MEMBER INSURER; REVISING ASSIGNMENT AND SUBROGATION PROVISIONS; REVISING BENEFIT LIABILITY OF AN ASSOCIATION; AMENDING SECTIONS 33-10-201, 33-10-202, 33-10-203, 33-10-205, 33-10-206, 33-10-207, 33-10-210, 33-10-215, 33-10-217, 33-10-219, 33-10-220, 33-10-221, 33-10-222, 33-10-223, 33-10-224, 33-10-226, AND 33-10-227, MCA; AND PROVIDING AN EFFECTIVE DATE 595

196 *(House Bill No. 174; Thomas)* GENERALLY REVISING PROFESSIONAL OCCUPATION AND LICENSING LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY, WITH RESPECT TO CERTAIN LICENSING EXAMINATIONS, ALLOW THIRD PARTIES TO PROVIDE EXAMINATION AND GRADING SERVICES; REVISING EXAMINATION AND CERTIFICATE REQUIREMENTS FOR SANITARIANS; REVISING OUTFITTER LICENSES FOR CORPORATIONS, PROPRIETORSHIPS, AND PARTNERSHIPS; REVISING EDUCATION, CERTIFICATION, AND EXAMINATION REQUIREMENTS FOR PUBLIC ACCOUNTANTS; REVISING EXAMINATION REQUIREMENTS FOR REAL ESTATE BROKERS AND SALESPERSONS; REVISING APPLICATION, EXAMINATION, AND CERTIFICATION REQUIREMENTS FOR REAL ESTATE APPRAISERS; REVISING EXAMINATION REQUIREMENTS FOR ARCHITECTS; REVISING APPLICATION, FEE, AND EXAMINATION REQUIREMENTS FOR ENGINEERS AND LAND SURVEYORS;

REVISING FEE AND EXAMINATION REQUIREMENTS FOR ELECTRICIANS; REVISING FEE AND EXAMINATION REQUIREMENTS FOR PLUMBERS; REVISING APPLICATION, FEE, AND LICENSE REQUIREMENTS FOR CONSTRUCTION BLASTERS; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING BOILERS AND STEAM ENGINES; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING HOISTING ENGINES; AMENDING SECTIONS 37-40-302, 37-47-304, 37-50-204, 37-50-305, 37-50-308, 37-50-309, 37-51-303, 37-54-105, 37-54-201, 37-54-302, 37-54-305, 37-65-303, 37-67-303, 37-67-311, 37-68-304, 37-68-305, 37-68-307, 37-68-311, 37-69-304, 37-69-305, 37-69-307, 37-72-303, 37-72-304, 37-72-305, 50-74-312, AND 50-76-104, MCA; AND REPEALING SECTIONS 37-54-304 AND 50-74-310, MCA 615

197 *(House Bill No. 312; Lindeen)* EXCLUDING SERVICES PERFORMED BY AN INDIVIDUAL AS AN OFFICIAL AT ALL AMATEUR ATHLETIC EVENTS FROM THE DEFINITION OF "EMPLOYMENT" FOR PURPOSES OF THE STATE'S UNEMPLOYMENT COMPENSATION INSURANCE LAWS; AMENDING SECTION 39-51-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 629

198 *(House Bill No. 416; Younkin)* EXTENDING THE PROTEST PERIOD FOR THE CREATION OR EXTENSION OF A RURAL IMPROVEMENT DISTRICT FROM 15 DAYS TO 30 DAYS; AND AMENDING SECTION 7-12-2109, MCA 632

199 *(Senate Bill No. 103; Laible)* PROVIDING FOR CONTINGENT FUND TRANSFERS FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR THE REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE. 633

200 *(Senate Bill No. 107; Roush)* INCREASING THE YEARLY PAYMENT TO A COUNTY FOR ITS JUNK VEHICLE COLLECTION AND GRAVEYARD BUDGET FROM $1 TO $1.25 FOR EACH MOTOR VEHICLE UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT; INCREASING THE TOTAL PAYMENT TO COUNTIES WITH FEWER THAN 5,000 MOTOR VEHICLES UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT FROM $5,000 TO $6,250; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE. 639

201 *(Senate Bill No. 122; Tash)* AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES ENTITLING THE HOLDER OF A CLASS A-5, CLASS A-7, OR CLASS B-10 LICENSE TO TAKE A SECOND ELK, WHICH MUST BE ANTLERLESS; ESTABLISHING A FEE AND ELIGIBILITY REQUIREMENTS FOR A CLASS A-9 RESIDENT ANTLERLESS ELK B TAG AND A CLASS B-12 NONRESIDENT ANTLERLESS ELK B TAG; AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ESTABLISH A WAITING PERIOD FOR ELIGIBILITY FOR CERTAIN ANTLERED BULL ELK PERMITS; AMENDING SECTIONS 87-2-104, 87-2-501, 87-2-505, 87-2-702, AND 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 639

202 *(Senate Bill No. 125; Tester)* REVISING SECURITIES LAWS FOR THE PURPOSE OF PROMOTING CAPITAL FORMATION BY CREATING AN

ADDITIONAL EXEMPT TRANSACTION FOR MONTANA-BASED BUSINESSES; AND AMENDING SECTION 30-10-105, MCA 643

203 *(Senate Bill No. 229; Thomas)* PROVIDING THAT, WITH RESPECT TO CERTAIN TYPES OF SURETY BONDS REQUIRED TO BE FURNISHED ON VARIOUS PUBLIC CONTRACTS, THE STATE OR OTHER GOVERNMENTAL AGENCIES MAY NOT REQUIRE THAT THE BONDS BE FURNISHED BY A PARTICULAR SURETY COMPANY OR BY A PARTICULAR INSURANCE PRODUCER FOR A SURETY COMPANY; AND AMENDING SECTIONS 18-1-203, 18-2-201, 18-2-302, AND 18-4-312, MCA 647

204 *(House Bill No. 373; Olson)* REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS; MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 651

205 *(House Bill No. 616; Younkin)* REVISING THE TAX CHANGES TO CONTRIBUTIONS TO QUALIFIED ENDOWMENTS THAT WERE ENACTED DURING THE AUGUST 2002 SPECIAL SESSION; REPEALING THE INCREASES TO THE CREDITS AND DEDUCTIONS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS FOR FISCAL YEAR 2004; AMENDING SECTION 11, CHAPTER 24, SPECIAL LAWS OF 2002; REPEALING SECTIONS 2, 4, 6, AND 8, CHAPTER 24, SPECIAL LAWS OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 676

206 *(Senate Bill No. 100; Grimes)* ELIMINATING THE REQUIREMENT FOR A HEALTH CARE DATABASE; ELIMINATING THE DEFINITION OF THE TERMINATED "HEALTH CARE ADVISORY COUNCIL"; AMENDING SECTIONS 50-4-312, 50-4-504, AND 50-4-505, MCA; REPEALING SECTION 50-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 676

207 *(Senate Bill No. 104; Tester)* CLARIFYING THE LAW GOVERNING PER DIEM CHARGES FOR STATE INSTITUTIONS; CHANGING THE TIME FOR THE ANNUAL REVIEW OF THE PER DIEM CHARGE FOR STATE INSTITUTIONS; AMENDING SECTIONS 53-1-401 AND 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 678

208 *(House Bill No. 467; Barrett)* PROVIDING THAT NECESSITY MUST BE SHOWN BEFORE CHANGES TO THE EXISTING WATER QUALITY OF CERTAIN WATERS CAN BE PROHIBITED; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO MAKE A WRITTEN FINDING WHEN ACCEPTING A PETITION TO CLASSIFY WATERS AS OUTSTANDING RESOURCE WATERS; PROVIDING CRITERIA FOR THE BOARD OF ENVIRONMENTAL REVIEW'S WRITTEN FINDING; PROVIDING A HEARING PROCESS WHEN THE BOARD OF

ENVIRONMENTAL REVIEW RECEIVES A PETITION FOR RULEMAKING TO CLASSIFY A WATER AS AN OUTSTANDING RESOURCE WATER; PROVIDING THAT THE COSTS OF THE ENVIRONMENTAL IMPACT STATEMENT MUST BE PAID BY THE PETITIONER; AMENDING SECTIONS 75-5-315 AND 75-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 679

209 *(House Bill No. 306; Balyeat)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION RECOGNIZING AND PRESERVING THE HERITAGE OF MONTANA CITIZENS' OPPORTUNITY TO HARVEST WILD FISH AND WILD GAME ANIMALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 683

210 *(House Bill No. 122; Forrester)* REVISING THE VIDEO GAMBLING MACHINE LAWS TO TAKE INTO ACCOUNT CONNECTION OF MACHINES TO THE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; PROVIDING FOR DEPARTMENT OF JUSTICE TRAINING OF TECHNICIANS WORKING ON OR INSTALLING THE MACHINES; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 683

211 *(House Bill No. 165; Lake)* AUTHORIZING THE STATE LOTTERY COMMISSION TO ENTER INTO AGREEMENTS WITH OTHER COUNTRIES TO OFFER LOTTERY GAMES AND TO ENTER INTO AGREEMENTS WITH AN ASSOCIATION FOR THE PURPOSE OF PARTICIPATING IN MULTISTATE LOTTERY GAMES OR GAMES OFFERED IN OTHER STATES AND OTHER COUNTRIES; AMENDING SECTION 23-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 690

212 *(House Bill No. 262; Fuchs)* CLARIFYING THE POLICY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND PROVIDING LEGISLATIVE INTENT WITH REGARD TO THE MANAGEMENT OF LARGE PREDATORS; ESTABLISHING THAT LARGE PREDATORS MUST BE MANAGED PRIMARILY TO PRESERVE HUNTABLE SPECIES OF LARGE GAME AND TO PROTECT LIVESTOCK, PETS, AND PEOPLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 691

213 *(House Bill No. 284; Gillan)* PROVIDING THAT A PEACE OFFICER DOES NOT NEED PROBABLE CAUSE TO BELIEVE THAT A PERSON WAS DRIVING UNDER THE INFLUENCE IN ORDER TO REQUEST A TEST OF A PERSON'S BLOOD OR BREATH FOR THE PURPOSE OF DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY WHEN THE PERSON HAS BEEN INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN SERIOUS BODILY INJURY OR DEATH; AND AMENDING SECTION 61-8-402, MCA . . . 692

214 *(House Bill No. 333; Waitschies)* ALLOWING LOCAL GOVERNMENTS TO RETURN INTEREST FROM INVESTMENTS AND DEPOSITS TO A SPECIFIED FUND IN PROPORTION TO THAT FUND'S PARTICIPATION IN AN INVESTMENT OR DEPOSIT RATHER THAN DEPOSITING THE INTEREST IN THE GENERAL FUND; AMENDING SECTION 7-6-204, MCA; AND PROVIDING AN EFFECTIVE DATE . . 694

215 *(House Bill No. 350; Cohenour)* EXPANDING THE ABILITY OF HIGHWAY PATROL OFFICERS TO MAKE ARRESTS OF PERSONS IN THE POSSESSION OF DANGEROUS DRUGS OR DRUG PARAPHERNALIA; SUBSTITUTING THE TERM "DANGEROUS

DRUGS" FOR "NARCOTICS"; AND AMENDING SECTION 44-1-1001, MCA. 694

216 *(House Bill No. 420; Lake)* DECREASING THE FEE PAID BY COMMERCIAL APPLICATORS, PESTICIDE DEALERS, AND GOVERNMENT AGENCIES FOR THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; REPEALING THE TERMINATION OF THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM, THE ASSESSMENT OF FEES FOR FUNDING THE PROGRAM, AND THE DEPOSIT AND USE OF FEES BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTIONS 80-8-203, 80-8-207, AND 80-8-213, MCA; REPEALING SECTION 14, CHAPTER 465, LAWS OF 1993, AND CHAPTER 362, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . 695

217 *(House Bill No. 443; Lange)* GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; MODIFYING THE DEFINITION OF "CERTIFICATE"; MODIFYING THE INFORMATION REQUIREMENTS FOR APPLICATIONS; ELIMINATING THE REQUIREMENT THAT A COPY OF AN APPLICATION BE SENT TO OTHER LOCAL, STATE, AND FEDERAL GOVERNMENTAL ENTITIES; MODIFYING PUBLIC NOTICE REQUIREMENTS; REVISING THE FILING FEE SCALE; REDUCING CERTAIN TIME REQUIREMENTS OF THE SITING LAWS; QUALIFYING THE USE OF MONTANA ENVIRONMENTAL POLICY ACT DOCUMENTS; INCLUDING ECONOMIC IMPORTANCE AND BENEFITS IN DETERMINING THE SIGNIFICANCE OF A FACILITY'S IMPACT; REVISING THE DEPARTMENT'S APPROVAL CRITERIA FOR CERTAIN FACILITIES; CLARIFYING REQUIREMENTS FOR COMMENCEMENT OF CONSTRUCTION; AMENDING SECTIONS 7-1-111, 69-3-1205, 75-20-102, 75-20-104, 75-20-201, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-223, 75-20-231, 75-20-232, 75-20-301, 75-20-303, 85-2-124, 85-2-607, 85-15-107, AND 90-6-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 698

218 *(House Bill No. 548; Jent)* ESTABLISHING A FEDERAL SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE SECRETARY OF STATE FOR MONEY RECEIVED UNDER THE FEDERAL HELP AMERICA VOTE ACT OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 713

219 *(House Bill No. 583; Brown)* AUTHORIZING A COUNTY AND A MUNICIPALITY TO ESTABLISH A TRANSPORTATION IMPROVEMENT AUTHORITY 714

220 *(House Bill No. 639; Laslovich)* PROVIDING THAT FINES FOR VIOLATIONS OF MOTOR VEHICLE OR PARKING REGULATIONS ON A UNIVERSITY SYSTEM CAMPUS BE ASSESSED IN ACCORDANCE WITH A SCHEDULE THAT IS APPROVED BY THE BOARD OF REGENTS; REMOVING THE $10 PER OFFENSE CAP ON FINES; AND AMENDING SECTION 20-25-312, MCA 716

221 *(Senate Bill No. 28; Mangan)* GENERALLY REVISING THE LAWS RELATING TO DEFERRED DEPOSIT LOANS; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; PROVIDING FOR CIVIL PENALTIES FOR CERTAIN VIOLATIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; REQUIRING THE NAME, ADDRESS, AND PHONE NUMBER OF A CONSUMER TO BE INCLUDED ON THE WRITTEN AGREEMENT BETWEEN THE LICENSEE AND CONSUMER WITH RESPECT TO A DEFERRED DEPOSIT LOAN;

ESTABLISHING THAT CERTAIN DAMAGES ARE NOT AVAILABLE TO A LICENSEE FOR INSUFFICIENT FUNDS CHECKS OR ELECTRONIC DEDUCTIONS FOR WHICH THERE ARE INSUFFICIENT FUNDS; PROVIDING THAT THE DEFINITION OF "CONSUMER LOAN" DOES NOT INCLUDE A DEFERRED DEPOSIT LOAN; INCREASING THE INSUFFICIENT FUNDS FEE FROM $15 TO $30; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-704, 31-1-712, 31-1-721, 31-1-722, 31-1-724, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE. 717

222 *(Senate Bill No. 75; Stapleton)* PROVIDING FOR THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; DEFINING TERMS; AUTHORIZING COURTS TO PROVIDE CERTAIN NATIONAL GUARD SERVICE MEMBERS RELIEF FROM CERTAIN CIVIL ACTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 720

223 *(Senate Bill No. 84; Cocchiarella)* ELIMINATING THE REQUIREMENT THAT THE BOARD OF OIL AND GAS CONSERVATION REPORT TO THE REVENUE OVERSIGHT COMMITTEE REGARDING ENHANCED RECOVERY PROJECTS, NUMBERS OF HORIZONTALLY COMPLETED WELLS, AND METHODOLOGY FOR DETERMINING OIL PRODUCTION DECLINE RATES; AND REPEALING SECTION 21, CHAPTER 9, SPECIAL LAWS OF NOVEMBER 1993. 721

224 *(Senate Bill No. 109; McNutt)* GENERALLY REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; ADDING A PHARMACY TECHNICIAN TO THE BOARD OF PHARMACY; DEFINING "PHYSICIAN"; PROVIDING LICENSING AND OTHER REQUIREMENTS FOR DOCTORS OF OSTEOPATHY AND RECOGNIZING THEIR STATUS AS PHYSICIANS; MODIFYING REQUIREMENTS FOR PHYSICIAN RENEWAL FEES; MODIFYING REQUIREMENTS FOR LICENSE APPLICATIONS FOR DENTISTS; PROVIDING THAT LICENSEES UNDER THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF DENTISTRY MAY BE REFERRED TO AN IMPAIRMENT PROGRAM; PROVIDING THAT CERTAIN MEDICAL LICENSES THAT ARE NOT TIMELY RENEWED MAY BE CONSIDERED LAPSED RATHER THAN REVOKED; MODIFYING CHIROPRACTIC LICENSING AND EXAMINATION REQUIREMENTS; MODIFYING LICENSE RENEWAL REQUIREMENTS FOR ACUPUNCTURISTS; REMOVING THE LIMITATION ON THE REEXAMINATION ELIGIBILITY PERIOD FOR HEARING AID DISPENSERS; REMOVING THE REQUIREMENT THAT AN INTERNSHIP REQUIREMENT FOR MORTICIANS BE FULFILLED WITHIN THE STATE OF MONTANA; REMOVING A DATE REQUIREMENT FOR MORTICIAN EXAMINATIONS; MAKING THE ADOPTION OF CERTAIN RULES PERTAINING TO MIDWIFERY DISCRETIONARY; ALLOWING MIDWIFERY EXAMINATIONS TO BE PREPARED BY A NATIONAL TESTING ENTITY; MODIFYING OUTDATED LANGUAGE PERTAINING TO DENTURISTS; AMENDING SECTIONS 2-15-1733, 15-6-217, 37-3-102, 37-3-103, 37-3-203, 37-3-303, 37-3-304, 37-3-307, 37-3-313, 37-3-315, 37-3-345, 37-4-301, 37-4-311, 37-4-312, 37-4-402, 37-6-304, 37-12-102, 37-12-302, 37-12-304, 37-13-306, 37-16-403, 37-19-302, 37-19-303, 37-20-302, 37-20-303, 37-26-301, 37-27-105, 37-27-202, 37-29-304, 39-71-116, AND 50-5-105,MCA; REPEALING SECTIONS 37-5-101, 37-5-102, 37-5-301, 37-5-302, 37-5-305, 37-5-307, AND 37-5-312, MCA; AND PROVIDING AN EFFECTIVE DATE 721

225 *(Senate Bill No. 121; Glaser)* GENERALLY REVISING THE TAXATION OF PASS-THROUGH ENTITIES AND THEIR OWNERS; TO CLARIFY THAT ALL OWNERS OF PASS-THROUGH ENTITIES WITH MONTANA SOURCE INCOME ARE SUBJECT TO TAX; TO EXTEND THE

CONSENT, COMPOSITE RETURN, AND WITHHOLDING PROVISIONS TO FOREIGN C. CORPORATIONS AND TO OTHER PASS-THROUGH ENTITY OWNERS; TO PROVIDE A REFUNDABLE CREDIT FOR SECOND-TIER PASS-THROUGH ENTITY OWNERS FOR WITHHELD AMOUNTS REMITTED ON THEIR BEHALF; TO CLARIFY AN INTENT THAT THE PASS-THROUGH ENTITY PROVISIONS NOT OVERRIDE THE MULTISTATE TAX COMPACT; PROVIDING A DEFINITION OF "FOREIGN C. CORPORATION"; AND AMENDING SECTIONS 15-30-101, 15-30-1102, 15-30-1112, AND 15-30-1113, MCA 743

226 *(Senate Bill No. 216; Cocchiarella)* PROVIDING THAT A FORMER MEMBER OF THE SELF-INSURERS GUARANTY FUND IS LIABLE FOR ASSESSMENTS MADE BY THE FUND IN ANY YEAR FOLLOWING THE DATE THAT THE MEMBER'S STATUS AS A PRIVATE SELF-INSURER IS TERMINATED; REQUIRING A FORMER MEMBER'S ASSESSMENT TO BE BASED ON BENEFITS PAID DURING THE LAST CALENDAR YEAR IMMEDIATELY PRECEDING THE ANNUAL ASSESSMENT; AMENDING SECTION 39-71-2615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 752

227 *(Senate Bill No. 221; Kitzenberg)* ALLOWING THE TAKING OF SALMON AND LAKE TROUT BY SPEAR OR GIG IN FORT PECK RESERVOIR DURING CERTAIN TIMES; AND AMENDING SECTION 87-3-204, MCA 753

228 *(Senate Bill No. 253; Elliott)* CREATING A CLASS B-5 10-DAY NONRESIDENT FISHING LICENSE; ESTABLISHING THE TERMS, USE, AND COST OF THE LICENSE; DIRECTING A PORTION OF THE LICENSE FEE TO THE PURCHASE, OPERATION, DEVELOPMENT, AND MAINTENANCE OF FISHING ACCESSES; AMENDING SECTIONS 87-1-605, 87-2-104, 87-2-306, 87-2-805, AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 755

229 *(Senate Bill No. 398; Cromley)* CLARIFYING THAT FINGERPRINT AND OTHER CRIMINAL HISTORY RECORD INFORMATION RELATING TO APPLICANTS FOR ADMISSION TO THE STATE BAR MAY BE EXCHANGED WITH THE MONTANA SUPREME COURT AND ITS COMMISSION ON CHARACTER AND FITNESS FOR LICENSING PURPOSES; AMENDING SECTION 44-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 759

230 *(House Bill No. 557; Andersen)* GENERALLY REVISING PROVISIONS RELATING TO ANATOMICAL GIFTS; PROVIDING FOR THE DEVELOPMENT OF AN ORGAN DONATION REGISTRY SYSTEM; PROVIDING FOR THE TRANSFER OF ORGAN DONOR INFORMATION FROM THE DEPARTMENT OF JUSTICE TO THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION; LIMITING USES OF ORGAN DONOR INFORMATION; ALLOWING THE DEPARTMENT OF JUSTICE TO RECOVER COSTS; CLARIFYING THAT THE DONOR'S WISHES ARE PARAMOUNT; AND AMENDING SECTIONS 61-5-301 AND 72-17-201, MCA 759

231 *(House Bill No. 700; Brueggeman)* REVISING LAWS RELATING TO THE ENVIRONMENT; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH AUTHORITY FOR STAYING CERTAIN ACTIONS; ALLOWING THE BOARD TO REQUIRE A WRITTEN UNDERTAKING; AUTHORIZING THE BOARD TO ADOPT RULES FOR REGISTRATION OF SOURCES OF AIR CONTAMINANTS AND GENERAL PERMITS AND MULTIPLE SIMILAR SOURCES; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR GENERAL PERMITS FOR DISCHARGES FROM CATEGORIES OF POINT SOURCES; AMENDING SECTIONS 75-2-111, 75-2-204, 75-2-211, 75-2-218, 75-2-221, AND 75-5-401, MCA; AND PROVIDING AN

IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 763

232 *(House Bill No. 41; Noennig)* REVISING THE LEGISLATIVE COUNCIL'S FUNCTIONS AND APPOINTMENT AUTHORITY REGARDING INTERSTATE, INTERNATIONAL, AND INTERGOVERNMENTAL ENTITIES; AMENDING SECTION 5-11-707, MCA; REPEALING SECTION 5-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 773

233 *(House Bill No. 63; Kasten)* REPEALING THE STATUTORY DESIGNATION OF ASSETS AT CHIEF PLENTY COUPS STATE PARK AND PICTOGRAPH CAVE STATE PARK AS PRIORITIES FOR PRESERVATION AND FUNDING; REPEALING SECTION 23-1-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 775

234 *(House Bill No. 129; Gutsche)* EXTENDING THE AUTHORITY TO EXPEND UNEXPENDED FUNDS PREVIOUSLY APPROPRIATED FOR THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM TO THE PROGRAM TERMINATION DATE IN 2009; AMENDING SECTION 5, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 775

235 *(House Bill No. 236; Erickson)* CLARIFYING AND REVISING THE USE OF BONDS ISSUED FOR TECHNOLOGY PROJECTS; PROVIDING FOR THE USE OF REMAINING BOND PROCEEDS ALLOCATED TO THE DEPARTMENT OF REVENUE FOR STABILIZATION AND ASSESSMENT OF SOFTWARE AND DATA IN THE POINTS PROJECT, FOR THE PLANNING, DEVELOPMENT, ACQUISITION, INSTALLATION, ADMINISTRATION, AND IMPLEMENTATION OF INFORMATION TECHNOLOGY SYSTEMS TO REPLACE DEPARTMENT OF REVENUE INFORMATION TECHNOLOGY SYSTEMS, FOR THE PLANNING, DEVELOPMENT, AND IMPLEMENTATION OF BUSINESS PROCESS CHANGES TO FACILITATE AND ENABLE THE REPLACEMENT ACTIVITIES, AND FOR STAFFING A PROJECT MANAGEMENT OFFICE TO FACILITATE AND ENABLE THE REPLACEMENT AND BUSINESS PROCESS CHANGE ACTIVITIES; AMENDING SECTIONS 2 AND 8, CHAPTER 447, LAWS OF 1997, AND SECTIONS 2 AND 5, CHAPTER 519, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 776

236 *(House Bill No. 272; Gillan)* PROHIBITING A STATE AGENCY FROM OFFSETTING A DEBT OWED BY A LOCAL GOVERNMENT AGAINST THE ENTITLEMENT SHARE PAYMENT OWED TO A LOCAL GOVERNMENT; AMENDING SECTIONS 15-1-121 AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 778

237 *(House Bill No. 319; Lawson)* GENERALLY REVISING LAWS RELATING TO CREDIT UNIONS; CLARIFYING THE USE OF "CREDIT UNION" IN THE NAME OF CREDIT UNIONS; AUTHORIZING OUT-OF-STATE CREDIT UNIONS TO DO BUSINESS IN THIS STATE UNDER CERTAIN CONDITIONS; AUTHORIZING MONTANA CREDIT UNIONS TO CONDUCT BUSINESS IN OTHER STATES UNDER CERTAIN CONDITIONS; GENERALLY REPLACING REFERENCES TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION WITH REFERENCES TO THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR EXAMINATIONS OF CREDIT UNIONS ON A SCHEDULE DETERMINED BY THE DEPARTMENT RATHER THAN ON AN ANNUAL BASIS; ESTABLISHING CRITERIA FOR CEASE AND DESIST ORDERS AND INVOLUNTARY DISSOLUTION; REVISING SUSPENSION CRITERIA; ESTABLISHING CRITERIA FOR

APPOINTING A CONSERVATOR FOR A CREDIT UNION; ESTABLISHING CRITERIA FOR THE INVOLUNTARY MERGER OF A CREDIT UNION; PROVIDING FOR THE CONFIDENTIALITY OF CERTAIN CREDIT UNION INFORMATION MAINTAINED BY THE DEPARTMENT OF ADMINISTRATION; REVISING CERTAIN ORGANIZATIONAL AND ADMINISTRATIVE PROCEDURES OF CREDIT UNIONS; REVISING VOLUNTARY LIQUIDATION AND MERGER PROCEDURES; REVISING BOARD OF DIRECTORS AND COMMITTEE PROCEDURES; REVISING ACCOUNT, SHARE, AND LOAN PROVISIONS; REVISING RESERVE REQUIREMENTS; AMENDING SECTIONS 32-3-103, 32-3-201, 32-3-202, 32-3-203, 32-3-204, 32-3-205, 32-3-206, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-310, 32-3-321, 32-3-322, 32-3-323, 32-3-401, 32-3-403, 32-3-404, 32-3-408, 32-3-411, 32-3-412, 32-3-414, 32-3-417, 32-3-505, 32-3-506, 32-3-508, 32-3-601, 32-3-602, 32-3-604, 32-3-608, 32-3-611, 32-3-702, 32-3-703, AND 32-3-705, MCA; AND REPEALING SECTION 32-3-704, MCA 785

238 *(House Bill No. 340; Andersen)* ALLOWING A GUARDIAN TO PROVIDE FOR FINAL DISPOSITION OF A WARD'S PHYSICAL REMAINS AND PERSONAL EFFECTS AFTER THE WARD'S DEATH, UPON ORDER OF A COURT; AMENDING SECTIONS 72-5-231, 72-5-233, 72-5-321, AND 72-5-324, MCA 803

239 *(House Bill No. 554; Kasten)* REVISING THE CRITERIA FOR AWARDING RECLAMATION GRANTS AND LOANS; TEMPORARILY REMOVING PRIORITIES FOR ABANDONED MINE PROJECTS AND REDUCING PRIORITIES FOR OIL AND GAS PROJECTS; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 806

240 *(House Bill No. 585; Franklin)* RELATING TO ADVANCED PRACTICE REGISTERED NURSING; PROVIDING FOR ATTENDING ADVANCED PRACTICE REGISTERED NURSES TO BE RECOGNIZED AS HEALTH CARE PROVIDERS WITH THE AUTHORITY TO FOLLOW A LIVING WILL PROTOCOL AND A DO NOT RESUSCITATE PROTOCOL; AND AMENDING SECTIONS 50-9-102, 50-9-103, 50-9-104, 50-9-105, 50-9-106, 50-9-107, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, 50-9-206, 50-10-101, 50-10-102, 50-10-103, 50-10-104, AND 50-10-106, MCA 808

241 *(House Bill No. 627; Lindeen)* REVISING THE DEFINITION OF "COST" WHEN APPLIED TO PROPERTY TAX LIEN PURCHASES AND THE TAX DEED PROCESS; ALLOWING THE RECOVERY OF CERTAIN COSTS REQUIRED BY LAW THAT ARE INCURRED BY A PURCHASER OF A PROPERTY TAX LIEN; REQUIRING TIMELY SUBMISSION OF RECEIPTS TO THE COUNTY TREASURER FOR CERTAIN CLAIMED COSTS; AND AMENDING SECTION 15-17-121, MCA 817

242 *(Senate Bill No. 206; Anderson)* REVISING THE BOND RELEASE PROVISIONS FOR TIMBER SLASH FIRE HAZARD REDUCTION AGREEMENTS; AMENDING SECTION 76-13-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 819

243 *(House Bill No. 196; Fisher)* COMBINING THE BOARD OF BARBERS WITH THE BOARD OF COSMETOLOGISTS; ESTABLISHING THE COMPOSITION AND QUALIFICATION OF MEMBERS ON THE COMBINED BOARD OF BARBERS AND COSMETOLOGISTS AND PROVIDING FOR 5-YEAR STAGGERED TERMS FOR THE MEMBERS; SUBSTITUTING THE TERM "SALON OR SHOP" FOR "COSMETOLOGY SALON" AND "BARBERSHOP"; PROVIDING A PURPOSE STATEMENT FOR BARBERING AND COSMETOLOGY DISCIPLINES REGULATED UNDER TITLE 37, CHAPTER 31, MCA; REVISING DEFINITIONS IN TITLE 37, CHAPTER 31, MCA, TO BE CONSISTENT WITH THE

COMBINED BOARD; EXPANDING RULEMAKING AUTHORITY TO PROVIDE FOR THE COMBINED BOARD; REVISING PROHIBITED ACTS, LICENSING REQUIREMENTS, AND TEACHING LICENSE REQUIREMENTS TO REFLECT THE COMBINED BOARD; REDUCING THE HOURS OF STUDY FOR A BARBER'S LICENSE FROM 2,000 HOURS TO 1,500 HOURS; PROVIDING RECIPROCITY FOR OUT-OF-STATE BARBERS; REVISING SCHOOL CERTIFICATION AND INSPECTION REQUIREMENTS TO REFLECT THE COMBINED BOARD; ALLOWING USE OF A THIRD PARTY TO PROVIDE EXAMINATION SERVICES; REVISING FEE PROVISIONS AND LICENSE DENIAL, REVOCATION, AND SUSPENSION PROVISIONS TO REFLECT THE COMBINED BOARD; MOVING ELECTROLOGY PROVISIONS FROM TITLE 37, CHAPTER 32, MCA, TO TITLE 37, CHAPTER 31, MCA; AMENDING SECTIONS 2-15-1747, 15-30-256, 37-20-303, 37-31-101, 37-31-102, 37-31-203, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-31-331, 39-51-204, 49-2-101, AND 50-61-103, MCA; AND REPEALING SECTIONS 2-15-1746, 37-30-101, 37-30-201, 37-30-202, 37-30-203, 37-30-301, 37-30-303, 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401, 37-30-402, 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413, 37-30-421, 37-30-422, 37-30-423, 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201, 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, AND 37-32-311, MCA 820

244 *(House Bill No. 354; Newman)* CREATING AND REVISING EXEMPTIONS TO THE PRACTICE OF BARBERING, COSMETOLOGY, AND APPLICATION OF MAKEUP AND OTHER SERVICES INVOLVING ESTHETICS IN CASES OF EMERGENCY AND FOR CERTAIN VISUAL ARTS PRODUCTIONS; AMENDING SECTION 37-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 843

245 *(House Bill No. 368; Devlin)* EXTENDING THE 2-YEAR TIME LIMIT FOR SUBMITTING CLAIMS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; MODIFYING THE ELIGIBILITY REQUIREMENTS; REVISING PROCEDURES FOR REIMBURSEMENT OF ELIGIBLE COSTS; PROVIDING FOR THIRD-PARTY REVIEW OF CLAIMS AND PLANS; REVISING THE AUTHORITY OF THE BOARD; AMENDING SECTIONS 75-11-307, 75-11-308, 75-11-309, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN APPLICABILITY DATE 844

246 *(House Bill No. 414; Balyeat)* PROVIDING A GRACE PERIOD FOR REGISTRATION OF MOTORBOATS, SAILBOATS, PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; AUTHORIZING THE OPERATION OF A MOTORBOAT, SAILBOAT, PERSONAL WATERCRAFT, SNOWMOBILE, OR OFF-HIGHWAY VEHICLE DURING THE GRACE PERIOD; AMENDING SECTIONS 23-2-511, 23-2-512, 23-2-616, 23-2-618, AND 23-2-817, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 851

247 *(House Bill No. 428; Keane)* REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES BY ELIMINATING A PROVISION NOT REQUIRING BACKFILLING; AMENDING SECTION 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 856

248 *(House Bill No. 458; Musgrove)* ALLOWING A QUALIFYING PERSON TO COMBINE AN APPLICATION FOR A SPECIAL LICENSE PLATE WITH AN APPLICATION FOR A LICENSE PLATE BEARING THE SYMBOL

OF A PERSON WITH A DISABILITY; AND AMENDING SECTION 61-3-479, MCA 858

249 *(House Bill No. 479; Gillan)* REVISING THE LAWS THAT PROHIBIT TELECOMMUNICATIONS CARRIERS FROM SWITCHING A CUSTOMER'S TELECOMMUNICATIONS SERVICES WITHOUT THE CUSTOMER'S CONSENT; CLARIFYING THAT ENTITIES NOT OTHERWISE REGULATED BY THE PUBLIC SERVICE COMMISSION ARE SUBJECT TO THE PROHIBITION; DEFINING TERMS; PROHIBITING TELECOMMUNICATIONS CARRIERS AND OTHER ENTITIES FROM MISREPRESENTING PRODUCTS AND SERVICES TO BE CHARGED ON TELEPHONE BILLS; PROHIBITING INITIATION OF UNAUTHORIZED CHARGES TO BE PLACED ON TELEPHONE BILLS; ESTABLISHING REGISTRATION REQUIREMENTS FOR ENTITIES OFFERING OR BILLING FOR SERVICES AND PRODUCTS; ESTABLISHING PENALTIES; PROVIDING FOR NOTICE TO THE ATTORNEY GENERAL; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY REQUEST COMPLAINTS OF VIOLATIONS; AMENDING SECTIONS 69-3-1301, 69-3-1302, 69-3-1303, AND 69-3-1305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 859

250 *(House Bill No. 549; Dickenson)* INCREASING TO $30 THE SCHOLARSHIP DONATION FOR A COLLEGIATE LICENSE PLATE; AMENDING SECTION 61-3-465, MCA; AND PROVIDING AN EFFECTIVE DATE 865

251 *(House Bill No. 711; Gallus)* REQUIRING THE DEPARTMENT OF JUSTICE TO MAIL A RENEWAL NOTICE PRIOR TO THE EXPIRATION OF A DRIVER'S LICENSE; PROVIDING A RENEWAL NOTICE FEE; AND AMENDING SECTION 61-5-111, MCA. 866

252 *(Senate Bill No. 114; Johnson)* CLARIFYING THE CALCULATION OF THE GROWTH RATE OF THE ENTITLEMENT SHARE POOL FOR EACH YEAR OF THE NEXT BIENNIUM BEGINNING WITH CALENDAR YEAR 2002; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 868

253 *(Senate Bill No. 141; Wheat)* ALLOWING THE RELEASE OF CRIMINAL JUSTICE INFORMATION TO FIRE SERVICE AGENCIES AND FIRE MARSHALS REGARDING THE CRIMINAL INVESTIGATION OF A FIRE; PROVIDING A PROCEDURE FOR A PROSECUTOR TO PETITION THE COURT FOR RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IN CERTAIN CASES; AMENDING SECTIONS 44-5-103 AND 44-5-303, MCA; AND PROVIDING AN APPLICABILITY DATE 873

254 *(Senate Bill No. 149; Barkus)* REVISING THE COMPOSITION OF THE DISTRICTS FROM WHICH THE DISTRICTING AND APPORTIONMENT COMMISSION MEMBERS ARE APPOINTED FOR THE PURPOSE OF POPULATION EQUALITY AND REDUCING THE NUMBER OF DISTRICTS FROM FOUR TO TWO; MAKING CORRESPONDING REVISIONS IN THE BOARD OF PUBLIC EDUCATION, BOARD OF REGENTS, COAL BOARD, AND HARD-ROCK MINING IMPACT BOARD APPOINTMENT PROVISIONS; AND AMENDING SECTIONS 2-15-1508, 2-15-1821, 2-15-1822, AND 5-1-102, MCA. 878

255 *(Senate Bill No. 183; Bohlinger)* PROVIDING FOR EDUCATIONAL AID FOR CERTAIN PERSONS EXONERATED OF A CRIME BY POSTCONVICTION DNA TESTING; PROVIDING FOR STATE AID FOR TUITION, FEES, BOOKS, BOARD, AND ROOM; AUTHORIZING THE

BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE TUITION AND FEES FOR PERSONS ELIGIBLE FOR AID; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 880

256 *(Senate Bill No. 413; Kitzenberg)* NAMING U.S. HIGHWAY 2 AS THE 163RD INFANTRY REGIMENT (SUNSET DIVISION) HERITAGE HIGHWAY 882

257 *(House Bill No. 323; Jent)* REVISING LAWS GOVERNING REGISTERED MARKS AND TRADEMARKS TO CONFORM TO RECENT CHANGES IN THE MODEL ACT; DEFINING THE TERMS "ABANDONED", "DILUTION", AND "USE"; REVISING THE DEFINITIONS OF "SERVICE MARK" AND "TRADEMARK"; REVISING THE CONTENT OF THE APPLICATION FOR REGISTRATION; REVISING REQUIREMENTS FOR THE FILING OF APPLICATIONS; REVISING THE REQUIREMENTS FOR CERTIFICATES OF REGISTRATION; REVISING THE DURATION AND RENEWAL OF CERTIFICATES OF REGISTRATION; REVISING LAWS GOVERNING ASSIGNMENTS AND CHANGE OF NAME; REVISING LAWS GOVERNING CANCELLATION OF REGISTRATION; REPLACING THE STATUTORY LIST OF CLASSIFICATIONS OF GOODS AND SERVICES WITH RULES ADOPTED BY THE SECRETARY OF STATE TO CONFORM TO CLASSIFICATIONS ADOPTED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE; REVISING LAWS ON INJURY TO BUSINESS REPUTATION AND DILUTION; PROVIDING FOR TREBLE DAMAGES AND ATTORNEY FEES IN CASES INVOLVING THE COMMISSION OF WRONGFUL ACTS WITH KNOWLEDGE OR IN BAD FAITH; PROVIDING FOR A FORUM FOR ACTIONS INVOLVING REGISTRATION AND PROVIDING FOR SERVICE OF PROCESS ON THE SECRETARY OF STATE; ELIMINATING EXISTING PROVISIONS CONCERNING WHEN A MARK IS CONSIDERED USED, APPLICATIONS FOR RENEWAL OF REGISTRATION, CERTIFICATES OF ASSIGNMENT, PENALTIES FOR FALSE SWEARING, AND THE FILING OF FACSIMILE COPIES; AMENDING SECTIONS 30-13-301, 30-13-303, 30-13-311, 30-13-312, 30-13-313, 30-13-315, 30-13-317, 30-13-318, 30-13-331, 30-13-332, 30-13-333, 30-13-334, AND 30-13-335, MCA; REPEALING SECTIONS 30-13-302, 30-13-314, 30-13-316, 30-13-319, AND 30-13-341, MCA; AND PROVIDING AN EFFECTIVE DATE 883

258 *(House Bill No. 389; Gibson)* PROVIDING THAT WHEN A JUDGE IMPOSES A TERM OF INCARCERATION IN A STATE PRISON, THE DEPARTMENT OF CORRECTIONS SHALL DESIGNATE THE STATE PRISON IN WHICH THE PERSON WILL BE PLACED; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 895

259 *(House Bill No. 496; Becker)* INCLUDING INJUNCTIONS OR OTHER COURT ORDERS UNDER SEXUAL ASSAULT OR STALKING LAWS IN THE DEFINITION OF "PROTECTION ORDER" FOR PURPOSES OF THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; AMENDING SECTIONS 40-15-402 AND 40-15-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 897

260 *(House Bill No. 507; Brueggeman)* REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY ADOPT RULES TO IMPLEMENT AND PREVENT CIRCUMVENTION OR EVASION OF THE CHILD LABOR STANDARDS ACT; MAKING THE ADOPTION OF

RULES PERMISSIVE; AMENDING SECTION 41-2-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 899

261 *(House Bill No. 686; Bergren)* REVISING THE PROVISIONS OF THE DEFERRED RETIREMENT OPTION PLAN IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING FOR RETROACTIVE PARTICIPATION IN THE DEFERRED RETIREMENT OPTION PLAN FOR CERTAIN MEMBERS; AMENDING SECTION 19-9-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 899

262 *(House Bill No. 731; Lehman)* PROVIDING AN INCREASED PENSION BENEFIT TO MEMBERS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT WHO HAVE COMPLETED MORE THAN 20 YEARS OF SERVICE; AMENDING SECTIONS 19-17-401 AND 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE 900

263 *(Senate Bill No. 22; Nelson)* AMENDING THE MONTANA AGRICULTURAL SEED LAWS TO ESTABLISH NEW LICENSING AND ASSESSMENT FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING AND ASSESSMENT FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-5-130 AND 80-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 901

264 *(Senate Bill No. 24; Mangan)* ALLOWING A COUNTY OR MUNICIPALITY TO CHARGE A CONVENIENCE FEE FOR PROVIDING ELECTRONIC GOVERNMENT SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 903

265 *(Senate Bill No. 85; Cocchiarella)* REQUIRING THE LEGISLATIVE COUNCIL TO REVIEW PROPOSED LEGISLATION FOR AGENCIES OR ENTITIES THAT ARE NOT ASSIGNED TO AN INTERIM COMMITTEE OR THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING 5-11-105, MCA 904

266 *(Senate Bill No. 133; Zook)* AUTHORIZING THE DEPARTMENT OF CORRECTIONS, RATHER THAN THE YOUTH COURT JUDGE, TO SELECT AND APPOINT THE JUVENILE PAROLE OFFICER REPRESENTATIVE ON YOUTH PLACEMENT COMMITTEES; AND AMENDING SECTION 41-5-121, MCA. 905

267 *(Senate Bill No. 162; Story)* CONFORMING MONTANA UNEMPLOYMENT INSURANCE LAW WITH FEDERAL LAW BY EXCLUDING A "NO-ADDITIONAL-COST SERVICE" FROM WAGES FOR STATE UNEMPLOYMENT INSURANCE TAX PURPOSES; DEFINING "NO-ADDITIONAL-COST SERVICE"; AMENDING SECTION 39-51-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 906

268 *(Senate Bill No. 163; Mangan)* ALLOWING THE PAYMENT OF TAXES AND FEES TO LOCAL GOVERNMENT ENTITIES BY CREDIT CARD OR OTHER COMMERCIALLY ACCEPTABLE MEANS; PROVIDING THAT THE PAYMENT IS NOT CONSIDERED MADE UNTIL THE LOCAL GOVERNMENT ENTITY RECEIVES ITS PAYMENT FROM THE FINANCIAL INSTITUTION OR CREDIT CARD COMPANY; ALLOWING THAT A FEE BE CHARGED UPON NOTICE OF NONPAYMENT; IMPOSING A CONVENIENCE FEE ON A PERSON PAYING BY CREDIT CARD OR OTHER COMMERCIALLY ACCEPTABLE MEANS; ALLOWING LOCAL GOVERNMENT ENTITIES TO ENTER INTO ANY NECESSARY AGREEMENTS WITH FINANCIAL INSTITUTIONS, CREDIT CARD COMPANIES, AND STATE AGENCIES; SPECIFYING THAT FEES PAID TO FINANCIAL INSTITUTIONS OR CREDIT CARD

COMPANIES MUST BE PAID FROM AN APPROPRIATE FUND OF A LOCAL GOVERNMENT ENTITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 909

269 *(Senate Bill No. 197; Perry)* CLARIFYING THAT A MAYOR MAY NOT REJECT OR REFUSE TO APPOINT TO THE CITY PLANNING BOARD A COUNTY REPRESENTATIVE WHO HAS BEEN DESIGNATED BY A BOARD OF COUNTY COMMISSIONERS; AND AMENDING SECTION 76-1-223, MCA 911

270 *(Senate Bill No. 213; Nelson)* INCREASING THE MAXIMUM WHEAT AND BARLEY ASSESSMENT COLLECTED BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 80-11-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 911

271 *(House Bill No. 285; Brown)* REVISING LAWS RELATED TO MILITARY STATUS; PROVIDING THAT A PUBLIC HIGH SCHOOL SHALL PROVIDE EQUAL ACCESS TO U.S. ARMED FORCES RECRUITERS VISITING THE CAMPUS AS OTHER RECRUITERS; PROTECTING THE ELECTION LAW RESIDENCY RIGHTS OF A RESERVE MEMBER OF THE U.S. ARMED FORCES ACTIVATED TO FEDERAL MILITARY DUTY; PROHIBITING CERTAIN ADVERSE ACTIONS RELATED TO THE PROFESSIONAL LICENSURE OF A RESERVE MEMBER OF THE U.S. ARMED FORCES WHO IS ACTIVATED TO FEDERAL MILITARY DUTY FOR AN EXTENDED LENGTH OF TIME; AMENDING SECTIONS 13-1-112, 27-12-206, 37-1-105, 37-1-136, 37-3-313, 37-3-346, 37-4-307, 37-4-406, 37-5-307, 37-6-304, 37-7-303, 37-8-431, 37-9-305, 37-10-307, 37-11-201, 37-11-308, 37-12-307, 37-13-306, 37-14-310, 37-15-308, 37-16-407, 37-17-306, 37-17-307, 37-18-307, 37-19-306, 37-20-302, 37-21-302, 37-22-304, 37-23-205, 37-24-308, 37-25-307, 37-26-201, 37-27-105, 37-28-203, 37-29-306, 37-31-322, 37-32-305, 37-34-201, 37-35-203, 37-40-304, 37-42-308, 37-43-307, 37-43-313, 37-47-307, 37-50-317, 37-51-310, 37-53-103, 37-53-203, 37-54-211, 37-54-311, 37-60-312, 37-65-306, 37-66-307, 37-67-315, 37-68-310, 37-69-307, 37-72-306, AND 50-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 912

272 *(House Bill No. 220; Laszloffy)* REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY OR GOVERNMENTAL AGENCY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-237, 46-18-241, 46-18-242, 46-18-243, 46-18-244, 46-18-245, AND 53-30-132, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE 936

273 *(House Bill No. 287; Lindeen)* REQUIRING A PERSON WHO PURPOSELY IGNITES A FIRE WITHOUT A PERMIT TO REIMBURSE THE ENTITY RESPONSIBLE FOR ANY FIRE SUPPRESSION ACTIVITIES RESULTING FROM THE ILLEGAL FIRE; AND AMENDING SECTION 7-33-2205, MCA 945

274 *(House Bill No. 438; Forrester)* REVISING THE REQUIREMENTS FOR PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS WITH RESPECT TO CONSTRUCTION CONTRACTS; REVISING DEFINITIONS; PROVIDING THAT A CONSTRUCTION CONTRACT MAY PROVIDE FOR A BILLING CYCLE THAT IS OTHER THAN A

MONTHLY BILLING CYCLE; PROVIDING THAT CERTAIN CONSTRUCTION CONTRACT PROVISIONS ARE AGAINST STATE POLICY AND ARE VOID AND UNENFORCEABLE; ESTABLISHING CONDITIONS UNDER WHICH A CONTRACTOR OR SUBCONTRACTOR MAY SUSPEND PERFORMANCE OR TERMINATE A CONSTRUCTION CONTRACT; AMENDING SECTIONS 28-2-2101 AND 28-2-2103, MCA; AND PROVIDING AN APPLICABILITY DATE . 946

275 *(House Bill No. 684; Olson)* REPEALING THE TERMINATION DATE OF A PROVISION ALLOWING THE TRANSFER OF A REVOKED COAL MINE OPERATING PERMIT; REPEALING SECTION 5, CHAPTER 522, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 951

276 *(Senate Bill No. 97; Story)* REQUIRING THE COUNTY SUPERINTENDENT IN EACH COUNTY TO REPORT THE REVENUE AMOUNTS USED TO ESTABLISH THE LEVY REQUIREMENTS FOR THE COUNTYWIDE TRANSPORTATION AND RETIREMENT FUNDS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING THAT BUDGETING PROCEDURES APPLY TO COUNTY FUNDS SUPPORTING SCHOOL DISTRICT TRANSPORTATION AND RETIREMENT OBLIGATIONS; AMENDING SECTIONS 20-3-209, 20-9-101, 20-9-501, AND 20-10-146, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 951

277 *(Senate Bill No. 150; Johnson)* REVISING AND CLARIFYING LOCAL GOVERNMENT BONDING AND ASSESSMENT LAWS; CLARIFYING REFUNDINGS CONCERNING VARIABLE RATES; PROVIDING PROTEST PROCEDURES FOR PROPERTY CREATED AS A CONDOMINIUM UNDER SPECIAL AND RURAL IMPROVEMENT DISTRICTS; REVISING THE DEFINITION OF "OWNER" FOR PURPOSES OF PROTESTING THE CREATION OR EXTENSION OF A SPECIAL OR RURAL IMPROVEMENT DISTRICT; REVISING THE PROCESS FOR PAYMENT OF IMPROVEMENTS AND MAINTENANCE OF SPECIAL AND RURAL IMPROVEMENT DISTRICTS; CLARIFYING CONDOMINIUM PROPERTY FOR ASSESSMENT PURPOSES FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; ELIMINATING DEFINITIONS OF BOND FORMS FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; CLARIFYING THE TYPES OF INVESTMENT SECURITIES AVAILABLE IN CERTAIN REFUNDINGS; CLARIFYING CROSSOVER REFUNDING; AMENDING SECTIONS 7-7-2304, 7-7-2316, 7-7-4304, 7-7-4316, 7-7-4502, 7-12-2109, 7-12-2120, 7-12-2161, 7-12-2168, 7-12-2171, 7-12-4110, 7-12-4174, 7-12-4203, 7-13-114, 7-13-3043, 7-14-4712, 7-14-4732, 17-5-2102, AND 20-9-412, MCA; REPEALING SECTIONS 7-12-2110 AND 7-12-4111, MCA; AND PROVIDING AN EFFECTIVE DATE 955

278 *(Senate Bill No. 445; Barkus)* REPEALING THE TRANSITION SECTION OF THE DISTRICTING AND APPORTIONMENT PLAN THAT ASSIGNS HOLDOVER SENATORS TO NEW DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 968

279 *(House Bill No. 474; Weiss)* PROVIDING THAT AN ADJUSTMENT OF THE RENTAL PRICE OF A MOTOR VEHICLE, TRAILER, OR SEMITRAILER, BASED ON THE AMOUNT REALIZED UPON THE SALE OR DISPOSITION OF THE MOTOR VEHICLE, TRAILER, OR SEMITRAILER, DOES NOT CREATE A SALE OR SECURITY INTEREST 969

280 *(Senate Bill No. 118; DePratu)* GENERALLY REVISING THE LAWS GOVERNING LICENSE PLATES; PROHIBITING, WITH EXCEPTIONS, THE DISPLAY OF PRIOR DESIGNS OF NUMBER PLATES OR CERTAIN SPECIAL LICENSE PLATES AFTER ISSUANCE OF A NEW

DESIGN; DELAYING THE NEW ISSUE OF NUMBER PLATES UNTIL 2006; INCREASING LICENSE PLATE FEES; REVISING THE REPORTING REQUIREMENTS PERTAINING TO HOLDERS OF AMATEUR RADIO OPERATOR LICENSE PLATES; REVISING THE REQUIREMENTS GOVERNING QUALIFICATION, ISSUANCE, AND RENEWAL OF GENERIC SPECIALTY LICENSE PLATES; ALLOWING COLLECTION AND DISBURSEMENT OF SPONSOR DONATION FEES BY COUNTY TREASURERS AND THE DEPARTMENT OF REVENUE; EXPANDING THE VEHICLE TYPES ELIGIBLE FOR GENERIC SPECIALTY LICENSE PLATES; MAKING THE MONTANA GENERIC SPECIALTY LICENSE PLATE ACT PERMANENT; CLARIFYING SPECIAL LICENSE PLATE TYPES THAT MAY BE USED TO PERMANENTLY REGISTER A VEHICLE; AMENDING SECTIONS 61-3-301, 61-3-321, 61-3-332, 61-3-333, 61-3-424, 61-3-465, 61-3-473, 61-3-474, 61-3-475, 61-3-476, 61-3-477, 61-3-478, 61-3-479, 61-3-480, 61-3-481, AND 61-3-562, MCA; REPEALING SECTION 21, CHAPTER 402, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES 969

281 *(Senate Bill No. 211; Hansen)* ELIMINATING THE JUNK VEHICLE DISPOSAL FEE; AMENDING SECTIONS 75-10-513 AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 991

282 *(Senate Bill No. 292; Cocchiarella)* EXEMPTING FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977 HOUSING PROVIDED BY THE MONTANA UNIVERSITY SYSTEM AND OTHER POSTSECONDARY EDUCATION INSTITUTIONS; AND AMENDING SECTION 70-24-104, MCA 992

283 *(House Bill No. 160; Haines)* APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES 993

284 *(House Bill No. 417; Golie)* REPEALING THE SMALL POWER PRODUCTION LAWS; REPEALING SECTIONS 69-3-601, 69-3-602, 69-3-603, AND 69-3-604, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE 994

285 *(House Bill No. 445; Pattison)* PROVIDING THAT A ROCKY MOUNTAIN DOUBLE CARRYING BALED HAY MAY NOT EXCEED 88 FEET OF COMBINED TRAILER LENGTH; AMENDING SECTION 61-10-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION. 994

286 *(House Bill No. 546; Wagman)* INCREASING FROM 2 YEARS TO 10 YEARS THE MAXIMUM INCARCERATION FOR THE OFFENSE OF FAILURE TO PROVIDE SUPPORT FOR 6 MONTHS OR FAILURE TO PROVIDE SUPPORT IN A CUMULATIVE AMOUNT EQUAL TO OR IN EXCESS OF 6 MONTHS' SUPPORT; AMENDING SECTION 45-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 997

287 *(House Bill No. 617; Mendenhall)* REVISING THE METAL MINE RECLAMATION LAWS; PROHIBITING AN INCREASE IN A MINE RECLAMATION BOND UNTIL A MINE OPERATING PERMIT MODIFICATION IS COMPLETE; AMENDING SECTION 82-4-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 999

288 *(House Bill No. 678; Lindeen)* ESTABLISHING A DECLARATORY RULING PROCESS UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AUTHORIZING THE BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO ISSUE DECLARATORY RULINGS; PROVIDING FOR JUDICIAL REVIEW OF A DECLARATORY RULING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 1001

289 *(Senate Bill No. 66; Bohlinger)* REDUCING THE YEARS OF SERVICE REQUIRED BEFORE MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', HIGHWAY PATROL OFFICERS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS MAY PURCHASE MILITARY SERVICE; PROVIDING THAT MEMBERS OF THE JUDGES' RETIREMENT SYSTEM MAY PURCHASE MILITARY SERVICE; PROVIDING THAT ANY VESTED MEMBER OF THE SYSTEM MAY PURCHASE THE SERVICE; AMENDING SECTIONS 19-3-503, 19-6-801, 19-7-803, 19-7-804, 19-8-901, 19-9-403, AND 19-13-403, MCA; AND PROVIDING AN EFFECTIVE DATE 1003

290 *(Senate Bill No. 77; Johnson)* EXTENDING UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS THROUGH DECEMBER 2005; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1007

291 *(Senate Bill No. 135; Thomas)* REVISING THE LAWS RELATING TO THE SCHOOL GUARANTEE ACCOUNT; PROVIDING THAT INTEREST PAYMENTS ON THE COAL SEVERANCE TAX LOAN TO PURCHASE MINERAL PRODUCTION RIGHTS MUST BE PAID MONTHLY ON THE CURRENT OUTSTANDING LOAN BALANCE; PROVIDING THAT THE TRUST LAND ADMINISTRATION ACCOUNT DOES NOT RECEIVE A PORTION OF THE MINERAL ROYALTIES PURCHASED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH THE COAL SEVERANCE TAX LOAN; AMENDING SECTIONS 20-9-622 AND 77-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1009

292 *(Senate Bill No. 145; Bohlinger)* PROVIDING THAT A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE MEMBERSHIP SERVICE AND SERVICE CREDIT FOR VERIFIABLE SERVICE AS A VOLUNTEER IN A UNITED STATES SERVICE PROGRAM; AND AMENDING SECTION 19-3-514, MCA. 1010

293 *(Senate Bill No. 188; Cocchiarella)* REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO INCLUDE LICENSED ELECTRICAL CONTRACTORS AND LICENSED MASTER PLUMBERS IN THE STANDARD PREVAILING WAGE SURVEY; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1011

294 *(Senate Bill No. 220; Thomas)* REVISING THE PUBLIC SERVICE COMMISSION DISTRICTS FOR THE PURPOSE OF POPULATION EQUALITY; PROVIDING FOR TRANSITION; AND AMENDING SECTION 69-1-104, MCA 1014

295 *(Senate Bill No. 249; Taylor)* REVISING AND CLARIFYING THE PURPOSE FOR WHICH GENERAL OBLIGATION BONDS MAY BE ISSUED FOR FINANCING AND ACQUIRING INFRASTRUCTURE IMPROVEMENTS AND EQUIPMENT FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS; PROVIDING THAT AN AGREEMENT MAY PROVIDE THE PROJECT DEVELOPER WITH THE RIGHT OF FIRST REFUSAL FOR THE PURCHASE OF REAL PROPERTY SECURED BY THE BONDS AT FAIR MARKET VALUE

PLUS REIMBURSEMENT TO THE STATE FOR ANY COSTS INCURRED IN THE ISSUANCE OF THE BONDS; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999, SECTION 1, CHAPTER 6, SPECIAL LAWS OF MAY 2000, AND SECTION 1, CHAPTER 589, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . 1015

296 *(House Bill No. 6; Witt)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING EFFECTIVE DATES. 1017

297 *(House Bill No. 8; Witt)* APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 57TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE 1021

298 *(House Bill No. 124; Olson)* CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE DEPARTMENT OF JUSTICE ON BEHALF OF THE MONTANA LAW ENFORCEMENT ACADEMY; PROVIDING FOR A SURCHARGE UPON CERTAIN CRIMINAL CONVICTIONS TO FUND LAW ENFORCEMENT ACADEMY OPERATIONS; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES 1024

299 *(House Bill No. 186; Matthews)* GENERALLY REVISING THE LAWS GOVERNING THE LICENSING AND REGULATION OF MOTOR VEHICLE DEALERS; AUTHORIZING WITHDRAWAL OF DEALER AND DEMONSTRATOR PLATES AND 20-DAY PERMITS IN CERTAIN CONDITIONS; REQUIRING DEALERS TO PAY OFF OUTSTANDING BALANCES ON TRADE-IN OR CONSIGNED VEHICLES WITHIN A CERTAIN PERIOD; REQUIRING A SECURED PARTY WHO HAS BEEN PAID IN FULL TO DELIVER A RELEASE WITHIN A CERTAIN PERIOD; REMOVING THE REQUIREMENT THAT A DEALER LICENSE BE LIMITED TO A 1-YEAR TERM AND ALLOWING THE LICENSE TO REMAIN VALID UNTIL SUSPENDED, REVOKED, OR CANCELED UPON SURRENDER; INCREASING BOND REQUIREMENTS FOR NEW AND USED MOTOR VEHICLE DEALERS, RECREATIONAL VEHICLE DEALERS, TRAILER DEALERS, WHOLESALERS, AND AUTO AUCTIONS TO $50,000 AND FOR MOTORCYCLE DEALERS TO $15,000; REVISING THE REPORTING REQUIREMENTS CONCERNING DEALER PLATES; CLARIFYING THE GRACE PERIOD FOR DEALER AND DEMONSTRATOR PLATE USAGE; REVISING DEALER RECORDKEEPING REQUIREMENTS; REVISING THE PERIOD OF SUSPENSION OF A DEALER LICENSE; LIMITING THE EXEMPTION FROM REGISTRATION LAWS AND SPECIAL TRANSFER PRIVILEGES FOR DEALERS WHO FAIL TO FILE AN ANNUAL REPORT AND PAY ANNUAL FILING AND REGISTRATION FEES BEFORE CERTAIN DATES; ALLOWING A LICENSED AUTO AUCTION TO USE AUTO AUCTION LICENSE PLATES TO TRANSPORT VEHICLES BOTH TO AND FROM AUCTION TO A POINT OF STORAGE OR DELIVERY IN THIS STATE; CLARIFYING THE REQUIREMENT FOR DEALERS TO CARRY AND MAINTAIN GENERAL LIABILITY INSURANCE; REQUIRING INSURANCE CARRIERS TO NOTIFY THE DEPARTMENT

OF JUSTICE UPON CANCELLATION OR TERMINATION OF A DEALER'S GENERAL LIABILITY INSURANCE POLICY; REPLACING THE ANNUAL LICENSE RENEWAL REQUIREMENT WITH THE REQUIREMENT TO FILE AN ANNUAL REPORT AND PAY CERTAIN FEES; REQUIRING CERTAIN USED MOTOR VEHICLE DEALERS TO CERTIFY TO THE RETAIL SALE OF AT LEAST 12 VEHICLES IN THE PRIOR YEAR OR PAY AN ADDITIONAL REGISTRATION FEE OF $25; PROHIBITING THE DEPARTMENT OF JUSTICE FROM RENEWING DEALER OR DEMONSTRATOR PLATES FOR A DEALER WHO HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; PROHIBITING THE DEPARTMENT OF JUSTICE FROM TRANSFERRING TITLE TO A DEALER WITHOUT REGISTERING THE VEHICLE WHEN THE DEALER HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; REQUIRING THE DEPARTMENT OF JUSTICE TO INITIATE ADMINISTRATIVE ACTION TO REVOKE A DEALER'S LICENSE WHEN THE DEALER FAILS TO FILE AN ANNUAL REPORT AND PAY FEES BY A CERTAIN DATE; INCREASING THE DEALER AND WHOLESALER DEMONSTRATOR PLATE FEE TO $5; CLARIFYING REQUIREMENTS FOR USE OF DEMONSTRATOR PLATES; REVISING REQUIREMENTS FOR THE CONTESTED CASE HEARING PROCESS TO CANCEL OR TERMINATE A MOTOR VEHICLE FRANCHISE; INCREASING THE FEE FOR TRANSIT PLATES TO $10 AND LIMITING THE NUMBER OF SETS OF TRANSIT PLATES THAT MAY BE ISSUED TO A TRANSPORTER OF NEW MOTOR VEHICLES, UNLESS NEED FOR ADDITIONAL PLATES IS DEMONSTRATED; AMENDING SECTIONS 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-107, 61-4-111, 61-4-120, 61-4-123, 61-4-124, 61-4-125, 61-4-129, 61-4-206, AND 61-4-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1025

300 *(House Bill No. 195; Younkin)* INCREASING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OR DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-2-302, 61-5-208, 61-8-421, 61-8-442, 61-8-714, 61-8-722, AND 61-8-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1045

301 *(House Bill No. 230; Erickson)* PROVIDING THAT AN EMPLOYER MAY PAY WAGES DUE IN THE ENSUING PAY PERIOD WHEN AN EMPLOYEE SUBMITS A TIMESHEET AFTER THE EMPLOYER'S DEADLINE FOR PROCESSING TIMESHEETS FOR A PARTICULAR PAY PERIOD; ELIMINATING ARCHAIC LANGUAGE PROVIDING THAT WAGES OWED TO EMPLOYEES WHO ARE ABSENT FROM WORK ON THE REGULAR PAY DATE MUST BE PAID AT ANY TIME AFTER THE DATE OF REGULAR PAYMENT AND PROVIDING THAT THE LAW IS INAPPLICABLE TO CERTAIN EMPLOYEES WHO BY CUSTOM RECEIVE WAGES MONTHLY; AMENDING SECTION 39-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1050

302 *(House Bill No. 293; Smith)* PROHIBITING RACIAL PROFILING; REQUIRING LAW ENFORCEMENT AGENCIES TO ADOPT A DETAILED WRITTEN POLICY THAT CLEARLY DEFINES THE ELEMENTS CONSTITUTING RACIAL PROFILING AND THAT PROHIBITS RACIAL PROFILING; REQUIRING THE POLICY TO INCLUDE A PROCEDURE FOR INVESTIGATING COMPLAINTS OF RACIAL PROFILING; REQUIRING A LAW ENFORCEMENT AGENCY TO TAKE APPROPRIATE ACTION AGAINST A PEACE OFFICER

VIOLATING THE POLICY AGAINST RACIAL PROFILING; DEFINING "RACIAL PROFILING"; AND PROVIDING AN EFFECTIVE DATE . . . 1051

303 *(House Bill No. 419; Laszloffy)* REQUIRING A RAILROAD CORPORATION TO ERECT SIGNS IN ADVANCE OF A CROSSING AT WHICH A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; REQUIRING THE HORN AND BELL TO BE SOUNDED FOR AT LEAST 15 SECONDS PRIOR TO A LOCOMOTIVE OCCUPYING A CROSSING IF THE TRAIN IS STOPPED WITHIN A CERTAIN DISTANCE OF THE CROSSING; CLARIFYING THE MEANING OF THE PHRASE "PUBLIC HIGHWAY, PUBLIC ROAD, OR PUBLIC RAILROAD CROSSING" FOR THE PURPOSES OF DETERMINING WHEN A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; AMENDING SECTION 69-14-562, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1052

304 *(House Bill No. 456; Parker)* SUBSTITUTING THE TERM "PREDOMINANT AGGRESSOR" FOR THE TERM "PRIMARY AGGRESSOR" IN THAT PART OF THE PARTNER OR FAMILY MEMBER ARREST STATUTE THAT RELATES TO MUTUAL AGGRESSION; AND AMENDING SECTION 46-6-311, MCA. 1054

305 *(House Bill No. 482; Forrester)* PROVIDING THAT A PROVISION IN A CONSTRUCTION CONTRACT THAT REQUIRES ONE PARTY TO THE CONTRACT TO INDEMNIFY ANOTHER PARTY TO THE CONTRACT, OR THE OTHER PARTY'S OFFICERS, EMPLOYEES, OR AGENTS, FOR THE OTHER PARTY'S LIABILITY, LOSSES, DAMAGES, OR COSTS IS VOID AS AGAINST THE PUBLIC POLICY OF THIS STATE; AUTHORIZING A CONSTRUCTION CONTRACT TO CONTAIN A PROVISION REQUIRING A PARTY TO A CONTRACT TO PURCHASE A PROJECT-SPECIFIC INSURANCE POLICY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1055

306 *(House Bill No. 494; Wilson)* REVISING THE LAWS GOVERNING LICENSURE OF PHYSICIANS; PROVIDING FOR TEMPORARY LICENSURE OF PERSONS IN AN APPROVED RESIDENCY PROGRAM UPON CERTAIN CONDITIONS; AND AMENDING SECTIONS 37-3-304 AND 37-3-305, MCA 1056

307 *(House Bill No. 501; Noennig)* REVISING THE PROVISIONS RELATED TO LICENSURE OF RADIOLOGIC TECHNOLOGISTS; PROVIDING FOR APPROVAL BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS OF A LICENSED RADIOLOGIC TECHNOLOGIST TO PERFORM THE FUNCTIONS OF A RADIOLOGIST ASSISTANT UNDER SUPERVISION OF A RADIOLOGIST; DEFINING TERMS; AND AMENDING SECTIONS 37-14-102 AND 37-14-301, MCA. 1057

308 *(House Bill No. 555; Bitney)* CHANGING THE AMOUNT THAT MAY BE CHARGED FOR A PAST-DUE LOAN PAYMENT FROM 5 PERCENT OF THE AMOUNT PAST DUE TO THE GREATER OF 5 PERCENT OF THE AMOUNT PAST DUE OR $15; AND AMENDING SECTION 32-5-301, MCA. 1060

309 *(House Bill No. 579; Shockley)* PROVIDING THAT THE PARTIES TO A DIVORCE OR SEPARATION IN WHICH A TEMPORARY INJUNCTION IS SOUGHT MUST BE INFORMED BY THE COURT AT THE HEARING ON THE INJUNCTION THAT THE INJUNCTION MIGHT LIMIT OR RESULT IN LIMITS ON THE RIGHTS OF ONE OR BOTH PARTIES RELATING TO FIREARMS UNDER STATE AND FEDERAL LAW; CLARIFYING THAT A PARTY AGAINST WHOM AN INJUNCTION IS SOUGHT IS ENTITLED TO NOTICE AND HEARING; PROVIDING THAT A PERSON CHARGED WITH AN OFFENSE MUST BE INFORMED BY THE COURT THAT CONVICTION MAY RESULT IN

THE LOSS OF VARIOUS RIGHTS REGARDING FIREARMS UNDER STATE AND FEDERAL LAW; AND AMENDING SECTIONS 40-4-121 AND 46-7-102, MCA 1062

310 *(House Bill No. 580; Bitney)* PROVIDING THE PUBLIC SERVICE COMMISSION WITH EXPEDITED COMPLAINT AUTHORITY FOR INTERCONNECTION AND EXCHANGE ACCESS DISPUTES; PROVIDING AN EXPEDITED COMPLAINT PROCESS AND PROCEDURES; AMENDING SECTION 69-3-832, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1065

311 *(House Bill No. 591; Fuchs)* PROVIDING FOR TERM PERMIT FEES FOR CERTAIN OVERWEIGHT VEHICLE LOADS; AND AMENDING SECTION 61-10-125, MCA 1067

312 *(House Bill No. 637; Raser)* PROHIBITING UNSOLICITED ADVERTISEMENTS THROUGH FACSIMILE TRANSMISSION; AND PROVIDING THAT A VIOLATION OF THIS PROHIBITION IS A VIOLATION OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973. 1069

313 *(Senate Bill No. 180; Ryan)* MAKING PERMANENT THE PROVISION THAT ALLOWS AN INDIVIDUAL WHO LEAVES WORK OR IS DISCHARGED BECAUSE OF CIRCUMSTANCES RESULTING FROM DOMESTIC VIOLENCE TO RECEIVE UNEMPLOYMENT BENEFITS; REPEALING SECTION 4, CHAPTER 520, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1070

314 *(Senate Bill No. 283; Wheat)* REVISING LAWS RELATING TO VENUE IN FAMILY LAW CASES; REQUIRING MONTANA RESIDENCE FOR 90 DAYS PRECEDING THE FILING OF AN ACTION FOR DISSOLUTION OF MARRIAGE; ALLOWING MEDIATION AGREEMENTS TO BE ADMISSIBLE AS EVIDENCE IF AFFIRMED BY THE PARTIES; AND AMENDING SECTIONS 25-2-118, 40-4-104, AND 40-4-305, MCA 1070

315 *(Senate Bill No. 302; McCarthy)* CHANGING THE WAY UNDIVIDED OWNERSHIP INTERESTS IN PROPERTY ARE ASSESSED FOR PROPERTY TAX PURPOSES; PROVIDING THAT THE OWNERS OF UNDIVIDED INTERESTS MAY BE ASSESSED SEPARATELY UPON REQUEST; PROVIDING THAT PAYMENT OF THE TOTAL PROPERTY TAX DUE BY A SINGLE OWNER MAY BE PAYMENT ON BEHALF OF ALL OF THE OWNERS OR THAT A PAYING CO-OWNER MAY, AFTER 3 YEARS OF PAYMENTS AND NOTICES TO THE NONPAYING CO-OWNER, TAKE A PROPERTY TAX LIEN ON THE NONPAYING CO-OWNER'S INTEREST; PROVIDING THAT NONPAYMENT BY A SEPARATELY ASSESSED CO-OWNER SUBJECTS ONLY THE NONPAYING CO-OWNER'S INTEREST TO A TAX SALE; AND AMENDING SECTIONS 15-7-138 AND 15-16-102, MCA 1071

316 *(Senate Bill No. 329; Mangan)* PROVIDING FOR JUVENILE DETENTION OR JUVENILE CORRECTIONS OFFICER AND ADMINISTRATOR STANDARDS, CERTIFICATION, AND TRAINING; PROVIDING THAT TRAINING BE UNDER THE AUSPICES OF THE BOARD OF CRIME CONTROL AND THE MONTANA LAW ENFORCEMENT ACADEMY; EXTENDING THE TIME PERIOD FOR RECEIVING TRAINING FROM 6 MONTHS TO 1 YEAR FOR PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, JUVENILE DETENTION AND JUVENILE CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS; AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE. 1074

317 *(Senate Bill No. 331; Squires)* GENERALLY REVISING THE LAWS APPLYING TO THE PRACTICE OF NURSING; ELIMINATING THE

REQUIREMENT THAT THE PRACTICE OF NURSING APPLIES ONLY TO THOSE PRACTICING FOR COMPENSATION; AMENDING SECTIONS 37-8-102, 37-8-431, AND 37-8-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1077

318 *(Senate Bill No. 409; Stapleton)* REVISING LAWS RELATED TO STATE LANDS; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONDUCT CERTAIN INVENTORIES AND ASSESSMENTS; AUTHORIZING THE DEPARTMENT TO CONDUCT LEASE PLANNING; ELIMINATING DUPLICATIVE ENVIRONMENTAL REVIEWS; AMENDING SECTIONS 77-1-121 AND 77-3-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1079

319 *(House Bill No. 20; Golie)* BENEFITING MULE DEER AND ELK BY ALLOWING THE ANNUAL ISSUANCE OF ONE MULE DEER LICENSE AND ONE ELK LICENSE THROUGH A COMPETITIVE AUCTION OR LOTTERY; ALLOWING THE AUCTION OR LOTTERY TO BE CONDUCTED BY A WILDLIFE CONSERVATION ORGANIZATION AND ALLOWING THE RETENTION OF 10 PERCENT OF SALE PROCEEDS BY THE WILDLIFE CONSERVATION ORGANIZATION TO COVER EXPENSES; AND DEDICATING THE REMAINING AUCTION OR LOTTERY PROCEEDS TO THE BENEFIT OF MULE DEER AND ELK 1082

320 *(House Bill No. 87; Jent)* PROHIBITING THE USE OF A PUNCHCARD VOTING SYSTEM IN AN ELECTION AFTER DECEMBER 31, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1083

321 *(House Bill No. 123; Clark)* REDUCING THE MINIMUM AGE FOR PURCHASE OF A TRAPPER'S LICENSE FROM 13 YEARS OF AGE TO 12 YEARS OF AGE; REDUCING THE MAXIMUM AGE FOR PURCHASE OF A YOUTH TRAPPING LICENSE TO LESS THAN 12 YEARS OF AGE AND ELIMINATING THE LICENSE FEE; CLARIFYING THAT THE FISH, WILDLIFE, AND PARKS COMMISSION REGULATES TRAPPING; AMENDING SECTIONS 87-2-601, 87-2-603, AND 87-2-605, MCA; AND PROVIDING AN EFFECTIVE DATE 1084

322 *(House Bill No. 127; Fritz)* GENERALLY REVISING CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; DEFINING "CONSUMER" AND DELETING THE DEFINITION OF "NATIONAL ADVERTISING"; CLARIFYING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY BRING AN ACTION TO RESTRAIN UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN LEWIS AND CLARK COUNTY WITHOUT CONSENT OF THE PARTIES; INCREASING THE MINIMUM DAMAGES FOR UNLAWFUL ACTS TO $500; INCREASING THE MAXIMUM CIVIL FINE FOR UNLAWFUL ACTS TO $10,000; MANDATING THAT THE DEPARTMENT HOLD A HEARING TO DECIDE IF A COST SURVEY SHOULD BE PERFORMED; DELETING PROVISIONS RELATING TO CERTAIN REBATES; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION'S OBLIGATION TO ENFORCE CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS IS PERMISSIVE RATHER THAN MANDATORY; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF A DEPARTMENT ORDER UNDER THE UNFAIR TRADE PRACTICES LAWS TO $10,000; INCREASING THE RECOVERY FOR A PERSON BRINGING AN ACTION UNDER THE UNFAIR TRADE PRACTICES LAWS AND PROVIDING FOR ATTORNEY FEES AND COSTS FOR

PREVAILING PARTIES; PROVIDING THAT A VIOLATION OF CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS MAY BE A FELONY RATHER THAN A MISDEMEANOR; GENERALLY REVISING LAWS REGARDING PERSONAL SOLICITATION SALES; REVISING THE DEFINITION OF "PERSONAL SOLICITATION"; ELIMINATING THE DISCLOSURE OBLIGATION EXEMPTION FOR NONPROFIT ORGANIZATIONS; INCREASING THE BUYER'S RECOVERY UNDER REVOKED PERSONAL SOLICITATION SALES; AMENDING SECTIONS 30-14-102, 30-14-105, 30-14-111, 30-14-131, 30-14-133, 30-14-142, 30-14-211, 30-14-219, 30-14-220, 30-14-222, 30-14-223, 30-14-224, 30-14-501, 30-14-502, 30-14-503, AND 30-14-506, MCA; REPEALING SECTION 30-14-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1085

323 *(House Bill No. 203; Olson)* GENERALLY REVISING LAWS GOVERNING BALLOT MEASURES; REVISING THE DEFINITION OF "SIGNATURE GATHERER"; CLARIFYING THAT PETITIONS FOR BALLOT MEASURES ARE TO BE CIRCULATED BY SIGNATURE GATHERERS; PROVIDING REQUIREMENTS FOR INTERNET POSTING OF PETITIONS FOR BALLOT MEASURES; REQUIRING PETITIONS FOR BALLOT MEASURES TO INCLUDE THE INITIALS OF THE PERSON SIGNING THE PETITION AND THE DATE WHEN THE FIRST SIGNATURE WAS GATHERED; CONFORMING REQUIREMENTS FOR SIGNATURES FOR INITIATIVE MEASURES AND INITIATIVES FOR CONSTITUTIONAL AMENDMENTS TO CONSTITUTIONAL REQUIREMENTS FOR GATHERING SIGNATURES IN ONE-HALF OF THE COUNTIES; REVISING REQUIREMENTS FOR SUBMISSION OF PETITION SHEETS FOR BALLOT MEASURES FOR VERIFICATION OF SIGNATURES; REQUIRING CERTIFICATION OF SIGNATURES ON PETITIONS FOR BALLOT MEASURES BY THE SIGNATURE GATHERER; AUTHORIZING THE SECRETARY OF STATE TO REJECT PETITIONS FOR BALLOT MEASURES SUBMITTED FOR TABULATION OF SIGNATURES THAT DO NOT MEET STATUTORY REQUIREMENTS; AMENDING SECTIONS 13-27-111, 13-27-201, 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-301, 13-27-302, 13-27-303, 13-27-304, AND 13-27-307, MCA; AND PROVIDING AN EFFECTIVE DATE 1093

324 *(House Bill No. 303; Olson)* MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT RELATES TO TRANSMISSION LINES; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1101

325 *(House Bill No. 384; McKenney)* CREATING A DEMONSTRATION PROJECT THAT ALLOWS HEALTH INSURANCE ISSUERS TO OFFER A LIMITED COVERAGE INDIVIDUAL HEALTH BENEFIT PLAN OR A MANAGED CARE PLAN; PROVIDING THAT THE INSURER MUST SPECIFY CLEARLY WHICH STATE-REQUIRED BENEFITS OR COVERAGES ARE NOT INCLUDED IN THE OFFERED LIMITED COVERAGE INDIVIDUAL PLAN; AMENDING SECTIONS 33-22-301, 33-22-706, 33-30-1001, 33-31-111, 33-31-202, 33-31-301, 33-36-201, AND 33-36-205, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 1103

326 *(House Bill No. 431; Lawson)* PROVIDING LOCAL GOVERNMENTS WITH THE RIGHT OF FIRST REFUSAL ON CERTAIN LANDS BEING SOLD BY THE STATE; AMENDING SECTION 77-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1113

327 *(House Bill No. 435; Sinrud)* CLARIFYING THAT A LEGISLATOR MAY NOT ACCEPT A FEE OR CERTAIN OTHER COMPENSATION FOR

SPEAKING TO A MONTANA STATE AGENCY OR POLITICAL SUBDIVISION; AMENDING SECTION 2-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1114

328 *(House Bill No. 602; Galvin-Halcro)* REQUIRING DEVELOPMENT OF A LEASING PREFERENCE GUIDELINE THAT ENCOURAGES COST-EFFICIENCY AND APPROPRIATE USE; REQUIRING A REPORT ON THE PREFERENCE GUIDELINE TO BE SUBMITTED TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE; AND PROVIDING AN EFFECTIVE DATE 1115

329 *(Senate Bill No. 13; Mahlum)* SUBSTITUTING 0.08 FOR 0.10 IN THE LAWS RELATING TO DRIVING UNDER THE INFLUENCE AND DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION IN THE BODY; REDUCING THE BLOOD ALCOHOL CONCENTRATION FROM 0.18 TO 0.16 FOR PURPOSES OF REQUIRING AN IGNITION INTERLOCK DEVICE; AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-401, 61-8-406, 61-8-442, AND 61-11-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1115

330 *(Senate Bill No. 34; Barkus)* AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO IMPLEMENT AN EXPEDITED ACQUISITION PROCESS FOR ACQUIRING PROPERTY UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 60-4-104, 70-30-302, AND 70-30-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1120

331 *(Senate Bill No. 80; Laible)* PROHIBITING A LEGISLATIVE STANDING COMMITTEE FROM MEETING DURING THE INTERIM BETWEEN REGULAR LEGISLATIVE SESSIONS, EXCEPT IN CONJUNCTION WITH A SPECIAL SESSION OR TO PERFORM CERTAIN TASKS BEFORE A REGULAR SESSION 1124

332 *(Senate Bill No. 86; Zook)* REVISING ACCOUNTING, BUDGETING, AND APPROPRIATION LAWS; AUTHORIZING STATE SPECIAL AND OTHER FEDERAL FUND SWITCHES; CHANGING THE DATE FOR STATE AGENCIES TO ANNUALLY REPORT ACCOUNTING INFORMATION TO THE LEGISLATIVE FINANCE COMMITTEE; CLARIFYING THE CALCULATION OF BALANCED FINANCIAL PLANS THAT REDUCE THE PROPOSED BASE BUDGET FOR AGENCIES WITH MORE THAN 20 FTE; PROVIDING BUDGET AMENDMENT EXCEPTIONS FOR STATE SPECIAL REVENUE; AMENDING SECTIONS 17-2-108, 17-2-304, 17-7-111, AND 17-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE 1124

333 *(Senate Bill No. 166; Bales)* REVISING THE PADDLEFISH ROE DONATION PROGRAM; REVISING THE RESTRICTION THAT ONLY ROE FROM PADDLEFISH CAUGHT BETWEEN THE BURLINGTON NORTHERN RAILROAD BRIDGE AT GLENDIVE TO THE CONFLUENCE OF COTTONWOOD CREEK AND THE YELLOWSTONE RIVER IS ELIGIBLE FOR DONATION TO THE PROGRAM BY SPECIFYING A LONGER SECTION OF THE YELLOWSTONE RIVER; ADJUSTING THE PERCENTAGES OF PROGRAM PROCEEDS THAT ARE DIVIDED BETWEEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE NONPROFIT ORGANIZATION THAT PROCESSES AND MARKETS THE CAVIAR; EXTENDING THE PADDLEFISH ROE DONATION PROGRAM UNTIL JUNE 30, 2018; AMENDING SECTION 87-4-601, MCA, SECTION 5, CHAPTER 409, LAWS OF 1989, AND SECTION 2, CHAPTER 196, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1129

334 *(Senate Bill No. 168; Stonington)* REQUIRING THAT MUNICIPALITIES ANNEX ROADS AND STREETS THAT ARE ADJACENT TO PROPERTY THAT IS BEING ANNEXED 1131

335 *(Senate Bill No. 241; Shea)* DEFINING "DEALER", "MOTOR VEHICLE", AND "NEW MOTOR VEHICLE" FOR THE PURPOSES OF SECTIONS 61-4-131 THROUGH 61-4-137, 61-4-141, AND 61-4-150, MCA, IN ORDER TO PROVIDE THAT THE RIGHT OF A DESIGNATED FAMILY MEMBER TO SUCCEED IN THE OWNERSHIP OR OPERATION OF A NEW MOTOR VEHICLE DEALERSHIP INCLUDES PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES AND IN ORDER TO PROVIDE THAT A MANUFACTURER'S RIGHT OF FIRST REFUSAL AND A DEALER'S RIGHTS WITH RESPECT TO THE SALE, TRANSFER, OR EXCHANGE OF A DEALERSHIP APPLY TO PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES; AND AMENDING SECTION 61-4-131, MCA 1132

336 *(Senate Bill No. 262; Perry)* CLARIFYING APPOINTMENT BY COUNTY COMMISSIONERS TO A VACANCY IN THE LEGISLATURE; CLARIFYING THE ROLE OF THE COUNTY CENTRAL COMMITTEE; REVISING THE TIMEFRAME FOR NOTIFICATIONS AND APPOINTMENT; CLARIFYING THE BEGINNING OF A TERM OF OFFICE FILLED BY AN APPOINTMENT; ALLOWING AN APPOINTMENT PRIOR TO AN ELECTION IF A SPECIAL LEGISLATIVE SESSION IS CALLED; AMENDING SECTIONS 5-2-402, 5-2-403, 5-2-404, 5-2-406, AND 5-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1133

337 *(Senate Bill No. 315; Schmidt)* PROVIDING FOR A FEASIBILITY STUDY TO ASSESS CONDITIONS AFFECTING RAIL FREIGHT COMPETITION IN MONTANA AND TO ANALYZE POSSIBILITIES TO IMPROVE RAIL FREIGHT COMPETITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1136

338 *(Senate Bill No. 316; Grimes)* CLARIFYING ENERGY-RELATED TAX LAWS BY PROVIDING THAT THE DEPARTMENT OF REVENUE MAY REFER CLAIMS FOR DEDUCTIONS OR CREDITS FOR ENERGY CONSERVATION MEASURES TO THE DEPARTMENT OF LABOR AND INDUSTRY RATHER THAN THE DEPARTMENT OF ADMINISTRATION; CLARIFYING THAT THE MINERAL EXPLORATION INCENTIVE CREDIT MAY NOT EXCEED A TOTAL OF $20 MILLION FOR ALL EXPLORATION ACTIVITIES; AND AMENDING SECTIONS 15-32-106, 15-32-503, AND 15-32-507, MCA 1137

339 *(Senate Bill No. 341; Thomas)* INCREASING FROM 30 TO 45 DAYS THE TIME REQUIRED FOR AN INSURER TO PROVIDE NOTICE TO A POLICYHOLDER OF A CANCELLATION, NONRENEWAL, OR RENEWAL WITH CHANGES OF PROPERTY OR CASUALTY INSURANCE, MOTOR VEHICLE LIABILITY INSURANCE, OR PRIVATE RESIDENCE INSURANCE; INCREASING THE NOTIFICATION REQUIREMENT FOR CANCELLATION OR NONRENEWAL OF POLICIES ISSUED TO A SPECIFIC GROUP OF PROFESSIONAL LIABILITY POLICYHOLDERS FROM 60 TO 120 DAYS; AMENDING SECTIONS 33-15-1104, 33-15-1105, 33-15-1106, 33-23-212, 33-23-214, 33-23-302, AND 33-23-401, MCA; AND PROVIDING AN APPLICABILITY DATE 1139

340 *(Senate Bill No. 380; Bales)* AUTHORIZING THE TRUSTEES OF A HIGH SCHOOL OR K-12 PUBLIC SCHOOL DISTRICT TO ESTABLISH A STUDENT FINANCIAL INSTITUTION AT A HIGH SCHOOL; DEFINING "STUDENT FINANCIAL INSTITUTION"; AMENDING

SECTIONS 20-3-324, 32-1-102, 32-1-402, AND 32-3-106, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1142

341 *(Senate Bill No. 432; Grimes)* PROVIDING FOR LICENSED REAL ESTATE APPRAISAL TRAINEES WHO ARE AUTHORIZED ONLY TO ASSIST A CERTIFIED REAL ESTATE APPRAISER IN THE PERFORMANCE OF AN APPRAISAL ASSIGNMENT; PROVIDING QUALIFICATIONS; AND AMENDING SECTIONS 37-54-102, 37-54-202, AND 37-54-304, MCA 1147

342 *(Senate Bill No. 460; Story)* REVISING THE LAWS RELATING TO THE TAXATION OF METAL MINES; PROVIDING A DEFINITION OF "BASIC TREATMENT AND REFINERY CHARGES" FOR THE PURPOSES OF DETERMINING THE GROSS PROCEEDS TAX OF METAL MINES AND THE METALLIFEROUS MINES LICENSE TAX; CLARIFYING THE TAXATION OF PROCESSED CONCENTRATE UNDER THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTIONS 15-23-801 AND 15-37-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1149

343 *(House Bill No. 40; Newman)* GENERALLY REVISING THE LAWS RELATING TO AN INVESTIGATIVE STOP AND FRISK BY PEACE OFFICERS; ELIMINATING THE REQUIREMENT THAT A PEACE OFFICER PROVIDE A PERSON WITH CERTAIN INFORMATION PRIOR TO QUESTIONING OF THE PERSON AFTER AN INVESTIGATIVE STOP; AMENDING SECTION 46-5-401, MCA; AND REPEALING SECTION 46-5-402, MCA 1150

344 *(House Bill No. 54; Newman)* REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF ELECTRONIC COMMUNICATIONS; DEFINING "ELECTRONIC COMMUNICATION"; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA 1151

345 *(House Bill No. 170; Parker)* REVISING THE LAW RELATING TO REVOCATION OF A SUSPENDED OR DEFERRED SENTENCE BY PROVIDING THAT RECENT LEGISLATIVE CHANGES TO THE REVOCATION LAW APPLY RETROACTIVELY; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1155

346 *(House Bill No. 171; Parker)* PROVIDING THAT A CRIMINAL OFFENDER HAS 1 YEAR AFTER FINAL JUDGMENT TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE; PROVIDING AN EXCEPTION; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1157

347 *(House Bill No. 388; Lake)* ALLOWING INDIVIDUAL OWNERS OF TRACTS OF LAND 3 ACRES OR SMALLER IN SIZE THAT ARE LOCATED WITHIN THE BOUNDARIES OF IRRIGATION DISTRICTS AND THAT ARE NOT BEING SERVED BY THE IRRIGATION DISTRICT WORKS TO BE ELIMINATED FROM FUTURE SERVICES, ASSESSMENTS OVER AND ABOVE CURRENT INDEBTEDNESS, AND LIABILITY UPON PAYMENT OF A SEVERANCE FEE OR NEGOTIATED AMOUNT; REQUIRING THAT OWNERS OF TRACTS LOCATED WITHIN AN IRRIGATION DISTRICT THAT HAS A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION MAY NOT PAY A SEVERANCE FEE OR NEGOTIATED AMOUNT TO BE EXCLUDED FROM FUTURE SERVICES, ASSESSMENTS, AND LIABILITY OF THE DISTRICT IF THAT WOULD IMPAIR THE

CONTRACT UNLESS THE PETITIONER COOPERATES WITH THE DISTRICT IN ORDER TO COMPLY WITH FEDERAL LAWS AND REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1158

348 *(House Bill No. 524; Mendenhall)* PROVIDING FOR LICENSURE OF AN OUTDOOR BEHAVIORAL PROGRAM THAT ACCEPTS PUBLIC FUNDING; AMENDING SECTION 50-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE 1161

349 *(House Bill No. 532; Stoker)* REVISING THE PROCEDURE FOR THE ELECTION OF DRAINAGE DISTRICT COMMISSIONERS; PROVIDING THAT IF THE NUMBER OF CANDIDATES IS EQUAL TO OR LESS THAN THE NUMBER OF POSITIONS TO BE ELECTED, THE ELECTION ADMINISTRATOR MAY CANCEL THE ELECTION; PROVIDING FOR A DECLARATION OF ELECTION BY ACCLAMATION; PROVIDING FOR AN APPOINTMENT TO FILL A POSITION IF THERE ARE NO CANDIDATES; AMENDING SECTION 85-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1166

350 *(House Bill No. 17; Newman)* MAKING EXPLOITATION OF AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY A FELONY IF THE AMOUNT INVOLVED IS OVER $1,000; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1167

351 *(House Bill No. 76; McKenney)* ESTABLISHING CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS AND TREASURE COMMUNITIES; REDIRECTING THE STATUTORY APPROPRIATION TO PROVIDE FUNDING TO CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS; ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COUNCIL; PROVIDING FOR APPOINTMENT AND DUTIES OF ADVISORY COUNCIL; ABOLISHING THE MICROBUSINESS ADVISORY COUNCIL; AMENDING SECTIONS 15-35-108, 17-6-403, 90-1-116, AND 90-8-201, MCA; REPEALING SECTION 17-6-411, MCA; AND PROVIDING EFFECTIVE DATES . . . 1169

352 *(House Bill No. 105; Olson)* GENERALLY REVISING, UPDATING, AND CLARIFYING PROVISIONS GOVERNING VEHICLE OPERATING REQUIREMENTS; ALLOWING A SLOW-MOVING VEHICLE TO TURN OFF OF A ROADWAY AT AREAS OTHER THAN THOSE DESIGNATED FOR THAT PURPOSE; MAKING CONSISTENT REFERENCES TO VARIOUS TYPES OF HIGHWAYS; REQUIRING OTHER VEHICLES TO YIELD THE RIGHT-OF-WAY TO VEHICLES ENGAGED IN MOBILE HIGHWAY MAINTENANCE; CLARIFYING THAT LOCAL AUTHORITIES HAVE THE OPTION OF DESIGNATING NO-PASSING ZONES; CLARIFYING THAT PROVISIONS GOVERNING NO-PASSING ZONES DO NOT APPLY WHEN A VEHICLE IS MAKING CERTAIN TURNING MOVEMENTS; PROVIDING FOR AND DEFINING ROUNDABOUTS; ALLOWING A PERSON TO CROSS DOUBLE YELLOW LINES IF TURNING INTO A PRIVATE ROAD OR DRIVEWAY; PROHIBITING A PERSON FROM PARKING A MOTOR VEHICLE IN A BICYCLE LANE; REGULATING TURNING WHERE A SPECIAL LANE HAS BEEN DESIGNATED FOR MAKING LEFT TURNS; PROHIBITING THE OPERATOR OF A MOTOR VEHICLE FROM INTERFERING WITH A BICYCLIST; MODIFYING THE PROVISIONS FOR STOPPING AT AND CROSSING RAILROAD GRADE CROSSINGS; ALLOWING A MOTORCYCLIST TO DRIVE WITHOUT THE HEADLAMP LIGHTED IF THE MOTORCYCLE IS BEING DRIVEN TO A REPAIR FACILITY; INCREASING THE FINE FOR THROWING CONTAINERS OF URINE OR FECES ON A HIGHWAY TO $1,000; PROHIBITING SHOOTING A

FIREARM FROM OR ACROSS THE RIGHT-OF-WAY OF ANY HIGHWAY; PROVIDING FOR THE ESTABLISHMENT OF SCHOOL CROSSING GUARDS; AMENDING SECTIONS 61-8-301, 61-8-303, 61-8-311, 61-8-312, 61-8-321, 61-8-323, 61-8-324, 61-8-325, 61-8-326, 61-8-327, 61-8-328, 61-8-329, 61-8-330, 61-8-331, 61-8-332, 61-8-333, 61-8-334, 61-8-336, 61-8-338, 61-8-340, 61-8-341, 61-8-342, 61-8-343, 61-8-344, 61-8-345, 61-8-346, 61-8-347, 61-8-348, 61-8-349, 61-8-350, 61-8-354, 61-8-355, 61-8-356, 61-8-359, 61-8-360, 61-8-361, 61-8-362, 61-8-363, 61-8-364, 61-8-365, 61-8-368, 61-8-369, 61-8-715, 61-9-402, 61-9-416, AND 61-9-431, MCA; AND REPEALING SECTION 61-8-315, MCA. 1176

353 *(House Bill No. 134; Weiss)* REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA 1200

354 *(House Bill No. 210; Shockley)* AUTHORIZING AN APPEAL TO DISTRICT COURT BASED UPON THE DENIAL OF A MOTION TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE BY A COURT OF LIMITED JURISDICTION; PROVIDING A TIME FOR AN APPEAL; AMENDING SECTIONS 46-17-203 AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1202

355 *(House Bill No. 223; Lawson)* CREATING THE STATE LAND BANK FUND; REVISING THE LAWS RELATING TO THE SALE OF STATE TRUST LAND AND THE DISPOSITION OF PROCEEDS; PROHIBITING THE SALE OF LAND TO THE FEDERAL GOVERNMENT; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ACQUIRE LANDS FOR THE FINANCIAL BENEFIT OF TRUST BENEFICIARIES; PROVIDING A STATUTORY APPROPRIATION FOR THE FUNDING OF STATE LAND BANK FUNCTIONS, INCLUDING THE ACQUISITION OF TRUST LANDS; PROHIBITING CREATION OF RIGHT OF ACCESS; PROVIDING A DEADLINE FOR LAND SALES UNDER THE LAND BANKING PROCESS; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTIONS 17-3-1003, 17-7-502, 18-2-107, 77-1-109, 77-2-301, 77-2-306, 77-2-309, 77-2-323, 77-2-328, AND 77-2-337, MCA; REPEALING SECTIONS 77-2-307 AND 77-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1204

356 *(House Bill No. 224; Shockley)* REVISING LAWS RELATING TO STANDING MASTERS; REMOVING THE AUTHORITY OF COUNTIES TO APPOINT STANDING MASTERS; REMOVING THE AUTHORITY OF WATER JUDGES TO SET THE SALARY OF WATER MASTERS; REMOVING THE REQUIREMENT THAT WATER MASTERS PARTICIPATE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REPEALING SECTIONS 3-5-123 AND 3-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1211

357 *(House Bill No. 237; Brueggeman)* REQUIRING A MOTOR VEHICLE EQUIPPED WITH AN ENGINE COMPRESSION BRAKE DEVICE TO HAVE A MUFFLER; ALLOWING USE OF AN ENGINE COMPRESSION BRAKE DEVICE EQUIPPED WITH A MUFFLER; PROVIDING A PENALTY; AND PROVIDING A DELAYED APPLICABILITY DATE . . 1212

358 *(House Bill No. 317; Shockley)* ALLOWING A SENTENCING COURT TO REQUIRE A PERSON CONVICTED OF CRUELTY TO ANIMALS TO PAY THE REASONABLE COSTS INCURRED BY A PUBLIC OR PRIVATE ANIMAL CONTROL AGENCY OR HUMANE ANIMAL TREATMENT SHELTER FOR THE CARE OF THE ANIMAL; AMENDING SECTION 45-8-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

359 *(House Bill No. 337; Ripley)* REQUIRING THAT THE EXPENSE OF MOVING UTILITY WIRES AND POLES WHEN RELOCATING A STRUCTURE BE PAID BY THE PERSON, FIRM, OR CORPORATION MOVING THE STRUCTURE; PROVIDING AN EXCEPTION; REQUIRING A PAYMENT TO THE OWNER OF THE WIRES AND POLES IN ADVANCE OF THE MOVE; AMENDING SECTIONS 69-4-602 AND 69-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1212

360 *(House Bill No. 385; Fritz)* PROVIDING THAT MONTANA NEW MOTOR VEHICLE WARRANTY LAWS APPLY TO MOTOR VEHICLES REGISTERED IN THIS STATE IN ADDITION TO MOTOR VEHICLES SOLD IN THIS STATE; INCLUDING MOTORCYCLES AS VEHICLES COVERED BY REGISTRATION; SUBSTITUTING SELECTION OF AN ARBITRATOR FOR SELECTION OF AN ARBITRATION PANEL AND DECREASING THE NUMBER OF ARBITRATORS FROM THREE TO ONE; AND AMENDING SECTIONS 61-4-501, 61-4-516, 61-4-518, AND 61-4-519, MCA 1213

361 *(House Bill No. 437; Olson)* GENERALLY REVISING LAWS GOVERNING THE ENVIRONMENT; PROVIDING THAT THE ENACTMENT OF CERTAIN LEGISLATION IS THE LEGISLATIVE IMPLEMENTATION OF ARTICLE II, SECTION 3, AND ARTICLE IX OF THE MONTANA CONSTITUTION AND PROVIDING THAT COMPLIANCE WITH THE REQUIREMENTS OF THE LEGISLATIVE IMPLEMENTATION CONSTITUTES ADEQUATE REMEDIES AS REQUIRED BY THE CONSTITUTION; REQUIRING THAT A CHALLENGE TO A PERMIT ISSUED PURSUANT TO THE AIR QUALITY LAWS OR OPENCUT MINING RECLAMATION LAWS, A CHALLENGE TO A LICENSE OR PERMIT ISSUED PURSUANT TO THE METAL MINE RECLAMATION LAWS, A CHALLENGE TO A CERTIFICATE ISSUED PURSUANT TO THE MONTANA MAJOR FACILITY SITING ACT, OR AN AMENDMENT ISSUED PURSUANT TO THE OPENCUT MINING RECLAMATION LAWS MUST PROVIDE FOR COSTS AND ATTORNEY FEES IF THE CHALLENGE WAS FOR AN IMPROPER PURPOSE; PROVIDING THAT AN ACTION CHALLENGING THE ISSUANCE OF A PERMIT UNDER THE AIR QUALITY LAWS, THE ISSUANCE OF AN AMENDMENT UNDER THE OPENCUT MINING RECLAMATION LAWS, THE ISSUANCE OF A LICENSE OR PERMIT UNDER THE METAL MINE RECLAMATION LAWS, A PETITION FOR REVIEW CHALLENGING A LICENSING OR PERMITTING DECISION UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AN ARBITRATION ACTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975, ANY ACTION UNDER THE HAZARDOUS WASTE FACILITIES LAWS OR THE MONTANA ENVIRONMENTAL POLICY ACT, ENTRY AND INSPECTION UNDER THE COAL AND URANIUM MINE RECLAMATION LAWS, OR A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING LAWS MUST BE BROUGHT IN THE COUNTY IN WHICH THE ACTIVITY SUBJECT TO THE PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR INSPECTION WILL OCCUR; PROVIDING THAT FOR AN ACTIVITY THAT WILL OCCUR IN MORE THAN ONE COUNTY, ANY COUNTY IN WHICH THE ACTIVITY WILL OCCUR IS A PROPER VENUE; PROVIDING THAT CERTAIN PERSONS MAY NOT CONDUCT REMEDIAL ACTIONS CONCERNING CLEANUP ACTIVITIES AT ANY FACILITY THAT IS SUBJECT TO AN ADMINISTRATIVE OR JUDICIAL ORDER; AMENDING SECTIONS 2-4-702, 2-4-704, 50-40-102, 75-1-102, 75-1-103, 75-2-102, 75-2-104, 75-5-101, 75-5-102, 75-7-102, 75-7-121, 75-10-202, 75-10-402, 75-10-420, 75-10-706, 75-10-902, 75-11-202, 75-11-301, 75-11-502, 75-20-102,

75-20-201, 75-20-401, 75-20-406, 76-6-102, 76-7-102, 82-4-102, 82-4-202, 82-4-239, 82-4-252, 82-4-301, 82-4-349, 82-4-402, 82-4-427, 82-4-436, AND 87-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1218

362 *(House Bill No. 451; Clark)* ALLOWING PRIVATE CORRECTIONAL FACILITIES TO CONFINE OUT-OF-STATE INMATES; AMENDING SECTION 53-30-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1241

363 *(House Bill No. 453; Raser)* PROVIDING FOR THE USE OF A PRISON INMATE'S FUNDS, INCOME, AND ASSETS TO PAY THE INMATE'S MEDICAL AND DENTAL EXPENSES; AND AMENDING SECTION 53-1-107, MCA 1241

364 *(House Bill No. 480; Steinbeisser)* INCREASING THE PENALTIES FOR CERTAIN VIOLATIONS REGARDING MOTOR VEHICLE ACCIDENTS; INCREASING THE RATE AT WHICH FINES MAY BE COMMUTED BY JAIL TIME; AND AMENDING SECTION 61-7-118, MCA 1242

365 *(House Bill No. 527; Mendenhall)* REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND APPLICANTS FOR OPERATING PERMITS UNDER THE METAL MINE RECLAMATION ACT TO CONSIDER THE UTILIZATION OF FACILITIES CONSTRUCTED IN CONJUNCTION WITH MINING OPERATIONS FOR POSTMINING USES IN LIEU OF REQUIRING THE REMOVAL OF THE FACILITIES; PROVIDING THAT ANCILLARY INDUSTRIAL FACILITIES MAY HAVE AN ACCEPTABLE POSTMINING USE; PROVIDING THAT AN AMENDMENT TO AN OPERATING PERMIT FOR THE PURPOSE OF RETENTION OF MINE-RELATED FACILITIES THAT ARE VALUABLE FOR POSTMINING USE IS A MINOR AMENDMENT AND DOES NOT REQUIRE THE PREPARATION OF AN ENVIRONMENTAL REVIEW OR AN ENVIRONMENTAL IMPACT STATEMENT; AMENDING SECTIONS 82-4-303, 82-4-335, 82-4-336, AND 82-4-342, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1243

366 *(House Bill No. 553; Gallik)* REVISING THE LAWS GOVERNING THE TREATMENT OF ANIMALS; PROVIDING FOR A CIVIL HEARING CONCERNING THE CARE OF ANIMALS SEIZED WHEN THE OWNER IS CHARGED WITH CRUELTY TO ANIMALS; CHANGING THE FINE AND IMPRISONMENT PENALTIES FOR THE CRIME; CREATING THE OFFENSE OF "AGGRAVATED ANIMAL CRUELTY"; EXPANDING THE LIST OF EXEMPT ACTIVITIES AND PRACTICES; AND AMENDING SECTION 45-8-211, MCA 1252

367 *(House Bill No. 563; Laszloffy)* GENERALLY REVISING ELECTION LAWS; PROHIBITING A THIRD PARTY FROM COLLECTING ABSENTEE BALLOT APPLICATIONS TO FORWARD TO AN ELECTION ADMINISTRATOR, WITH CERTAIN EXCEPTIONS; ALLOWING POLITICAL PARTY COMMITTEEMEN FOR AN ELECTION PRECINCT TO BE ELECTED BY ACCLAMATION; ALLOWING COMMISSIONERS OF A DRAINAGE DISTRICT TO BE ELECTED BY ACCLAMATION; AND AMENDING SECTIONS 13-13-213, 13-38-201, 85-8-302, AND 85-8-624, MCA 1254

368 *(House Bill No. 584; Barrett)* REVISING THE CONTROLLED ALLOCATION OF LIABILITY LAWS; ELIMINATING THE TERMINATION DATE FOR THE CONTROLLED ALLOCATION OF LIABILITY ACT; AMENDING SECTION 75-10-743, MCA; REPEALING SECTION 75-10-752, MCA, AND SECTION 30, CHAPTER 415, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1257

369 *(Senate Bill No. 152; Cocchiarella)* REVISING THE QUALIFICATIONS, PROCEDURES, AND FEES FOR OBTAINING SPECIAL PERMITS TO SELL BEER AND TABLE WINE; DEFINING "SPECIAL EVENT"; REVISING CATERING REQUIREMENTS; AMENDING SECTIONS 16-1-106, 16-4-111, 16-4-204, 16-4-301, AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1259

370 *(Senate Bill No. 159; Johnson)* PROVIDING THAT CERTAIN PROPERTY OWNED BY A RAILROAD AND LEASED BY A NONPROFIT ORGANIZATION OR A GOVERNMENT ENTITY IS EXEMPT FROM PROPERTY TAXES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1267

371 *(Senate Bill No. 284; Wheat)* REVISING THE PROCEDURE A COUNTY AUDITOR IS REQUIRED TO FOLLOW TO PROCESS A CLAIM; ESTABLISHING TIMEFRAMES WITHIN WHICH INVESTIGATION OF CERTAIN CLAIMS MUST BE COMPLETED; PROVIDING TIMEFRAMES AND PROCEDURES FOR DISAPPROVING A CLAIM; AUTHORIZING A BOARD OF COUNTY COMMISSIONERS, UPON A MAJORITY VOTE, TO ORDER PAYMENT OF A CLAIM DISAPPROVED BY A COUNTY AUDITOR; PROVIDING FOR AN APPEAL TO DISTRICT COURT WITHIN 7 WORKING DAYS IF A BOARD OF COUNTY COMMISSIONERS ORDERS PAYMENT OF A DISAPPROVED CLAIM; AMENDING SECTION 7-6-2407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1268

372 *(Senate Bill No. 334; Sprague)* INCREASING THE NUMBER OF REPRESENTATIVES WHO MAY BE HIRED BY A VENDOR PROMOTING THE VENDOR'S PRODUCT IN THE STATE; REQUIRING THAT A VACANCY IN THE ONE REQUIRED REPRESENTATIVE POSITION BE FILLED WITHIN 60 DAYS; AND AMENDING SECTION 16-3-107, MCA 1269

373 *(House Bill No. 50; Haines)* GENERALLY REVISING THE MONTANA FOOD, DRUG, AND COSMETIC ACT; REDEFINING THE TERM "BOTTLED WATER" TO CONFORM TO FEDERAL LAW; ELIMINATING REQUIREMENTS FOR WATER BOTTLERS UNDER THE ACT; DEFINING "DIETARY SUPPLEMENT" AND ADDING THE TERM TO THE DEFINITION OF "FOOD"; CLARIFYING THAT A FOOD SERVICE ESTABLISHMENT MEANS A PLACE THAT SERVES FOOD AT RETAIL TO THE PUBLIC; CLARIFYING THE DEFINITION OF "RETAIL MEAT ESTABLISHMENT"; ELIMINATING PERMIT REQUIREMENTS FOR MANUFACTURING, PROCESSING, OR PACKAGING FOOD BECAUSE THOSE REQUIREMENTS ARE PROVIDED FOR ELSEWHERE IN STATE LAW; AMENDING SECTIONS 50-31-103, 50-31-110, 50-31-208, 50-31-312, AND 50-31-501, MCA; AND REPEALING SECTIONS 50-31-205, 50-31-206, 50-31-207, 50-31-236, AND 50-31-238, MCA 1270

374 *(House Bill No. 67; Kaufmann)* GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING PEDESTRIANS; ELIMINATING STATUTORY PROVISION FOR SCHOOL SAFETY PATROLS; PROHIBITING A VEHICLE OPERATOR FROM DRIVING PAST A SCHOOL CROSSING GUARD DIRECTING CHILDREN; DIRECTING WHERE A PEDESTRIAN MAY WALK WHEN SIDEWALKS OR SHOULDERS ARE NOT AVAILABLE; RESTRICTING STANDING ON A ROADWAY OR HIGHWAY FOR SOLICITING RIDES, BUSINESS, OR CONTRIBUTIONS; PROHIBITING A PERSON WHO IS UNDER THE INFLUENCE OF ALCOHOL OR ANY ILLEGAL DRUG FROM WALKING OR STANDING ON A ROADWAY OR SHOULDER EXCEPT IN AN AUTHORIZED CROSSWALK; REQUIRING PEDESTRIANS TO YIELD TO EMERGENCY VEHICLES; REQUIRING OPERATORS OF

VEHICLES TO YIELD TO BLIND PEDESTRIANS; PROHIBITING PEDESTRIANS FROM ENTERING A RAILROAD GRADE CROSSING WHILE BARRIERS ARE CLOSED OR BEING OPENED OR CLOSED; AMENDING SECTIONS 20-3-106, 61-8-501, 61-8-502, 61-8-504, 61-8-506, 61-8-507, AND 61-8-508, MCA; AND REPEALING SECTION 20-1-408, MCA. 1278

375 *(House Bill No. 98; McKenney)* GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF ATHLETICS IS DISCRETIONARY; PROVIDING THAT CERTAIN BOXING AND WRESTLING LICENSES ARE NOT RENEWABLE; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF PUBLIC ACCOUNTANTS IS DISCRETIONARY; PROVIDING THAT THE CREDENTIALS OF A FOREIGN ACCOUNTANT BE RECOGNIZED RATHER THAN REGISTERED; EXPANDING THE GROUNDS FOR WAIVING AN EXAMINATION FOR FOREIGN OR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS; PROVIDING THAT THE BOARD OF REALTY REGULATION MAY REQUIRE SPECIFIC PERFORMANCE LEVELS OF LICENSEES WHO TAKE CERTAIN KINDS OF CONTINUING EDUCATION COURSES; REQUIRING FINGERPRINT CHECKS FOR LICENSE APPLICANTS BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING LICENSE APPLICATION REQUIREMENTS FOR APPLICANTS OTHER THAN INDIVIDUALS APPLYING FOR LICENSURE BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A DIRECTORY OF REAL ESTATE BROKERS AND SALESPERSONS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A ROSTER OF LICENSED AND CERTIFIED REAL ESTATE APPRAISERS; AMENDING SECTIONS 23-3-405, 23-3-501, 37-50-102, 37-50-203, 37-50-301, 37-50-311, 37-50-312, 37-50-313, 37-50-335, 37-51-204, 37-60-303, AND 37-60-304, MCA; REPEALING SECTIONS 37-51-307 AND 37-54-110, MCA; AND PROVIDING AN EFFECTIVE DATE. 1283

376 *(House Bill No. 104; Bergren)* REVISING THE QUALIFICATIONS FOR A VOLUNTARY PURCHASING POOL; DECREASING THE NUMBER OF REQUIRED EMPLOYEES FROM 1,000 TO 51; ELIMINATING THE OPTION OF USING RATING ARRANGEMENTS TO OFFER DISABILITY INSURANCE POLICIES, CERTIFICATES, OR CONTRACTS THROUGH A POOL THAT RATES EACH MEMBER EMPLOYER SEPARATELY; REQUIRING CONTRACTS OFFERED THROUGH A POOL TO RATE AN ENTIRE GROUP AS A WHOLE AND TO CHARGE EACH INSURED PERSON BASED ON A COMMUNITY RATE WITHIN THE COMMON GROUP AS PERMITTED BY LAWS GOVERNING GROUP DISABILITY INSURANCE; AND AMENDING SECTION 33-22-1815, MCA. 1290

377 *(House Bill No. 110; Lange)* ELIMINATING THE AMOUNT FOR WHICH AN INJURED WORKER IS LIABLE TO ALL MEDICAL SERVICE PROVIDERS, EXCEPT FOR A HOSPITAL EMERGENCY DEPARTMENT, FOR TREATMENT RELATED TO A COMPENSABLE INJURY OR OCCUPATIONAL DISEASE AFTER THE INITIAL VISIT; PROVIDING THAT A WORKER IS NOT RESPONSIBLE FOR THE COST OF A SUBSEQUENT VISIT TO AN EMERGENCY DEPARTMENT FOR TREATMENT REQUESTED BY AN INSURER; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1291

378 *(House Bill No. 130; Lewis)* REVISING THE PROMPT PAY PROVISIONS FOR INSURERS; MODIFYING THE DEFINITION OF "PROOF OF LOSS"; DEFINING "CLAIM DOCUMENTATION"; REVISING THE TIME PERIOD FOR PAYMENT OF CLAIMS BY AN INSURER; REQUIRING PROMPT PAYMENT OF MOTOR VEHICLE DAMAGE CLAIMS; REVISING THE ADMINISTRATIVE PENALTY PROVISIONS FOR FAILURE OF AN INSURER TO PROMPTLY PAY CLAIMS; PROVIDING THAT COMPLIANCE OR NONCOMPLIANCE WITH PROMPT PAYMENT REQUIREMENTS MAY NOT BE USED AS A BASIS FOR PRIVATE CAUSE OF ACTION OR ADMISSIBLE AS EVIDENCE IN A PRIVATE ACTION; AND AMENDING SECTIONS 33-18-231, 33-18-232, AND 33-18-233, MCA 1294

379 *(House Bill No. 141; Lange)* REDEFINING THE CRIMINAL CONDUCT OF AND INCREASING THE PENALTIES FOR FLEEING FROM OR ELUDING A PEACE OFFICER; AND AMENDING SECTIONS 61-5-205, 61-8-301, 61-8-715, 61-9-402, AND 61-9-431, MCA. 1296

380 *(House Bill No. 145; McKenney)* GENERALLY REVISING THE STATE INSURANCE CODE; ALLOWING INSURANCE COMPANIES TO USE BOOK-ENTRY SYSTEMS WITH RESPECT TO THEIR SECURITIES AND PROVIDING THE INSURANCE COMMISSIONER WITH RULEMAKING AUTHORITY; DEFINING "DISABILITY INCOME INSURANCE"; MODIFYING REQUIREMENTS AND PENALTIES FOR SURPLUS LINES PRODUCERS; PROVIDING THAT CERTAIN FEES AND PENALTIES BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE STATE AUDITOR RATHER THAN DEPOSITING THEM INTO THE GENERAL FUND; REVISING VARIOUS INCORPORATION REQUIREMENTS; CHANGING REPORTING REQUIREMENTS WITH RESPECT TO AN INDIVIDUAL OBTAINING 10 PERCENT OR MORE OF ANY CLASS OF EQUITY SECURITY IN A DOMESTIC STOCK INSURANCE COMPANY; REVISING THE DEFINITION OF "INSOLVENT INSURER"; CHANGING THE PENALTY FOR MISAPPROPRIATION OF INSURANCE PREMIUMS; MODIFYING INCONTESTABILITY PROVISIONS FOR DISABILITY BENEFITS AND CERTAIN DEATH BENEFITS; ALLOWING A GROUP INSURER TO CONTRACT WITH ANOTHER INSURER FOR CONVERSION POLICIES; MODIFYING COVERAGE FOR WELL-CHILD CARE; MODIFYING THE DEFINITION OF "THEFT" TO INCLUDE MISAPPROPRIATION OF INSURANCE PREMIUMS; AMENDING SECTIONS 33-1-408, 33-1-705, 33-1-1202, 33-2-115, 33-2-307, 33-2-326, 33-2-708, 33-3-201, 33-3-441, 33-4-101, 33-4-202, 33-10-102, 33-10-207, 33-16-403, 33-17-503, 33-17-511, 33-17-1102, 33-17-1204, 33-20-101, 33-20-103, 33-20-105, 33-20-114, 33-20-1202, 33-20-1203, 33-20-1204, 33-20-1205, 33-20-1206, 33-20-1207, 33-20-1209, 33-20-1210, 33-20-1213, 33-22-101, 33-22-107, 33-22-303, 33-22-512, 33-22-1512, 33-22-1513, 33-23-212, 33-30-102, 33-30-107, 33-30-204, 33-31-111, 33-31-212, 33-35-306, 45-6-301, AND 50-3-109, MCA; AND REPEALING SECTION 17-2-121, MCA 1301

381 *(House Bill No. 157; Haines)* REPEALING THE REQUIREMENT FOR PROCUREMENT AND SALE OF ARTWORK FOR A MIGRATORY BIRD STAMP; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF MIGRATORY GAME BIRD LICENSES BE EXPENDED FOR THE PROTECTION, CONSERVATION, AND DEVELOPMENT OF WETLANDS IN MONTANA; PROVIDING THAT MIGRATORY GAME BIRD HUNTERS MUST BE REPRESENTED ON THE ADVISORY COUNCIL THAT REVIEWS PROPOSALS FOR EXPENDITURE OF THE FUNDS; AMENDING SECTIONS 2-15-3405, 87-1-601, AND 87-2-411,

MCA; REPEALING SECTION 87-2-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1328

382 *(House Bill No. 161; Matthews)* CLARIFYING THE LAW RELATING TO THE RIGHT OF A YOUTH TO WAIVE A PAROLE REVOCATION HEARING; AMENDING SECTION 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE 1330

383 *(House Bill No. 179; Matthews)* REVISING THE LAWS RELATING TO CAPTIVE INSURANCE COMPANIES; PROVIDING FOR SPONSORED CAPTIVE AND BRANCH CAPTIVE INSURANCE COMPANIES; ALLOWING RECIPROCAL INSURERS TO BE AN ASSOCIATION CAPTIVE INSURANCE COMPANY; ALLOWING AN ASSOCIATION CAPTIVE INSURANCE COMPANY OR INDUSTRIAL INSURED GROUP FORMED AS A STOCK OR MUTUAL CORPORATION TO CONVERT TO OR MERGE WITH A RECIPROCAL INSURER; ALLOWING A CAPTIVE INSURANCE COMPANY TO PROVIDE EXCESS WORKERS' COMPENSATION INSURANCE, PROPERTY INSURANCE, CASUALTY INSURANCE, LIFE INSURANCE, DISABILITY INCOME INSURANCE, AND HEALTH INSURANCE COVERAGE; DEFINING "DISABILITY INCOME INSURANCE"; REQUIRING CAPTIVE INSURANCE COMPANIES TO FILE REPORTS WITH THE COMMISSIONER OF INSURANCE; REQUIRING CAPTIVE INSURANCE AND BRANCH BUSINESS COMPANIES TO PAY A TAX ON PREMIUMS; REQUIRING A CAPTIVE INSURANCE COMPANY TO OBTAIN A CERTIFICATE FROM THE COMMISSIONER OF INSURANCE BEFORE ITS FORMATION; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-107, 33-28-108, 33-28-201, AND 33-28-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1332

384 *(House Bill No. 183; Steinbeisser)* REQUIRING 45-DAY OR 60-DAY NOTICES FOR HEALTH INSURANCE POLICY RATE CHANGES OR BENEFIT MODIFICATIONS AND PROVIDING FOR DELIVERY OF THE NOTICES; REQUIRING NOTICE FOR CANCELLATION FOR NONPAYMENT OF GROUP HEALTH INSURANCE PREMIUMS; REVISING REQUIREMENTS REGARDING CERTIFICATES OF CREDITABLE COVERAGE; AMENDING SECTIONS 33-22-107, 33-22-122, 33-22-141, 33-22-142, 33-30-1007, 33-31-111, AND 33-35-306, MCA; REPEALING SECTION 33-30-307, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1345

385 *(House Bill No. 205; Franklin)* REVISING MONTANA'S INSURANCE PRIVACY LAWS TO COMPLY WITH THE FEDERAL GRAMM-LEACH-BLILEY ACT AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; ALLOWING A LIMITED EXEMPTION FROM THE PRIVACY ACT FOR ENTITIES COVERED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 PRIVACY REGULATIONS; REQUIRING NATIONAL NOTICE FORMS TO REFER TO THE SPECIFIC STATE NOTICE FORM; AUTHORIZING DISCLOSURE OF CERTAIN NONMEDICAL INFORMATION TO A LIENHOLDER, MORTGAGEE, ASSIGNEE, OR LESSOR; AMENDING SECTIONS 33-19-104, 33-19-105, 33-19-202, 33-19-301, 33-19-306, AND 33-19-307, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 1351

386 *(House Bill No. 222; Parker)* ALLOWING A JUDGE WHO REVOKES A SENTENCE SUSPENSION TO IMPOSE ANY SENTENCE THAT COULD HAVE BEEN IMPOSED THAT IS NOT LONGER THAN THE ORIGINAL SENTENCE; IMPOSING A SUPERVISORY FEE ON PERSONS SUPERVISED BY THE DEPARTMENT OF CORRECTIONS UNDER

INTENSIVE SUPERVISION OR CONDITIONAL RELEASE OR TRANSFERRING THEIR SUPERVISION TO ANOTHER STATE; PROVIDING A PROCEDURE FOR SUSPENDING ALL OR PART OF THE REMAINING IMPRISONMENT SENTENCE OF A PERSON WHO SUCCESSFULLY COMPLETES THE STATE BOOT CAMP; GIVING PROBATION AND PAROLE OFFICERS AUTHORITY TO DETAIN A PERSON UNDER LIMITED CIRCUMSTANCES AND TO TURN THE PERSON OVER TO A LAW ENFORCEMENT AGENCY OR PEACE OFFICER; AMENDING SECTIONS 46-18-203, 46-23-1031, AND 53-30-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1365

387 *(House Bill No. 269; Bergren)* REVISING THE DEPARTMENT OF JUSTICE'S AND THE DEPARTMENT OF ADMINISTRATION'S RESPONSIBILITIES REGARDING FIRE PROTECTION AND FIRE PREVENTION; REMOVING CERTAIN REQUIREMENTS FOR KEEPING FIRE INCIDENT RECORDS; REMOVING THE REQUIREMENT THAT FIRE PREVENTION AND INVESTIGATION RULES ADOPTED BY THE DEPARTMENT OF JUSTICE INCLUDE CERTAIN BUILDING EQUIPMENT AND SYSTEMS; REQUIRING GENERAL LIABILITY INSURANCE RATHER THAN A BOND FOR PUBLIC DISPLAYS OF FIREWORKS; REDEFINING OCCUPANCY OF BUILDINGS OR STRUCTURES FOR A BROAD RANGE OF PURPOSES; CHANGING THE FREQUENCY FOR FIRE INSPECTIONS IN SCHOOLS FROM 12 MONTHS TO 18 MONTHS; REMOVING CERTAIN REQUIREMENTS FOR FIRE INCIDENT REPORTS; REVISING CERTAIN PROVISIONS RELATED TO FIRE PROTECTION AND HAZARDOUS MATERIALS STORAGE FOR STATE-OWNED BUILDINGS AND ELIMINATING REVIEW RESPONSIBILITIES FOR ARCHITECTURAL PLANS PRESENTED TO LOCAL GOVERNMENTS; AMENDING SECTIONS 2-17-112, 50-3-102, 50-3-103, 50-37-108, 50-61-101, 50-61-103, 50-61-114, AND 50-63-203, MCA; AND REPEALING SECTIONS 50-61-112 AND 50-61-113, MCA 1368

388 *(House Bill No. 289; Newman)* INCREASING THE SANCTIONS IMPOSED UPON A DRIVER WHO REFUSES TO SUBMIT TO A BLOOD OR BREATH TEST BY PROVIDING A REBUTTABLE INFERENCE THAT A PERSON WHO REFUSES A TEST IS UNDER THE INFLUENCE; AND AMENDING SECTION 61-8-404, MCA 1375

389 *(House Bill No. 358; Lange)* GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AUTHORIZING A MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, 3-10-207, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE 1376

390 *(House Bill No. 481; Lewis)* IMPOSING A UTILIZATION FEE ON HOSPITAL FACILITIES FOR INPATIENT BED DAYS; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT AND DEPOSIT FEES

IN A STATE SPECIAL REVENUE ACCOUNT FOR FUNDING INCREASES IN MEDICAID PAYMENTS TO HOSPITALS; PROVIDING FOR ASSESSMENT, COLLECTION, AND ADJUSTMENT OF THE FEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, A TERMINATION DATE, AND A CONTINGENT VOIDNESS PROVISION. 1382

391 *(House Bill No. 499; Franklin)* REVISING EMERGENCY HEALTH POWERS AND COMMUNICABLE DISEASE LAWS TO ENSURE THE ABILITY TO ADEQUATELY RESPOND TO INCIDENTS AND DISASTERS INVOLVING BIOTERRORISM AND WEAPONS OF MASS DESTRUCTION; DEFINING TERMS; AMENDING SECTIONS 10-3-103, 45-5-623, 50-1-101, 50-1-202, 50-1-204, 50-2-101, 50-2-116, 50-2-118, 50-2-130, AND 50-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1387

392 *(House Bill No. 525; Keane)* REVISING THE CLASSIFICATION FOR A THIRD-CLASS ENGINEER LICENSE TO OPERATE A STEAM BOILER; ALLOWING A PERSON TO BE LICENSED AS OTHER THAN A FIRST-CLASS OR SECOND-CLASS ENGINEER TO OPERATE A STEAM BOILER BY COMPLETING A COURSE OF INSTRUCTION APPROVED BY THE DEPARTMENT, BY PASSING A WRITTEN EXAMINATION, AND BY HAVING AN ENGINEER INFORM THE DEPARTMENT THAT THE APPLICANT IS COMPETENT TO OPERATE THE TYPE OF BOILER FOR WHICH LICENSURE IS SOUGHT; AND AMENDING SECTIONS 50-74-303 AND 50-74-304, MCA. 1395

393 *(House Bill No. 556; Gallik)* REVISING THE REGISTRATION PERIOD FOR CERTAIN VEHICLES THAT ARE REGISTERED IN A MANNER THAT ALLOWS THEM TO DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES THAT PROVIDE A SEPARATE REGISTRATION PERIOD FOR MOTOR HOMES THAT DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; AMENDING SECTIONS 61-3-313 AND 61-3-526, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1398

394 *(House Bill No. 569; Gutsche)* PROVIDING FOR THE MONTANA AT-HOME INFANT CARE PROGRAM FOR LOW-INCOME PARENTS IN LIEU OF CHILD CARE ASSISTANCE; PROVIDING ELIGIBILITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE. 1399

395 *(House Bill No. 610; Bergren)* MODIFYING THE PUBLIC HEARING PROCEDURES OF WATER AND SEWER DISTRICTS RELATING TO RATE INCREASES; AMENDING SECTION 7-13-2275, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1400

396 *(House Bill No. 647; Thomas)* GENERALLY REVISING THE LAWS GOVERNING HEALTH CARE INFORMATION TO CONFORM TO FEDERAL HEALTH CARE PRIVACY LEGISLATION, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; IMPOSING A DUTY ON A PERSON AUTHORIZED TO ACT AS A HEALTH CARE REPRESENTATIVE FOR AN INDIVIDUAL WITH RESPECT TO THE INDIVIDUAL'S HEALTH CARE INFORMATION TO ACT IN GOOD FAITH TO REPRESENT THE BEST INTERESTS OF THE INDIVIDUAL; AMENDING SECTIONS 41-1-401, 41-1-402, 41-1-403, 50-5-106, 50-16-201, 50-16-502, 50-16-504, 50-16-535, 50-16-1009, 50-19-402, 50-19-405, 50-19-406, AND 53-24-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1401

397 *(House Bill No. 663; Laslovich)* ENHANCING ENFORCEMENT OF THE TOBACCO PRODUCTS RESERVE FUND LAW; REQUIRING TOBACCO PRODUCT MANUFACTURERS, AS A CONDITION TO THE ABILITY TO

SELL THEIR PRODUCTS IN THIS STATE, TO CERTIFY COMPLIANCE WITH SECTION 16-11-403, MCA, TO IDENTIFY THE BRAND FAMILIES OF THEIR PRODUCTS, TO REGISTER TO DO BUSINESS IN THIS STATE, AND TO APPOINT AN AGENT FOR SERVICE OF PROCESS, IF NOT DOMICILED IN THIS STATE; REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND PUBLISH ON THE ATTORNEY GENERAL'S WEBSITE A DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND BRAND FAMILIES THAT ARE IN COMPLIANCE WITH THE TOBACCO PRODUCTS RESERVE FUND LAW; PROHIBITING WHOLESALERS FROM AFFIXING TAX INSIGNIA TO CIGARETTES OR BRAND FAMILIES MANUFACTURED BY TOBACCO PRODUCT MANUFACTURERS NOT INCLUDED IN THE ATTORNEY GENERAL'S DIRECTORY; REQUIRING WHOLESALERS TO REPORT INFORMATION REGARDING SALES OF NONPARTICIPATING MANUFACTURER CIGARETTES AND BRAND FAMILIES IN THIS STATE; ALLOWING THE ATTORNEY GENERAL TO PROVIDE BY RULE FOR THE MAKING OF ESCROW PAYMENTS IN INSTALLMENTS; ALLOWING THE ATTORNEY GENERAL TO RECOVER INVESTIGATION EXPENSES, ATTORNEY FEES, AND COSTS IN ACTIONS TO ENFORCE THE TOBACCO PRODUCTS RESERVE FUND LAW; STATUTORILY APPROPRIATING TO THE DEPARTMENT OF JUSTICE ANY EXPENSES, COSTS, OR ATTORNEY FEES AWARDED; PROVIDING PENALTIES; PROVIDING FOR JUDICIAL REVIEW OF DECISIONS BY THE ATTORNEY GENERAL REGARDING THE DIRECTORY; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE CALCULATION OF AMOUNTS THAT MAY BE WITHDRAWN FROM QUALIFYING ESCROW ACCOUNTS; AMENDING SECTIONS 16-11-403 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION 1412

398 *(House Bill No. 703; Parker)* REVISING LAWS GOVERNING CHILD ABUSE AND NEGLECT; AMENDING THE DEFINITION OF "PSYCHOLOGICAL ABUSE OR NEGLECT"; PROVIDING PROTECTIONS FOR VICTIMS OF PARTNER AND FAMILY MEMBER ASSAULT REGARDING CHILD REMOVAL AND EMERGENCY PROTECTIVE SERVICES; AMENDING SECTIONS 41-3-102 AND 41-3-301, MCA; AND PROVIDING EFFECTIVE DATES 1422

399 *(Senate Bill No. 65; Roush)* GENERALLY REVISING VETERANS' BENEFIT LAWS; REVISING THE PROPERTY TAX EXEMPTION, VEHICLE REGISTRATION FEE, AND SPECIAL LICENSE PLATES PROVISIONS FOR ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; REVISING INCOME THRESHOLDS FOR THE VETERAN PROPERTY TAX EXEMPTION; AMENDING LANGUAGE RELATED TO DISABLED VETERANS ENTITLED TO RECEIVE COMPENSATION FROM THE U.S. DEPARTMENT OF VETERANS AFFAIRS AT THE 100 PERCENT DISABILITY RATE; CLARIFYING AND SIMPLIFYING PROVISIONS ON THE VEHICLE REGISTRATION FEE WAIVERS AND SPECIAL LICENSE PLATE PROVISIONS AVAILABLE TO ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; EXTENDING VEHICLE REGISTRATION FEE WAIVERS TO THE SPOUSES OF VETERANS WHO WERE KILLED WHILE ON ACTIVE DUTY OR WHO DIED AS A RESULT OF A SERVICE-CONNECTED DISABILITY; CLARIFYING SPECIAL PARKING PRIVILEGES ASSOCIATED WITH DISABLED VETERANS; AMENDING SECTIONS 15-1-121, 15-1-122, 15-6-211, 49-4-301, 49-4-302, 49-4-304, 61-3-313, 61-3-321, 61-3-332, 61-3-407, 61-3-426, 61-3-455, AND 61-3-560, MCA; REPEALING SECTIONS 61-3-452, 61-3-453, 61-3-454, AND 61-3-457, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1426

400 *(Senate Bill No. 98; Mangan)* PROVIDING THAT PERSONAL-CARE FACILITIES ARE COMMUNITY RESIDENTIAL FACILITIES FOR PURPOSES OF INCLUDING THOSE FACILITIES AS RESIDENTIAL USES OF PROPERTY UNDER ZONING REGULATIONS; AMENDING SECTION 76-2-411, MCA; AND PROVIDING AN APPLICABILITY DATE 1454

401 *(Senate Bill No. 105; Johnson)* PROVIDING FOR THE ACCEPTANCE OF NATIONAL ACCREDITATION FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES, BEHAVIORAL TREATMENT PROGRAMS, CHEMICAL DEPENDENCY TREATMENT PROGRAMS, RESIDENTIAL TREATMENT FACILITIES, AND MENTAL HEALTH CENTERS FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; ELIMINATING HEALTH MAINTENANCE ORGANIZATIONS FROM BEING LICENSED AS HEALTH CARE FACILITIES; AND AMENDING SECTIONS 50-5-101, 50-5-103, AND 53-6-702, MCA 1455

402 *(Senate Bill No. 110; Toole)* REVISING CERTAIN OPTIONAL RETIREMENT PLAN MEMBERSHIP PROVISIONS; ALLOWING STATE AND LOCAL ELECTED OFFICIALS WHO WERE DRAWING A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OR THE TEACHERS' RETIREMENT SYSTEM AT THE TIME OF THEIR ELECTION TO CERTAIN POSITIONS COVERED BY THE RETIREMENT SYSTEM TO DECIDE NOT TO RETURN TO ACTIVE MEMBERSHIP IN THE SYSTEM AND TO CONTINUE TO RECEIVE THEIR RETIREMENT BENEFITS; AMENDING SECTIONS 19-3-412, 19-3-1106, 19-20-302, AND 19-20-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1461

403 *(Senate Bill No. 113; Esp)* REVISING LAWS REGARDING HOSPITALS AND RELATED FACILITIES; DEFINING "INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED"; PROVIDING FOR THE LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES FOR LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; ELIMINATING A HEALTH MAINTENANCE ORGANIZATION FROM THE DEFINITION OF "HEALTH CARE FACILITY"; AMENDING SECTIONS 50-5-101, 53-6-165, 53-6-171, AND 53-6-702, MCA; AND PROVIDING AN EFFECTIVE DATE 1467

404 *(Senate Bill No. 137; DePratu)* GENERALLY REVISING THE METHOD OF LEASING STATE TRUST LAND; AUTHORIZING THE LEASING OF STATE TRUST LAND FOR COMMERCIAL PURPOSES; ESTABLISHING PROCEDURES FOR COMMERCIAL LEASES; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES; REVISING CONSIDERATION FOR EASEMENTS; AMENDING SECTIONS 77-1-204, 77-2-106, 77-6-109, AND 77-6-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1474

405 *(Senate Bill No. 146; Anderson)* ELIMINATING UNUSED STATE GRANT AND LOAN PROGRAMS; ELIMINATING THE ENERGY CONSERVATION IN AGRICULTURE GRANT PROGRAM, THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION PROGRAM, THE SOLID WASTE MANAGEMENT GRANT AND LOAN PROGRAM, AND THE STATE-OWNED BUILDING ENERGY RETROFITTING GRANT AND LOAN PROGRAM; AMENDING SECTIONS 15-6-225, 15-24-1401, 15-31-124, 15-32-402, 17-6-403, 30-16-103, 75-10-103, 75-10-104, 75-10-105, 75-10-106, 80-12-201, 90-5-101, AND 90-8-104, MCA; AND REPEALING SECTIONS 75-10-121, 75-10-122, 75-10-123, 75-10-124,

75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104, 90-4-105, 90-4-106, 90-4-109, 90-4-111, AND 90-4-112, MCA 1479

406 *(Senate Bill No. 191; O'Neil)* PROVIDING FOR THE DESTRUCTION OF UNSUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT; DEFINING "UNSUBSTANTIATED"; AND AMENDING SECTIONS 41-3-102 AND 41-3-202, MCA 1489

407 *(Senate Bill No. 217; Mahlum)* REQUIRING THE USE OF CHILD SAFETY RESTRAINTS IN MOTOR VEHICLES FOR CHILDREN UNDER 6 YEARS OF AGE WHO WEIGH LESS THAN 60 POUNDS; ASSIGNING THE RESPONSIBILITY FOR USE OF CHILD SAFETY RESTRAINTS TO THE DRIVER; REMOVING THE PROVISION REQUIRING NO MORE THAN THREE CHILD SAFETY RESTRAINT SYSTEMS IN A VEHICLE; AND AMENDING SECTIONS 61-9-420 AND 61-13-103, MCA 1494

408 *(Senate Bill No. 226; DePratu)* PROVIDING THAT AN ARREST FOR DRUG OR GANG-RELATED ACTIVITY CONSTITUTES NONCOMPLIANCE WITH A TENANT'S DUTY TO MAINTAIN A DWELLING UNIT AND A LANDLORD'S DUTY TO MAINTAIN PREMISES; REVISING THE TIME PERIOD FOR NOTIFICATION OF INTENDED TERMINATION BASED ON THE NONCOMPLIANCE; REVISING HEARING TIME REQUIREMENTS FOR REPOSSESSION ACTIONS BASED ON THE NONCOMPLIANCE; AND AMENDING SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA . . . 1495

409 *(Senate Bill No. 254; Cooney)* REGULATING RENTAL VEHICLE ENTITIES AND CUSTOMER SERVICE REPRESENTATIVES WITH REGARD TO THE SALE OF RENTAL VEHICLE INSURANCE; REQUIRING TRAINING OF CUSTOMER SERVICE REPRESENTATIVES; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE 1499

410 *(Senate Bill No. 306; Ryan)* CREATING THE UNIFORM ATHLETE AGENTS ACT; PROVIDING FOR DEFINITIONS, SERVICE OF PROCESS, REGISTRATION OF ATHLETE AGENTS, AND CIVIL AND CRIMINAL PENALTIES; REQUIRING PAYMENT OF A $200 BIENNIAL REGISTRATION OR RENEWAL FEE; ESTABLISHING CONTRACT CRITERIA FOR ATHLETE AGENTS AND STUDENT-ATHLETES; PROVIDING FOR NOTICE TO THE STUDENT-ATHLETE'S EDUCATIONAL INSTITUTION OF A CONTRACT BETWEEN A STUDENT-ATHLETE AND AN ATHLETE AGENT; GIVING STUDENT-ATHLETES THE RIGHT TO CANCEL THE CONTRACT WITH AN ATHLETE AGENT; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; AND AMENDING SECTION 37-1-401, MCA 1502

411 *(Senate Bill No. 307; Ryan)* REVISING SCHOOL DISTRICT INVESTMENT LAWS; ELIMINATING THE REQUIREMENT FOR A SCHOOL DISTRICT TO ESTABLISH A SEPARATE INVESTMENT ACCOUNT FOR EACH FUND; REQUIRING THAT ONLY DEBT SERVICE FUNDS MUST BE COLLECTED BY A COUNTY TREASURER AND REPORTED TO A SCHOOL DISTRICT; AND AMENDING SECTION 20-9-235, MCA 1510

412 *(Senate Bill No. 389; McGee)* PROVIDING AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE FOR RESIDENTIAL CONSTRUCTION DISPUTES; REQUIRING A CLAIMANT WITH AN ALLEGED CONSTRUCTION DEFECT TO FILE A NOTICE OF CLAIM WITH THE CONSTRUCTION PROFESSIONAL THAT THE CLAIMANT ASSERTS IS RESPONSIBLE FOR THE DEFECT AND PROVIDING THE CONSTRUCTION PROFESSIONAL WITH THE OPPORTUNITY TO

RESOLVE THE CLAIM WITHOUT LITIGATION; LIMITING DAMAGES THAT CAN BE RECOVERED IN RESIDENTIAL CONSTRUCTION DISPUTES; AND AMENDING SECTION 27-2-208, MCA. 1511

413 *(Senate Bill No. 449; Cooney)* REVISING THE FETAL, INFANT, AND CHILD MORTALITY PREVENTION ACT; ALLOWING COUNTIES AND TRIBAL GOVERNMENTS TO COOPERATE TO ALLOW TEAMS TO REVIEW ALL FETAL, INFANT, AND CHILD DEATHS; REVISING CONFIDENTIALITY AND DISCLOSURE PROVISIONS RELATED TO FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; AND AMENDING SECTIONS 50-19-402, 50-19-403, 50-19-404, 50-19-405, AND 50-19-406, MCA 1516

414 *(House Bill No. 155; Jent)* GENERALLY UPDATING AND REVISING PROVISIONS ON VOTING SYSTEM TECHNOLOGIES, BALLOT FORMATS, AND VOTE COUNTING; SPECIFYING UNIFORM STANDARDS FOR THE SECRETARY OF STATE'S APPROVAL OF A VOTING SYSTEM FOR USE IN THE STATE; REQUIRING THE SECRETARY OF STATE TO ADOPT UNIFORM STATEWIDE RULES; REQUIRING ELECTION ADMINISTRATORS TO COLLECT AND REPORT CERTAIN DATA; PROVIDING UNIFORM PROCEDURES ON HOW VOTES ARE COUNTED; CLARIFYING TRAINING REQUIREMENTS FOR ELECTION ADMINISTRATORS AND ELECTION JUDGES; CLARIFYING THE APPLICATION OF CERTAIN ELECTION LAWS TO SCHOOL ELECTION AND SCHOOL ELECTION ADMINISTRATORS; AMENDING SECTIONS 13-1-101, 13-1-103, 13-1-202, 13-1-203, 13-3-105, 13-4-101, 13-4-102, 13-4-203, 13-10-204, 13-10-208, 13-10-209, 13-10-211, 13-10-301, 13-10-302, 13-10-303, 13-10-311, 13-12-201, 13-12-202, 13-12-203, 13-12-204, 13-12-205, 13-12-212, 13-13-111, 13-13-112, 13-13-115, 13-13-116, 13-13-117, 13-13-201, 13-13-203, 13-13-205, 13-13-211, 13-13-212, 13-13-214, 13-13-222, 13-13-229, 13-13-231, 13-13-232, 13-13-233, 13-13-234, 13-13-241, 13-13-244, 13-14-115, 13-14-116, 13-14-117, 13-14-118, 13-14-212, 13-15-101, 13-15-103, 13-15-104, 13-15-105, 13-15-201, 13-16-201, 13-16-303, 13-16-411, 13-16-412, 13-16-414, 13-16-417, 13-16-420, 13-17-101, 13-17-102, 13-17-103, 13-17-104, 13-17-105, 13-17-106, 13-17-107, 13-17-201, 13-17-203, 13-17-204, 13-17-206, 13-17-305, 13-17-306, 13-19-106, 13-19-309, 13-19-312, 13-19-314, 13-25-101, 13-27-501, 13-27-502, 13-35-202, 13-35-205, 13-35-206, 13-37-126, 13-37-250, 13-38-201, 20-20-421, AND 76-15-303, MCA; AND REPEALING SECTIONS 13-12-208, 13-12-209, 13-13-221, 13-15-202, 13-16-413, AND 13-17-301, MCA 1519

415 *(House Bill No. 253; Hedges)* INCLUDING INTERNET WEBSITES AS A FORM OF COMMUNICATION COVERED BY ELECTION LAW DISCLOSURE REQUIREMENTS; CLARIFYING THAT A CANDIDATE OR A CANDIDATE'S CAMPAIGN IS ALSO SUBJECT TO DISCLOSURE REQUIREMENTS; AND AMENDING SECTION 13-35-225, MCA 1562

416 *(House Bill No. 256; Shockley)* CLARIFYING THE JURISDICTION OF CAMPUS SECURITY OFFICERS; ALLOWING AGREEMENTS WITH LOCAL LAW ENFORCEMENT AGENCIES TO EXPAND JURISDICTION; AND AMENDING SECTION 20-25-321, MCA 1563

417 *(House Bill No. 266; Jacobson)* REVISING THE MONTANA TELECOMMUNICATIONS ACCESS PROGRAM; REMOVING THE REQUIREMENT FOR ASSISTING FACILITIES IN OBTAINING INFANT HEARING SCREENING EQUIPMENT; REVISING THE MEANS TEST FOR ELIGIBILITY; DELETING THE REQUIREMENT THAT A FEE BE PAID PRIOR TO DELIVERY OF SPECIAL EQUIPMENT; REQUIRING THE SPECIAL ASSESSMENT ON ALL

TELEPHONE ACCESS LINES; AMENDING SECTIONS 53-19-302, 53-19-306, 53-19-307, 53-19-310, AND 53-19-311, MCA; AND PROVIDING AN EFFECTIVE DATE 1564

418 *(House Bill No. 270; Bergren)* PROHIBITING THE USE OR SALE OF REFRIGERANTS IN MOTOR VEHICLE AND SPECIAL MOBILE EQUIPMENT AIR CONDITIONING SYSTEMS THAT ARE NOT INCLUDED IN THE LIST OF SAFE ALTERNATIVE AIR CONDITIONING SUBSTITUTES PUBLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1567

419 *(House Bill No. 468; Gillan)* REVISING WHAT INFORMATION MUST BE INCLUDED WITH ELECTION MATERIALS; REQUIRING PRINTED ELECTION MATERIALS THAT HAVE INFORMATION ABOUT VOTING RECORDS TO INCLUDE SPECIFIC INFORMATION AND A SIGNED STATEMENT ATTESTING TO THE ACCURACY OF THE INFORMATION; AND AMENDING SECTION 13-35-225, MCA 1568

420 *(House Bill No. 521; Balyeat)* REVISING THE LAWS RELATING TO BAIL BONDS; PROVIDING THAT IF A SURETY RETURNS A DEFENDANT WITHIN 90 DAYS OF FORFEITURE OF A BOND THE FORFEITURE MUST BE DISCHARGED WITHOUT PENALTY; ALLOWING A SURETY TO SURRENDER A DEFENDANT TO A DETENTION CENTER FACILITY; AMENDING SECTIONS 46-9-503 AND 46-9-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1569

421 *(House Bill No. 573; Parker)* ALLOWING A PARENT OR GUARDIAN OF A DIABETIC STUDENT TO DESIGNATE A SCHOOL DISTRICT EMPLOYEE TO ADMINISTER GLUCAGON TO THE STUDENT IN AN EMERGENCY SITUATION; AND LIMITING THE LIABILITY OF THE SCHOOL EMPLOYEE AND A SCHOOL DISTRICT. 1570

422 *(House Bill No. 631; Lake)* PROVIDING THAT A SECURITY INTEREST IN A LIQUOR LICENSE IS CONSIDERED IN DEFAULT IF THERE HAS BEEN A NONJUDICIAL SALE BY THE SECURED PARTY MADE PURSUANT TO THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 16-4-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1571

423 *(House Bill No. 641; Haines)* PROVIDING FOR NONDISCRIMINATORY PAYMENT OF INTERCARRIER COMPENSATION; DEFINING CERTAIN TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 69-3-803, MCA; AND PROVIDING AN EFFECTIVE DATE 1573

424 *(House Bill No. 9; Kasten)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE 1576

425 *(House Bill No. 94; Lawson)* REVISING AND CLARIFYING THE PUBLIC PARTICIPATION AND NOTICE REQUIREMENTS FOR OPEN MEETINGS; PROVIDING THAT AN AGENDA FOR AN OPEN MEETING MUST INCLUDE AN ITEM ALLOWING PUBLIC COMMENT ON ANY PUBLIC MATTER WITHIN THE JURISDICTION OF THE AGENCY CONDUCTING THE MEETING; CLARIFYING THAT AN AGENCY MAY NOT TAKE ACTION ON ANY MATTER DISCUSSED UNLESS SPECIFIC NOTICE OF THAT MATTER IS INCLUDED ON AN AGENDA AND PUBLIC COMMENT HAS BEEN ALLOWED; CLARIFYING WHAT CONSTITUTES A PUBLIC MATTER; CLARIFYING THAT THE GOVERNOR'S DUTY TO ENSURE THAT AGENCIES HAVE POLICIES

AND PROCEDURES TO FACILITATE PUBLIC PARTICIPATION APPLIES TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; AMENDING SECTION 2-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1579

426 *(House Bill No. 152; Fisher)* REVISING INTERGOVERNMENTAL COOPERATION OF DISASTER AND EMERGENCY SERVICES LAWS; CLARIFYING ACCEPTANCE OF FUNDS RECEIVED FOR FEDERAL REIMBURSEMENT OF MUTUAL AID; REVISING THE STATUTORY APPROPRIATION OF FUNDS RECEIVED FROM THE FEDERAL GOVERNMENT FOR EMERGENCY OR DISASTER SERVICES TO INCLUDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION; INCREASING THE STATUTORY APPROPRIATION UNDER THE EMERGENCY POWERS OF THE GOVERNOR FROM $12 MILLION TO $16 MILLION; AMENDING SECTIONS 10-3-203 AND 10-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE 1580

427 *(House Bill No. 169; Keane)* REVISING THE LAWS OF LICENSING FOR INSURANCE PRODUCERS, ADJUSTERS, AND CONSULTANTS; PROVIDING FOR INACTIVE STATUS FOR INSURANCE PRODUCERS SERVING IN THE ARMED FORCES; REQUIRING AN INSURANCE PRODUCER LICENSING BACKGROUND EXAMINATION AND PROVIDING EXAMINATION CRITERIA; DEFINING "CAR RENTAL INSURANCE"; REVISING THE PAYMENT OF FEES FOR LICENSES AND RENEWAL OF LICENSES RELATING TO INSURANCE; REVISING THE STATUS OF NONRESIDENT INSURANCE PRODUCERS; PROVIDING FOR BIENNIAL RENEWAL OF LICENSES AND PAYMENT OF BIENNIAL LICENSE FEES FOR CERTAIN PRODUCERS; SIMPLIFYING THE INSURANCE CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTIONS 33-2-305, 33-2-708, 33-7-525, 33-7-532, 33-17-102, 33-17-103, 33-17-201, 33-17-211, 33-17-212, 33-17-214, 33-17-301, 33-17-502, 33-17-503, 33-17-504, 33-17-1001, 33-17-1002, 33-17-1203, 33-17-1205, AND 33-17-1207, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES 1581

428 *(House Bill No. 185; Wilson)* GENERALLY REVISING LAWS GOVERNING COMMERCIAL DRIVER LICENSING TO CONFORM WITH REQUIREMENTS OF THE FEDERAL MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999 (MCSIA) AND THE FEDERAL REGULATIONS IMPLEMENTING MCSIA; DEFINING "NONCOMMERCIAL MOTOR VEHICLE"; REVISING THE DEFINITIONS OF "COMMERCIAL MOTOR VEHICLE" AND "COMMERCIAL DRIVER'S LICENSE"; CLARIFYING THE REQUIREMENTS FOR OPERATION OF A COMMERCIAL MOTOR VEHICLE; REVISING THE REQUIREMENTS GOVERNING THE APPLICATION FOR AND RENEWAL OF A COMMERCIAL DRIVER'S LICENSE; REVISING REQUIREMENTS FOR REQUESTING DRIVING RECORDS FROM A PRIOR STATE OF LICENSURE; REVISING LICENSE SUSPENSION PERIODS AND COMPUTATION REQUIREMENTS FOR NONCOMMERCIAL AND COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT LAWS; REVISING REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR MAJOR OFFENSES OR FOR CONDUCT OCCURRING WHILE OPERATING A NONCOMMERCIAL MOTOR VEHICLE; CLARIFYING THE REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE WITHOUT A COMMERCIAL DRIVER'S LICENSE OR PROPER ENDORSEMENT OR WHILE THE PERSON'S COMMERCIAL DRIVER'S LICENSE IS SUSPENDED;

INCLUDING NONCOMMERCIAL MOTOR VEHICLE OFFENSES IN THE LIST OF FELONY-DRUG OFFENSES FOR WHICH SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE IS REQUIRED; AMENDING SECTIONS 61-1-134, 61-1-135, 61-5-102, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-118, 61-5-212, 61-8-402, 61-8-802, 61-8-803, 61-8-804, 61-8-805, 61-8-806, AND 61-11-102, MCA; REPEALING SECTION 61-5-117, MCA; AND PROVIDING APPLICABILITY DATES 1601

429 *(House Bill No. 213; Gallik)* GENERALLY REVISING RETIREMENT LAWS; GENERALLY REVISING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDEN AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; GENERALLY REVISING THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CLARIFYING TERMINOLOGY RELATED TO SERVICE CREDIT; CLARIFYING PROVISIONS REGARDING THE PURCHASE OF SERVICE CREDIT; REVISING THE PURCHASE OF SERVICE CREDIT FOR RESERVE MILITARY SERVICE; CLARIFYING DEFINITIONS WITH RESPECT TO COMPENSATION, HIGHEST AVERAGE COMPENSATION, AND FINAL AVERAGE COMPENSATION; REVISING DISABILITY PROVISIONS; CLARIFYING SURVIVORSHIP PAYMENT PROVISIONS; REVISING PROVISIONS RELATED TO COURT SETTLEMENTS CONCERNING PAYMENT OF RETIREMENT BENEFITS; REVISING DEFINITIONS IN THE DEFERRED RETIREMENT OPTION PLAN WITHIN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 7-33-2313, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-702, 19-2-704, 19-2-706, 19-2-708, 19-2-709, 19-2-801, 19-2-802, 19-2-907, 19-2-908, 19-2-909, 19-2-1010, 19-3-108, 19-3-401, 19-3-403, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-514, 19-3-521, 19-3-904, 19-3-906, 19-3-908, 19-3-1002, 19-3-1008, 19-3-1015, 19-3-1106, 19-3-1201, 19-3-1202, 19-3-1205, 19-3-1210, 19-3-1501, 19-3-2103, 19-3-2111, 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2126, 19-3-2133, 19-3-2141, 19-5-101, 19-5-301, 19-5-409, 19-5-501, 19-5-502, 19-5-701, 19-6-101, 19-6-401, 19-6-502, 19-6-503, 19-6-601, 19-6-709, 19-6-801, 19-6-803, 19-6-804, 19-6-805, 19-7-101, 19-7-301, 19-7-312, 19-7-502, 19-7-601, 19-7-801, 19-7-803, 19-7-804, 19-7-805, 19-7-1001, 19-8-101, 19-8-301, 19-8-302, 19-8-308, 19-8-604, 19-8-701, 19-8-801, 19-8-901, 19-8-904, 19-8-905, 19-8-906, 19-9-104, 19-9-301, 19-9-403, 19-9-405, 19-9-406, 19-9-410, 19-9-411, 19-9-903, 19-9-1202, 19-9-1204, 19-9-1205, 19-9-1206, 19-9-1207, 19-9-1208, 19-13-104, 19-13-301, 19-13-403, 19-13-405, 19-13-406, 19-13-701, 19-13-704, 19-13-803, 19-13-1007, 19-17-108, 19-17-402, 19-17-403, 19-17-405, 19-50-102, AND 25-13-608, MCA; REPEALING SECTIONS 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, AND 19-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE 1617

430 *(House Bill No. 292; Younkin)* CLARIFYING THAT THE LAW GOVERNING COUNTY ACQUISITION OF REAL PROPERTY APPLIES TO THE ACQUISITION OF CONSERVATION EASEMENTS; PROVIDING FOR AN INDEPENDENT APPRAISAL OF CERTAIN CONSERVATION EASEMENTS BY A CERTIFIED GENERAL REAL ESTATE APPRAISER PRIOR TO A COUNTY PURCHASE OF THOSE CONSERVATION EASEMENTS; CLARIFYING THAT LAWS GOVERNING OPEN SPACE AND CONSERVATION EASEMENTS DO NOT SUPERSEDE THE PROCEDURE FOR COUNTY ACQUISITION OF REAL PROPERTY AND CONSERVATION EASEMENTS; AMENDING SECTIONS 7-8-2202 AND 76-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1693

431 *(House Bill No. 299; Peterson)* LIMITING THE LIABILITY OF OWNERS OF STOCK FOR TRESPASS TO INSTANCES OF NEGLIGENCE; CLARIFYING THAT HERD DISTRICT LAW APPLIES TO TRESPASSING ANIMALS IN HERD DISTRICTS; AMENDING SECTION 81-4-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1695

432 *(House Bill No. 338; Keane)* INCREASING THE LENGTH OF TIME FOR WHICH AN INDIVIDUAL IS ELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS TO 28 WEEKS; REVISING THE RATIOS USED TO CALCULATE UNEMPLOYMENT INSURANCE CONTRIBUTION RATES; INCREASING THE MAXIMUM WEEKLY BENEFIT AMOUNT TO 66.5 PERCENT OF THE AVERAGE WEEKLY WAGE; AMENDING SECTIONS 39-51-1218, 39-51-2201, AND 39-51-2204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1695

433 *(House Bill No. 396; Gibson)* REQUIRING ANY PERSON WHO IS BORN AFTER JANUARY 1, 1985, TO PROVIDE A CERTIFICATE OF COMPLETION FROM A HUNTER SAFETY AND EDUCATION COURSE BEFORE THE PERSON MAY BE ISSUED A MONTANA HUNTING LICENSE; CLARIFYING THAT THE PERSON ISSUING THE LICENSE IS REQUIRED TO DETERMINE PROOF OF COMPLETION OF THE COURSE; CLARIFYING THAT THE MONTANA HUNTER SAFETY AND EDUCATION COURSE IS NOT LIMITED TO YOUTHS; AND AMENDING SECTION 87-2-105, MCA. 1698

434 *(House Bill No. 408; Peterson)* REQUIRING THE PAYMENT OF LOCAL REGISTRAR FEES TO A COUNTY DEPARTMENT IF THE LOCAL REGISTRAR IS A COUNTY EMPLOYEE; AMENDING SECTION 50-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1700

435 *(House Bill No. 410; Younkin)* PROVIDING THAT AN EMPLOYEE WHO IS INJURED OR DIES WHILE TRAVELING IN THE COURSE OF EMPLOYMENT IS ENTITLED TO COMPENSATION IF THE EMPLOYER FURNISHES THE EMPLOYEE'S TRANSPORTATION; PROVIDING THAT A PAYMENT MADE TO AN EMPLOYEE UNDER A COLLECTIVE BARGAINING AGREEMENT, PERSONNEL POLICY MANUAL, EMPLOYEE HANDBOOK, OR ANY OTHER DOCUMENT PROVIDED TO THE EMPLOYEE AS AN INCENTIVE TO WORK AT A JOBSITE IS NOT A REIMBURSEMENT FOR COSTS OF TRAVEL, GAS, OIL, OR LODGING; AMENDING SECTION 39-71-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1700

436 *(House Bill No. 441; Cyr)* PROVIDING FOR THE PRORATION OF PROPERTY TAXES ON CENTRALLY ASSESSED PROPERTY WHEN LAND IS SUBDIVIDED; AND AMENDING SECTIONS 15-16-102 AND 76-3-207, MCA 1702

437 *(House Bill No. 478; Peterson)* ALLOWING A CRIMINAL SENTENCE TO INCLUDE A PROVISION FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE OF THE CONVICTED PERSON UPON THE FAILURE TO COMPLY WITH ANY PENALTY, RESTRICTION, OR CONDITION OF THE SENTENCE; PROVIDING A PROCEDURE FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE; AMENDING SECTIONS 46-18-201 AND 61-5-214, MCA; AND PROVIDING AN APPLICABILITY DATE 1704

438 *(House Bill No. 484; Brown)* PROVIDING THAT ASSESSMENT AND COUNSELING FOR A PERSON CONVICTED OF PARTNER OR FAMILY

MEMBER ASSAULT MUST INCLUDE A FOCUS ON CONTROLLING BEHAVIOR; AND AMENDING SECTION 45-5-206, MCA 1707

439 *(House Bill No. 512; Sinrud)* PROVIDING FOR THE ADDITION OF TERRITORY ADJACENT TO AN EXISTING PLANNING AND ZONING DISTRICT 1709

440 *(House Bill No. 537; Lawson)* REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMMISSION A NEW STUDY TO RECALCULATE THE ANNUAL SUSTAINABLE YIELD ON FORESTED STATE LANDS; SETTING THE ANNUAL TIMBER SALE TARGET AT 50 MILLION BOARD FEET UNTIL THE NEW STUDY IS COMPLETED; AMENDING SECTION 77-5-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1709

441 *(House Bill No. 540; Gallik)* REVISING THE LAWS RELATING TO THE SELECTION OF TRIAL JURIES; PROVIDING THAT TRIAL JURORS MUST BE SELECTED FROM A COMBINED LIST OF QUALIFIED ELECTORS AND LICENSED DRIVERS AND HOLDERS OF MONTANA IDENTIFICATION CARDS; ENSURING THAT NO PERSON'S NAME APPEARS ON THE COMBINED LIST MORE THAN ONCE; ELIMINATING THE REQUIREMENT THAT JURORS MUST BE REGISTERED ELECTORS; AMENDING SECTIONS 2-6-109, 3-15-301, 3-15-402, 3-15-403, 3-15-404, AND 46-17-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1710

442 *(House Bill No. 618; Dickenson)* INCREASING TO $200 THE FEE FOR REINSTATEMENT OF A DRIVER'S LICENSE THAT HAS BEEN REVOKED AS A RESULT OF CERTAIN OFFENSES, INCLUDING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING THAT HALF OF THE FEES COLLECTED BE DEPOSITED INTO THE GENERAL FUND AND THE OTHER HALF INTO AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND AMENDING SECTION 61-2-107, MCA. 1713

443 *(House Bill No. 640; Haines)* REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING EFFECTIVE DATES. 1714

444 *(House Bill No. 648; Younkin)* PROVIDING THAT A REPRODUCTIVE TECHNOLOGY BUSINESS HAS A LIEN ON ANIMAL EMBRYOS OR SEMEN UNTIL THE AMOUNT DUE FOR SERVICES IS PAID; DEFINING "REPRODUCTIVE TECHNOLOGY BUSINESS"; PROVIDING THAT A LIEN CREATED UNDER THE AGISTERS' LIEN LAWS BY A REPRODUCTIVE TECHNOLOGY BUSINESS MAY NOT TAKE PRECEDENCE OVER OTHER LIENS UNLESS THE REPRODUCTIVE TECHNOLOGY BUSINESS PROVIDES NOTICE TO OTHER LIENHOLDERS OR SECURED PARTIES WITHIN 30 DAYS FROM THE TIME OF HARVESTING OR COLLECTING THE EMBRYOS OR SEMEN; AMENDING SECTIONS 71-3-1201 AND 71-3-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1729

445 *(House Bill No. 653; Lambert)* AUTHORIZING THE GRAIN DEPOSITOR TO STATE A PREFERENCE OF GRADING FACILITY THROUGH A WRITTEN AGREEMENT; PROVIDING THAT THE OPTIONS PROVIDED FOR GRADING FACILITIES IN THE WRITTEN AGREEMENT MUST INCLUDE BUT MAY NOT BE LIMITED TO THE STATE GRAIN LAB; PROVIDING THAT THE WRITTEN AGREEMENT MUST SPECIFY THE TIME PERIOD TO WHICH THE AGREEMENT APPLIES; PROVIDING THAT ALL FEES AND OTHER CHARGES ASSOCIATED WITH THE GRAIN SAMPLE ANALYSIS MUST REFLECT AS NEARLY AS POSSIBLE THE ACTUAL COST OF THE SERVICES; REQUIRING A WAREHOUSE OPERATOR OR COMMODITY DEALER TO POST FEES, INCLUDING ANTICIPATED SHIPPING AND HANDLING FEES; AMENDING SECTIONS 80-4-711 AND 80-4-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1730

446 *(House Bill No. 667; Harris)* INCLUDING PONZI SCHEMES IN THE LAW CRIMINALIZING THE CONDUCT OR PROMOTION OF PYRAMID PROMOTIONAL SCHEMES; INCREASING THE PENALTIES FOR OPERATING A PYRAMID PROMOTIONAL SCHEME; AND AMENDING SECTIONS 30-10-324 AND 30-10-325, MCA 1732

447 *(House Bill No. 676; Lindeen)* CLARIFYING THE DEFINITION OF "PROJECT" UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AMENDING SECTION 75-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1734

448 *(House Bill No. 681; Clark)* PROVIDING FOR THE LICENSURE OF MEDICATION AIDES; DEFINING "MEDICATION AIDE"; PROVIDING THE BOARD OF NURSING AUTHORITY TO ESTABLISH QUALIFICATIONS; PROVIDING THAT MEDICATION AIDES MAY PRACTICE ONLY IN PERSONAL-CARE FACILITIES AND UNDER THE GENERAL SUPERVISION OF A LICENSED NURSE; AND AMENDING SECTIONS 37-8-101, 37-8-102, AND 37-8-202, MCA 1735

449 *(House Bill No. 698; Gillan)* CREATING A TRAUMATIC BRAIN INJURY ADVISORY COUNCIL; CREATING A TRAUMATIC BRAIN INJURY ACCOUNT FOR PUBLIC INFORMATION AND EDUCATION ON TRAUMATIC BRAIN INJURY; ALLOWING FOR A VOLUNTARY DONATION ON MOTOR VEHICLE REGISTRATION FOR THE TRAUMATIC BRAIN INJURY FUND; AMENDING SECTION 61-3-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 1739

450 *(House Bill No. 733; Schrumpf)* INCREASING FROM 2 YEARS TO 4 YEARS THE MINIMUM IMPRISONMENT TERM FOR SEXUAL ASSAULT IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM OR IF THE OFFENDER INFLICTS BODILY INJURY UPON ANYONE IN THE COURSE OF COMMITTING THE SEXUAL ASSAULT; ALLOWING A JUDGE TO IMPOSE A TERM OF LESS THAN 4 YEARS UPON A WRITTEN FINDING THAT THERE IS GOOD CAUSE TO DO SO; AND AMENDING SECTION 45-5-502, MCA. 1741

451 *(House Bill No. 761; Haines)* PROVIDING AUTHORITY TO EXERCISE EMINENT DOMAIN FOR THE PURPOSE OF ESTABLISHING A VETERANS' CEMETERY; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF PROPERTY FOR A VETERANS' CEMETERY IF THE LOCATION MEETS FEDERAL REQUIREMENTS FOR FEDERAL FUNDING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 10-2-601 AND 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1742

452 *(Senate Bill No. 35; Grimes)* PROVIDING THAT IF A PERSON WITH A DEVELOPMENTAL DISABILITY IS FOUND FIT TO PROCEED AND IS CONVICTED OF A CRIME, THE COURT MAY SENTENCE THE PERSON TO AN APPROPRIATE DEVELOPMENTAL DISABILITIES FACILITY; ALLOWING EVIDENCE OF DEVELOPMENTAL DISABILITY TO PROVE STATE OF MIND; PROVIDING THAT DEVELOPMENTAL DISABILITY MAY EXCLUDE FITNESS TO PROCEED; AND AMENDING SECTIONS 46-14-102, 46-14-103, 46-14-206, 46-14-221, 46-14-311, AND 46-14-312, MCA 1745

453 *(Senate Bill No. 111; Nelson)* AMENDING THE DEFINITION OF "ELIGIBLE PERSON" AS IT RELATES TO THE COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; AUTHORIZING THE INSURANCE COMMISSIONER TO LIMIT CERTAIN ELIGIBILITY CRITERIA BY ADOPTING RULES ON WHICH TO BASE THE ELIGIBILITY ON INCOME LEVEL; DEFINING ELIGIBILITY IN TERMS OF FEDERAL TRADE ADJUSTMENT ASSISTANCE; AMENDING SECTIONS 33-22-1501, 33-22-1502, 33-22-1513, 33-22-1516, AND 33-22-1524, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1749

454 *(Senate Bill No. 209; Tester)* REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PUBLISH AN ANNUAL COUNT OF GAME ANIMALS, INCLUDING THE BASIS UPON WHICH THE GAME COUNT WAS MADE; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1755

455 *(Senate Bill No. 243; Wheat)* REVISING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN FUND AND MOVING IT FROM THE STATE SPECIAL REVENUE FUND TO THE HOUSING AUTHORITY ENTERPRISE FUND; AMENDING SECTIONS 90-6-131, 90-6-133, AND 90-6-134, MCA; AND PROVIDING AN EFFECTIVE DATE 1757

456 *(Senate Bill No. 263; Grimes)* CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1759

457 *(Senate Bill No. 363; McNutt)* LIMITING AWARDS OF PUNITIVE DAMAGES IN CIVIL CASES OTHER THAN CLASS ACTION LAWSUITS; AND AMENDING SECTION 27-1-220, MCA 1762

458 *(Senate Bill No. 364; Cooney)* PROVIDING THAT EXPOSING A CHILD TO THE CRIMINAL DISTRIBUTION, PRODUCTION, OR MANUFACTURE OF DANGEROUS DRUGS OR TO THE OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY CONSTITUTES CHILD ABUSE OR NEGLECT FOR PURPOSES OF THE CHILD ABUSE AND NEGLECT STATUTES; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1762

459 *(Senate Bill No. 366; Grimes)* REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES; AMENDING SECTION 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1766

460 *(Senate Bill No. 383; Bales)* PROVIDING THAT CERTAIN ACTIVITIES ARE NOT PROHIBITED ACTIVITIES WITH REGARD TO WATER QUALITY; AMENDING SECTION 75-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1768

461 *(Senate Bill No. 392; Bales)* REQUIRING THAT WHEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS DEVELOPS A MANAGEMENT PLAN, THAT MANAGEMENT PLAN IS SUBJECT TO THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1769

462 *(Senate Bill No. 423; Black)* REVISING LIMITS ON CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR STATE AND OTHER PUBLIC OFFICES; REVISING LIMITS ON CONTRIBUTIONS THAT LEGISLATIVE CANDIDATES MAY RECEIVE FROM POLITICAL COMMITTEES; INCREASING THE AMOUNT THAT TRIGGERS REPORTS FOR AGGREGATE CONTRIBUTIONS BY EACH CONTRIBUTOR; INCREASING THE UPPER LIMIT UNDER WHICH A POLITICAL COMMITTEE MAY CLAIM TO BE IN COMPLIANCE WITH VOLUNTARY EXPENDITURE LIMITS; PROVIDING AN INFLATION FACTOR FOR CONTRIBUTION AND SPENDING LIMITS; INCREASING THE FINE FOR EXCEEDING THE EXPENDITURE LIMITS; AND AMENDING SECTIONS 13-37-216, 13-37-218, 13-37-229, AND 13-37-250, MCA 1772

463 *(Senate Bill No. 447; Grimes)* ELIMINATING THE TEST FOR LIABILITY FOR DISCLOSURE OF INFORMATION ABOUT AN EMPLOYEE'S OR FORMER EMPLOYEE'S PERFORMANCE; REPEALING SECTION 27-1-737, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1775

464 *(Senate Bill No. 450; Cocchiarella)* REVISING LAWS RELATED TO WORKERS' COMPENSATION; PROVIDING FOR DISCLOSURE AND COMMUNICATION OF HEALTH CARE INFORMATION FOR WORKERS' COMPENSATION PURPOSES WITHOUT PRIOR NOTICE TO THE INJURED EMPLOYEE; BARRING ATTORNEY FEES UNDER THE COMMON FUND DOCTRINE; EXCLUDING IMPAIRMENT RATINGS BASED EXCLUSIVELY ON PAIN; INCREASING THE PERMANENT PARTIAL DISABILITY BENEFIT MAXIMUM ENTITLEMENT FROM 350 TO 375 WEEKS; AMENDING SECTIONS 39-71-604, 39-71-611, 39-71-612, 39-71-703, AND 50-16-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 1775

465 *(House Bill No. 199; Harris)* AUTHORIZING A DRIVER TO POST A DRIVER'S LICENSE IN LIEU OF BAIL FOR TRAFFIC OFFENSES; REVISING LAW ENFORCEMENT AND DRIVER'S LICENSE LAWS TO COORDINATE WITH THE PRIVILEGE OF POSTING A LICENSE IN LIEU OF BAIL; REPLACING THE DRIVER'S LICENSE REINSTATEMENT FEE WITH AN ADMINISTRATIVE FEE; AND AMENDING SECTIONS 44-1-1101, 44-1-1102, 46-9-302, 46-9-401, 61-5-214, 61-5-215, AND 61-5-216, MCA 1780

466 *(House Bill No. 249; Barrett)* ALLOWING CITIES, TOWNS, AND CONSOLIDATED GOVERNMENTS TO ADOPT PLANS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS WITHIN THE BOUNDARIES OF A CITY, TOWN, OR PORTION OF A CONSOLIDATED GOVERNMENT THAT WAS ORIGINALLY A CITY OR TOWN; PROVIDING AN EXEMPTION TO THE POWERS DENIED LOCAL GOVERNMENT WITH RESPECT TO CONTROLLING, REMOVING, AND RESTRICTING GAME ANIMALS; PROVIDING AN EXEMPTION TO THE RESTRICTION THAT A CONSOLIDATED GOVERNMENT MUST ADOPT EITHER A CITY OR COUNTY PROVISION; REQUIRING APPROVAL BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS PRIOR TO DEVELOPING AND IMPLEMENTING A PROGRAM FOR

THE CONTROL, REMOVAL, AND RESTRICTION OF GAME ANIMALS FROM CITIES, TOWNS, OR CONSOLIDATED GOVERNMENTS THAT HAVE ADOPTED A PLAN; AMENDING SECTIONS 7-1-111, 7-3-1105, 7-3-1222, AND 7-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1784

467 *(House Bill No. 315; Lawson)* PROVIDING AN EXCEPTION FROM THE REQUIREMENT TO PAY STANDARD PREVAILING WAGES FOR AN EMPLOYER WHO, AS A NONPROFIT ORGANIZATION PROVIDING VOCATIONAL REHABILITATION, PERFORMS A PUBLIC WORKS CONTRACT FOR NONCONSTRUCTION SERVICES AND WHO EMPLOYS AN INDIVIDUAL WHOSE EARNING CAPACITY IS IMPAIRED BY A MENTAL, EMOTIONAL, OR PHYSICAL DISABILITY IF THE EMPLOYER CONFORMS WITH THE FEDERAL FAIR LABOR STANDARDS ACT AND PAYS THE INDIVIDUAL WAGES THAT ARE EQUAL TO OR ABOVE THE STATE'S MINIMUM WAGE; AMENDING SECTIONS 18-2-403 AND 18-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1787

468 *(House Bill No. 545; Haines)* ESTABLISHING STATUTORY WATER QUALITY PERMIT FEES FOR SUCTION DREDGE OPERATIONS; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR SUCTION DREDGING SUBJECT TO THE PERMIT FEES; AMENDING SECTIONS 75-5-201, 75-5-516, AND 82-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1789

469 *(House Bill No. 669; Younkin)* REVISING THE PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; PROVIDING THAT A SUBDIVIDER MAY DEDICATE LAND OUTSIDE OF A SUBDIVISION; AND AMENDING SECTION 76-3-621, MCA 1792

470 *(House Bill No. 677; Lindeen)* CLARIFYING THE JURISDICTION OF JUSTICES' COURTS WITH REGARD TO VIOLATIONS OF THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; CLARIFYING CRIMINAL FINES AND CIVIL PENALTIES; AMENDING SECTIONS 3-10-301, 3-10-601, AND 75-7-123, MCA; REPEALING SECTION 75-7-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1794

471 *(House Bill No. 758; Devlin)* GENERALLY REVISING THE LAWS RELATED TO VIDEO GAMBLING MACHINES; IMPOSING AN ANNUAL PERMIT SURCHARGE FEE BASED ON THE NUMBER OF VIDEO GAMBLING MACHINES ON THE PREMISES; PROVIDING FOR THE PRORATION OF THE FEE; PROVIDING THAT THE FEE BE DEPOSITED IN THE STATE GENERAL FUND; EXEMPTING ESTABLISHMENTS THAT HAVE PERMITTED VIDEO GAMBLING MACHINES ON THE PREMISES FROM LOCAL GOVERNMENT ORDINANCES ON SMOKING THAT ARE MORE RESTRICTIVE THAN STATE LAWS ON SMOKING; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 1797

472 *(Senate Bill No. 458; McNutt)* PROVIDING PROTECTION FOR RATEPAYERS AND FOR THE SHAREHOLDERS OF INNOCENT THIRD-PARTY PURCHASERS FOR THE ERRORS OR OMISSIONS OF A PREDECESSOR UTILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1798

473 *(House Bill No. 7; Witt)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM;

PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 419, LAWS OF 1999, AND SECTION 2, CHAPTER 232, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE 1799

474 *(House Bill No. 159; Haines)* GENERALLY REVISING FOOD ESTABLISHMENT AND NONPRESCRIPTION DRUG MANUFACTURING LAWS; CREATING A STATUTORY SCHEME FOR THE LICENSURE AND REGULATION OF WHOLESALE FOOD ESTABLISHMENTS AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL PENALTIES AND CRIMINAL PENALTIES FOR VIOLATIONS OF WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS; PROVIDING FOR VALIDATION OF LICENSES BY LOCAL HEALTH OFFICERS; PROVIDING FOR THE DENIAL OR CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY STATE AND LOCAL HEALTH OFFICERS, SANITARIANS-IN-TRAINING, AND REGISTERED SANITARIANS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPARTMENT TO BE USED IN ADMINISTERING WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL DRUG MANUFACTURING LAWS; REQUIRING THE DEPARTMENT TO PAY LOCAL BOARDS OF HEALTH FOR INSPECTIONS AND ENFORCEMENT; CLARIFYING THE DUTIES OF LOCAL HEALTH OFFICERS; GENERALLY REVISING LAWS GOVERNING FOOD ESTABLISHMENTS TO PROVIDE CONSISTENCY WITH THE WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS AND TO CLARIFY THE LAWS THAT PERTAIN TO RETAIL FOOD ESTABLISHMENTS; AMENDING SECTIONS 30-16-301, 50-2-118, 50-50-102, 50-50-106, 50-50-107, 50-50-108, AND 50-50-110, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1805

475 *(House Bill No. 190; Younkin)* GENERALLY REVISING ELECTION LAWS; CLARIFYING THE TIMES FOR HOLDING SPECIAL ELECTIONS; IMPLEMENTING THE PROVISIONS OF THE HELP AMERICA VOTE ACT CONCERNING A STATEWIDE VOTER REGISTRATION LIST, INFORMATION SHARING, AND PROVISIONAL VOTING; PROVIDING THAT ALL ELECTORS MUST PRESENT IDENTIFICATION BEFORE VOTING; PROVIDING THAT A CANDIDATE MAY NOT FILE FOR MORE THAN ONE OFFICE; REQUIRING THAT A DECLARATION OF INTENT FILED BY A WRITE-IN CANDIDATE IS NOT VALID UNTIL THE FILING FEE IS PAID; REVISING PROVISIONS REGARDING VOTER INSTRUCTIONS THAT MUST BE DISPLAYED; REVISING WHEN ABSENTEE BALLOTS MUST BE AVAILABLE; REQUIRING THAT AN APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; CLARIFYING HOW ABSENTEE BALLOT APPLICATIONS MUST BE PROVIDED TO THE ELECTION ADMINISTRATOR; PROVIDING THAT VOTING INSTRUCTIONS BE ENCLOSED WITH ABSENTEE BALLOT MAILINGS IRRESPECTIVE OF WHETHER THE ELECTOR IS OUT OF THE STATE; PROVIDING THAT STATE EMPLOYEE TIME MAY BE SPENT ON THE YOUTH VOTING PROGRAM; REVISING THE TIME WITHIN WHICH A CANVASSING BOARD IS REQUIRED TO MEET TO CANVASS THE RETURNS; PROVIDING THAT THE VOTER

INFORMATION PAMPHLET MAY BE ADDRESSED TO THE CURRENT RESIDENT AT AN ADDRESS; REVISING THE TIME BY WHICH THE VOTER INFORMATION PAMPHLET MUST BE MAILED; ELIMINATING CERTAIN CHALLENGES TO AN ELECTOR'S ELIGIBILITY TO VOTE; AMENDING SECTIONS 13-1-101, 13-1-104, 13-1-301, 13-2-115, 13-2-116, 13-2-122, 13-2-123, 13-2-205, 13-2-220, 13-2-402, 13-2-513, 13-2-514, 13-2-601, 13-10-201, 13-10-211, 13-13-112, 13-13-114, 13-13-201, 13-13-204, 13-13-205, 13-13-212, 13-13-213, 13-13-214, 13-13-232, 13-13-241, 13-13-301, 13-14-112, 13-14-113, 13-15-111, 13-15-401, 13-15-402, 13-19-313, 13-22-107, 13-27-410, AND 13-37-250, MCA; REPEALING SECTIONS 13-2-114, 13-2-202, 13-2-203, 13-2-219, 13-2-403, 13-2-404, 13-2-515, 13-2-603, 13-13-304, 13-13-305, 13-13-306, 13-13-307, 13-13-309, 13-13-310, AND 13-13-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1817

476 *(House Bill No. 517; Wilson)* CLARIFYING THAT A CITY OR COUNTY MAY IMPOSE MILL LEVIES FOR AIRPORTS EVEN IF THE AIRPORT OR AIRPORT AUTHORITY HAS NOT MADE A LEVY REQUEST IN THE PRIOR 2 YEARS; AMENDING SECTION 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1843

477 *(House Bill No. 538; Rome)* GENERALLY REVISING THE LAWS GOVERNING CERTIFICATES OF TITLE AND REGISTRATION OF CERTAIN MOTOR VEHICLES; IMPLEMENTING BUSINESS PRACTICES RECOMMENDED AS PART OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY PROJECT AUTHORIZED BY THE 57TH LEGISLATURE; ENABLING A GRADUAL TRANSITION FROM PAPER-BASED TO ELECTRONIC TRANSACTIONS FOR VEHICLE TITLING; REMOVING STATUTORY IMPEDIMENTS TO THE USE OF ELECTRONIC TRANSACTIONS FOR ISSUING TITLES FOR AND THE REGISTRATION OF CERTAIN VEHICLES; DEFINING CERTAIN TERMS RELATED TO THE ISSUING OF A TITLE AND THE REGISTRATION OF CERTAIN VEHICLES; CLARIFYING THE REQUIREMENTS FOR APPLYING FOR, ISSUING, AND TRANSFERRING A CERTIFICATE OF TITLE; REVISING AND CLARIFYING DUTIES OF THE DEPARTMENT OF JUSTICE AND COUNTY TREASURERS CONCERNING THE ISSUING OF TITLES AND REGISTRATION PROCESSES; REQUIRING ISSUANCE OF A CERTIFICATE OF TITLE ONLY IF REQUESTED BY THE VEHICLE OWNER; ALLOWING FOR DELAYED TITLE ISSUANCE; AUTHORIZING THE DEPARTMENT TO REFUSE ISSUANCE OF A CERTIFICATE OF TITLE IN CERTAIN CIRCUMSTANCES; CLARIFYING THE REQUIREMENTS FOR VOLUNTARY AND INVOLUNTARY TRANSFER OF VEHICLE INTERESTS; CLARIFYING THE REQUIREMENTS FOR ISSUANCE OF A CERTIFICATE OF TITLE FOR A SALVAGE VEHICLE; AUTHORIZING AND STANDARDIZING ISSUANCE OF TEMPORARY REGISTRATION PERMITS TO ALLOW THE OPERATION OF A VEHICLE PRIOR TO COMPLETION OF THE ISSUANCE OF TITLE PROCESS; REPLACING THE TERM "CERTIFICATE OF OWNERSHIP" WITH "CERTIFICATE OF TITLE" FOR CERTAIN MOTOR VEHICLES; APPLYING THE CERTIFICATE OF TITLE REQUIREMENTS FOR PASSENGER VEHICLES TO MOTORBOATS, SAILBOATS 12 FEET IN LENGTH OR LONGER, AND SNOWMOBILES; REVISING THE AUTHORITY OF CERTAIN VEHICLE DEALERS TO ISSUE TEMPORARY REGISTRATION PERMITS; CLARIFYING THE DEFINITION OF "OFF-HIGHWAY VEHICLE"; CLARIFYING THE REQUIREMENTS FOR OFF-HIGHWAY VEHICLE DECAL REGISTRATION; AUTHORIZING THE USE OF AN ELECTRONIC RECORD OF TITLE AND AN ELECTRONIC RECORD OF REGISTRATION FOR VEHICLE CERTIFICATE OF TITLE AND

REGISTRATION TRANSACTIONS; CLARIFYING THE RECORDKEEPING DUTIES OF THE DEPARTMENT CONCERNING VEHICLES; CLARIFYING AND STANDARDIZING THE PROCESSES FOR THE FILING AND PERFECTION OF CERTAIN SECURITY INTERESTS IN A MOTOR VEHICLE; CLARIFYING THAT A CERTIFICATE OF TITLE IS PRIMA FACIE EVIDENCE OF FACTS IN THE TITLE; CLARIFYING REPORTING REQUIREMENTS FOR STOLEN VEHICLES; REVISING THE DEPARTMENT'S AUTHORITY TO DEVELOP AND IMPLEMENT A PILOT PROGRAM FOR ELECTRONIC CERTIFICATE OF TITLE AND REGISTRATION TRANSACTIONS; CLARIFYING THE REQUIREMENTS TO OBTAIN A TITLE FOR A VEHICLE AND THE EXEMPTIONS FROM TITLING FOR CERTAIN VEHICLES; CLARIFYING WHEN A CERTIFICATE OF TITLE MUST BE CANCELED; INCREASING CERTAIN FEES RELATED TO THE ISSUING OF A TITLE OR THE REGISTRATION OF CERTAIN MOTOR VEHICLES; REVISING THE REQUIREMENTS FOR FURNISHING A BOND IN LIEU OF AN ASSIGNED CERTIFICATE OF TITLE; ALLOWING ISSUANCE OF A CERTIFICATE OF TITLE UNDER CERTAIN CONDITIONS; REVISING THE REQUIREMENTS FOR THE INITIAL REGISTRATION OF AND ANNUAL RENEWAL OF REGISTRATION FOR CERTAIN MOTOR VEHICLES; CLARIFYING THE REGISTRATION REQUIREMENTS FOR VEHICLES ISSUED A CERTIFICATE OF TITLE AND REGISTERED IN ANOTHER JURISDICTION AND USED FOR GAINFUL OCCUPATION IN MONTANA; CLARIFYING THE GRACE PERIOD FOR A CERTIFICATE OF TITLE AND REGISTRATION OF A VEHICLE FOLLOWING A TRANSFER OF OWNERSHIP; CLARIFYING THE REQUIREMENTS FOR A NEW OR USED MOTOR VEHICLE DEALER TO ISSUE A TEMPORARY REGISTRATION PERMIT; CLARIFYING THE LIMITATIONS ON THE TRANSFER OF TEMPORARY REGISTRATION PERMITS FROM DEALER TO DEALER; AMENDING SECTIONS 15-1-116, 15-1-117, 15-1-121, 15-1-122, 23-2-502, 23-2-508, 23-2-513, 23-2-601, 23-2-611, 23-2-614, 23-2-615, 23-2-616, 23-2-619, 23-2-622, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 23-2-801, 23-2-804, 23-2-814, 23-2-817, 23-2-818, 30-9A-311, 31-1-816, 40-5-248, 61-1-102, 61-1-509, 61-3-101, 61-3-103, 61-3-106, 61-3-107, 61-3-109, 61-3-201, 61-3-202, 61-3-203, 61-3-204, 61-3-205, 61-3-206, 61-3-207, 61-3-208, 61-3-210, 61-3-211, 61-3-212, 61-3-303, 61-3-311, 61-3-312, 61-3-317, 61-3-322, 61-3-342, 61-3-411, 61-3-412, 61-3-456, 61-3-519, 61-3-562, 61-3-603, 61-3-701, 61-4-104, 61-4-111, 61-4-112, 61-4-120, 61-4-121, 61-12-406, 75-10-512, AND 75-10-513, MCA; REPEALING SECTIONS 23-2-509, 23-2-510, 23-2-520, 23-2-612, 23-2-613, 23-2-620, 23-2-810, 23-2-811, 23-2-812, 23-2-813, 61-3-105, 61-3-305, AND 61-3-518, MCA, AND SECTION 4, CHAPTER 90, LAWS OF 1997, SECTION 2, CHAPTER 260, LAWS OF 1999, AND SECTION 9, CHAPTER 394, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE AND APPLICABILITY DATES 1845

478 *(House Bill No. 734; Lawson)* CHANGING THE DESIGNATED STATE AGENCY FOR THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 2-15-2204 AND 53-20-206, MCA; AND PROVIDING AN EFFECTIVE DATE 1924

479 *(Senate Bill No. 76; Schmidt)* ELIMINATING CERTAIN SPECIAL EDUCATION DEFINITIONS TO COMPLY WITH FEDERAL CHANGES MADE BY CONGRESS IN THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401 AND 20-7-436, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE. 1928

480 *(Senate Bill No. 89; Tash)* EXEMPTING PROPERTY HELD BY A LOCAL GOVERNMENT ENTITY FROM THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTION 70-9-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1931

481 *(Senate Bill No. 115; Mahlum)* EXTENDING AND REVISING THE STATUTORY APPROPRIATION, FOR THE FISCAL YEARS BEGINNING JULY 1, 2005, AND ENDING JUNE 30, 2010, OF THE INTEREST FROM $140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND THAT IS DEPOSITED IN THE GENERAL FUND FOR THE COOPERATIVE DEVELOPMENT CENTER, FOR THE GROWTH THROUGH AGRICULTURE PROGRAM, FOR A SMALL BUSINESS DEVELOPMENT CENTER, FOR A SMALL BUSINESS INNOVATIVE RESEARCH PROGRAM, FOR CERTIFIED COMMUNITIES, FOR A MANUFACTURING EXTENSION CENTER, FOR EXPORT TRADE ENHANCEMENT, AND FOR RESEARCH AND COMMERCIALIZATON PROJECTS; AMENDING SECTIONS 15-35-108 AND 17-7-502, MCA, AND SECTION 10, CHAPTER 10, SPECIAL LAWS OF MAY 2000; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE. 1934

482 *(Senate Bill No. 143; Bohlinger)* DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE STATE AUDITOR; PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES; CONFORMING CHARITABLE GIFT ANNUITY LAWS TO LAWS RELATED TO DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS AND TAX CREDITS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; AMENDING SECTIONS 15-30-121, 15-30-165, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1938

483 *(Senate Bill No. 194; Tash)* AUTHORIZING WATER ADMINISTRATION INTERIM AGREEMENTS TO PROVIDE FOR JOINT TRIBAL AND STATE ADMINISTRATION OF NEW WATER USES ON A RESERVATION PENDING FINAL ADJUDICATION OF INDIAN RESERVED WATER RIGHTS IF A COURT OF COMPETENT JURISDICTION HAS HELD THAT THE DEPARTMENT LACKS EXCLUSIVE AUTHORITY TO ISSUE NEW WATER USE PERMITS WITHIN THE EXTERIOR BOUNDARIES OF THE RESERVATION; AMENDING SECTION 85-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1945

484 *(Senate Bill No. 230; Cromley)* ADOPTING THE MONTANA PRUDENT INVESTOR RULE; PROVIDING STANDARDS OF CARE AND DUTIES OF TRUSTEES IN MAKING INVESTMENTS AND MANAGING TRUST ASSETS; AMENDING SECTIONS 72-34-113 AND 72-34-114, MCA; AND REPEALING SECTION 72-34-121, MCA. 1947

485 *(Senate Bill No. 232; Mahlum)* TRANSFERRING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; ALLOWING NEGOTIATIONS FOR AN INDIRECT ADMINISTRATIVE RATE; AMENDING SECTION 22-3-1002, MCA; AND PROVIDING AN EFFECTIVE DATE 1951

486 *(Senate Bill No. 282; Squires)* REQUIRING THAT TEMPORARY TOTAL DISABILITY BENEFITS NOT BE PAID FOR THE LESSER OF EITHER

THE FIRST 32 HOURS OR 4 DAYS' LOSS OF WAGES IF A CLAIMANT IS TOTALLY DISABLED AND UNABLE TO WORK FOR 5 OR MORE DAYS BECAUSE OF AN INJURY; AMENDING SECTION 39-71-736, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1952

487 *(Senate Bill No. 288; Mangan)* REVISING THE COUNTY COMPENSATION BOARD; ALLOWING TWO TO FOUR TAXPAYER MEMBERS; CLARIFYING THAT A CHARTER COUNTY AND A CHARTER, CONSOLIDATED CITY-COUNTY ARE NOT REQUIRED TO CREATE A COUNTY COMPENSATION BOARD; AND AMENDING SECTION 7-4-2503, MCA 1953

488 *(Senate Bill No. 321; Laible)* CHANGING THE MEMBERSHIP OF THE WATER POLLUTION CONTROL ADVISORY COUNCIL; AMENDING SECTION 2-15-2107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1955

489 *(Senate Bill No. 337; Tropila)* REVISING THE CIVIL LIABILITY OF BUSINESSES AND SOCIAL HOSTS FOR INJURIES INVOLVING ALCOHOL CONSUMPTION; ESTABLISHING CRITERIA GOVERNING LIABILITY; PROVIDING THAT THE JURY OR TRIER OF FACT MAY CONSIDER THE CONSUMPTION OF ALCOHOL IN ADDITION TO THE SALE OR SERVICE IN DETERMINING THE CAUSE OF ANY INJURY OR DAMAGE; PROVIDING THAT NO CIVIL ACTION MAY BE BROUGHT BY THE PERSON CONSUMING THE ALCOHOLIC BEVERAGE UNLESS THE CONSUMER WAS A MINOR OR WAS COERCED; PROVIDING THAT A CIVIL ACTION MUST BE COMMENCED WITHIN 2 YEARS OF THE SERVICE; LIMITING NONECONOMIC AND PUNITIVE DAMAGES; ALLOWING CRIMINAL AND INTENTIONAL ACTS OF A PERSON CAUSING AN INJURY TO BE ADMITTED INTO EVIDENCE; AMENDING SECTION 27-1-710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1956

490 *(Senate Bill No. 400; Toole)* REVISING THE RAILROAD VANDALISM PREVENTION ACT; REDUCING THE PENALTIES; INCREASING FROM $500 TO $1,000 THE AMOUNT OF PROPERTY DAMAGE NEEDED TO MAKE THE OFFENSE A FELONY; MAKING THE ACT PERMANENT; AMENDING SECTION 69-14-1205, MCA; REPEALING SECTION 8, CHAPTER 432, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1957

491 *(Senate Bill No. 401; Wheat)* REVISING AND EXPANDING THE MEMBERSHIP OF THE BOARD OF VETERANS' AFFAIRS; SPECIFYING THE DUTIES OF THE BOARD; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT AND A FEDERAL SPECIAL REVENUE ACCOUNT TO BE USED FOR VETERANS' SERVICES; AUTHORIZING THE BOARD TO SPONSOR PATRIOTIC LICENSE PLATES; AUTHORIZING COUNTIES TO PROVIDE FOR VETERANS' SERVICE OFFICERS; ALLOWING THE BOARD TO ACCEPT FEDERAL FUNDS AND DONATIONS; SPECIFYING THE ACCOUNT TO WHICH DONATIONS ARE DEPOSITED; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD THE OVERSIGHT OF AND RULEMAKING AUTHORITY FOR STATE VETERANS' CEMETERIES; AUTHORIZING ADDITIONAL VETERANS' CEMETERIES; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD OF VETERANS' AFFAIRS THE OVERSIGHT OF A SPECIAL REVENUE ACCOUNT FOR VETERANS' CEMETERIES; ALLOWING INCOME TAX DEDUCTIONS FOR CONTRIBUTIONS TO STATE VETERANS' SERVICES; REVISING

CERTAIN VEHICLE LICENSE PLATE REGISTRATION FEES TO BENEFIT STATE VETERANS' SERVICES; AMENDING SECTIONS 2-15-1205, 10-2-102, 10-2-106, 10-2-601, 10-2-602, 10-2-603, 15-1-122, AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . 1958

492 *(Senate Bill No. 441; Ryan)* AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ISSUE IMPACT AID REVENUE BONDS; DEFINING "FEDERAL IMPACT AID BASIC SUPPORT PAYMENT", "GENERAL OBLIGATION BONDS", AND "IMPACT AID REVENUE BONDS"; PLACING A LIMIT ON THE MAXIMUM AMOUNT OF IMPACT AID BONDS THAT A SCHOOL DISTRICT MAY ISSUE; PROVIDING SECURITY FOR IMPACT AID RESERVE BONDS; REQUIRING TRUSTEES TO SPECIFY IN A RESOLUTION, AN ELECTION PETITION, AND ON THE BOND ELECTION BALLOT WHETHER BONDS WILL BE GENERAL OBLIGATION OR IMPACT AID REVENUE BONDS; PROVIDING THAT IMPACT AID REVENUE BONDS MUST BE PAID SOLELY FROM FEDERAL IMPACT BASIC SUPPORT PAYMENTS RECEIVED AND DO NOT PLEDGE THE FULL FAITH AND CREDIT AND TAXING AUTHORITY OF THE SCHOOL DISTRICT; PROVIDING THAT THE TRUSTEES PROVIDE A COUNTY TREASURER WITH AN IMPACT AID REVENUE BOND DEBT SERVICE SCHEDULE AND A SEPARATE IMPACT AID REVENUE BOND DEBT SERVICE FUND AND AUTHORIZING ESTABLISHMENT OF AN IMPACT AID REVENUE BOND DEBT SERVICE RESERVE ACCOUNT; PROVIDING THAT THE GUARANTEED TAX BASE IS LIMITED TO GENERAL OBLIGATION BONDS; AMENDING SECTIONS 20-9-371, 20-9-403, 20-9-406, 20-9-408, 20-9-422, 20-9-423, 20-9-426, 20-9-427, 20-9-430, 20-9-433, 20-9-437, 20-9-438, 20-9-439, AND 20-9-440, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1968

493 *(Senate Bill No. 444; Tester)* GENERALLY REVISING SECURITIES LAWS, INSURANCE LAWS, AND ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS TO PROVIDE FOR THE PROTECTION OF CONSUMERS AND SENIOR CITIZENS AND PERSONS WITH DEVELOPMENTAL DISABILITIES WITH RESPECT TO THE MARKETING OF SECURITIES AND INSURANCE PRODUCTS; RESTRICTING THE MANNER IN WHICH INSURANCE PRODUCERS MAY ACT AS LEGAL GUARDIANS OF CLIENTS; EXPANDING THE DEFINITION OF "SECURITY" TO INCLUDE VIATICAL SETTLEMENT PURCHASE AGREEMENTS; MODIFYING THE DEFINITION OF "VIATICAL SETTLEMENT CONTRACT"; PROVIDING FOR PENALTIES AND OTHER REMEDIES WITH RESPECT TO PERSONS FAILING TO RESPOND TO CERTAIN INFORMATION REQUESTS OF THE INSURANCE COMMISSIONER; EXPANDING THE SCOPE FOR WHICH INJUNCTIONS AND OTHER REMEDIES ARE AVAILABLE UNDER INSURANCE LAWS; PROVIDING ADDITIONAL PENALTIES FOR DOMESTIC INSURERS FAILING TO PROPERLY MAINTAIN RECORDS; MODIFYING PENALTIES FOR INSURANCE PRODUCERS OR ADJUSTERS OPERATING WITHOUT A LICENSE; PROVIDING THAT THE DEFINITION OF "EXPLOITATION" UNDER ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS INCLUDES ACTS DONE IN THE COURSE OF AN OFFER OR SALE OF SECURITIES OR INSURANCE PRODUCTS; IMPOSING A POSSIBLE FELONY SENTENCE FOR A CONVICTION OF ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE; AMENDING SECTIONS 30-10-103, 33-1-315, 33-1-318, 33-3-401, 33-17-1004, 33-20-1302, 33-20-1315, 52-3-803, AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1978

494 *(House Bill No. 3; Brueggeman)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1991

495 *(House Bill No. 4; Brueggeman)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1992

496 *(House Bill No. 10; Maedje)* ALLOCATING REVENUE FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX TO MAKE DEBT SERVICE PAYMENTS ON CERCLA BONDS; CREATING A CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; COORDINATING CERTAIN PROVISIONS OF THE CERCLA MATCH DEBT SERVICE ACCOUNT, CERCLA BONDS, THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT, AND THE CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-38-106, 75-10-621, 75-10-622, AND 75-10-623, MCA; AND PROVIDING AN EFFECTIVE DATE 1998

497 *(House Bill No. 12; Kasten)* DEFINING "ENERGY COST SAVINGS"; CLARIFYING DEBT SERVICE FOR APPROPRIATIONS OF ENERGY COST SAVINGS; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2004 AND 2005; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; AMENDING SECTIONS 90-4-602 AND 90-4-614, MCA; AND PROVIDING AN EFFECTIVE DATE 2003

498 *(House Bill No. 18; Shockley)* INCREASING THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; MAKING PERMANENT THE USER SURCHARGE AND THE ACCOUNT ESTABLISHED FOR COURT INFORMATION TECHNOLOGY; AMENDING SECTION 3-1-317, MCA, SECTION 4, CHAPTER 361, LAWS OF 1995, AND SECTION 1, CHAPTER 71, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2005

499 *(House Bill No. 100; Jent)* GENERALLY REVISING THE LAWS RELATING TO GAME BIRDS AND SHOOTING PRESERVES; REVISING THE GENERAL DEFINITION OF "UPLAND GAME BIRDS" BY REMOVING QUAIL AND SPECIFYING RING-NECKED PHEASANTS; CONFORMING THE DEFINITION OF "GAME BIRDS" IN THE GAME BIRD FARM STATUTES TO THE GENERAL DEFINITION OF "UPLAND GAME BIRDS"; PROVIDING THAT POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF CAPTIVE-REARED MIGRATORY WATERFOWL IS NOT PROHIBITED; CONFORMING THE LAW GOVERNING VIOLATION OF CLOSED SEASON ON CERTAIN GAME BIRDS TO THE DEFINITION OF "UPLAND GAME BIRDS"; REVISING THE FEES FOR SHOOTING PRESERVE LICENSES; REVISING THE KINDS OF BIRDS THAT MAY BE HUNTED IN SHOOTING PRESERVES; ESTABLISHING MINIMUM AGE, NUMBER, AND MARKING REQUIREMENTS FOR RELEASED BIRDS; AUTHORIZING THE DEPARTMENT TO IMPOSE RESTRICTIONS ON NEW SHOOTING PRESERVE LICENSES; REVISING REGISTRATION BOOK REQUIREMENTS FOR SHOOTING PRESERVE OPERATORS;

AMENDING SECTIONS 87-2-101, 87-3-111, 87-3-402, 87-4-503, 87-4-522, 87-4-524, 87-4-526, AND 87-4-901, MCA; AND PROVIDING AN EFFECTIVE DATE 2006

500 *(House Bill No. 577; Brueggeman)* PROVIDING THAT EIGHT OR MORE EMPLOYERS WITH A TOTAL OF MORE THAN 500 EMPLOYEES MAY APPLY TO THE INSURANCE COMMISSIONER TO ORGANIZE A RECIPROCAL INSURER FOR THE PURPOSE OF PROVIDING WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND AMENDING SECTION 33-5-201, MCA. 2011

501 *(House Bill No. 588; Matthews)* RESTRICTING MIDTERM INCREASES IN RATES OR DECREASES IN COVERAGE ON CONTRACTS OF PROPERTY OR CASUALTY INSURANCE UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 33-15-1101, MCA . . 2012

502 *(House Bill No. 735; Fisher)* REVISING THE JOB REGISTRY FOR STATE EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION, OR REDUCTION IN FORCE; AMENDING SECTION 2-18-1203, MCA; AND PROVIDING AN EFFECTIVE DATE 2014

503 *(House Bill No. 741; Lindeen)* STATUTORILY ESTABLISHING THE MONTANA CONSENSUS COUNCIL; ATTACHING THE COUNCIL TO THE DEPARTMENT OF ADMINISTRATION FOR ADMINISTRATIVE PURPOSES; AND PROVIDING AN EFFECTIVE DATE 2015

504 *(Senate Bill No. 95; Stonington)* GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE COURT FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603,

76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA. 2016

505 *(Senate Bill No. 155; Taylor)* REVISING THE TAXATION OF CLASS EIGHT PROPERTY BY PROVIDING THAT THE COMPUTATIONS FOR DETERMINING WHETHER THE CLASS EIGHT RATE IS TO BE REDUCED ARE TO BE MADE AT LEAST 1 YEAR AND 2 MONTHS PRIOR TO THE AFFECTED TAX YEAR TO ALLOW FOR LEGISLATIVE ACTION; CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT TAX RATE IS TO BE REDUCED; AND AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TRANSITION PROVISION 2049

506 *(Senate Bill No. 231; Cromley)* REPLACING THE REVISED UNIFORM PRINCIPAL AND INCOME ACT WITH THE MONTANA UNIFORM PRINCIPAL AND INCOME ACT; AND REPEALING SECTIONS 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, AND 72-34-416, MCA 2051

507 *(Senate Bill No. 244; Story)* PROVIDING THAT A CONTRACT HOLDER OR EMPLOYEE OF A WATER USERS' ASSOCIATION THAT PAYS OPERATION OR MAINTENANCE COSTS ON A STATE-OWNED RESERVOIR MAY NOT BE REQUIRED TO PURCHASE A DAY-USE PERMIT TO ACCESS THAT RESERVOIR; REQUIRING THE ASSOCIATION TO ISSUE ANNUAL IDENTIFICATION CARDS TO ELIGIBLE CONTRACT HOLDERS AND EMPLOYEES OF WATER USERS' ASSOCIATIONS; AMENDING SECTION 23-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2066

508 *(Senate Bill No. 246; Glaser)* REVISING THE LAWS RELATED TO THE ANNEXATION OF PROPERTY INCLUDED IN A FIRE SERVICE AREA; REQUIRING A BOARD OF COUNTY COMMISSIONERS TO ALTER THE BOUNDARIES OF A FIRE SERVICE AREA TO EXCLUDE AN AREA THAT IS ANNEXED; REQUIRING THAT AN ANNEXING MUNICIPALITY BE NOTIFIED IN ORDER TO PREVENT THE PROPERTY OWNERS OF THE AREA TO BE ANNEXED FROM ASSUMING FINANCIAL RESPONSIBILITY TO BOTH THE MUNICIPALITY AND THE FIRE SERVICE AREA; AND AMENDING SECTIONS 7-33-2401 AND 7-33-2404, MCA. 2067

509 *(Senate Bill No. 247; Cobb)* ESTABLISHING A DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES THAT ESTABLISH CRITERIA THAT GUIDE THE DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; PROVIDING OBJECTIVES FOR THE DEFAULT SUPPLIER FOR DEFAULT SUPPLY PLANNING, PORTFOLIO MANAGEMENT, AND RESOURCE PROCUREMENT; REQUIRING THE DEFAULT SUPPLIER TO DEVELOP A PROCUREMENT PLAN; ESTABLISHING REQUIREMENTS FOR COMMENT BY THE PUBLIC AND THE COMMISSION ON A DEFAULT SUPPLIER PROCUREMENT PLAN; PROVIDING A PROCESS FOR DEFAULT SUPPLY PROCUREMENT FILINGS AND COMMISSION APPROVAL; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM FOR PRUDENTLY INCURRED ELECTRICITY SUPPLY COSTS; REQUIRING THE COMMISSION TO REQUIRE THE DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING THE DEFAULT

SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; AMENDING SECTIONS 69-1-114 AND 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 2069

510 *(Senate Bill No. 275; Laible)* GENERALLY REVISING LAWS FOR THE COLLECTION OF JUDGMENTS AND FINES; REQUIRING THAT COLLECTION FEES BE ADDED TO THE AMOUNT OF THE JUDGMENT OR FINE BEING COLLECTED; INCREASING THE LENGTH OF A JUDGMENT LIEN FILED IN ANOTHER COUNTY AND A JUDGMENT LIEN RENDERED IN FEDERAL COURT FROM 6 YEARS TO 10 YEARS; REQUIRING EARNINGS WITHHELD FROM A JUDGMENT DEBTOR TO BE REMITTED TO THE SHERIFF OR LEVYING OFFICER WITHIN 5 DAYS OF THE DAY THE EARNINGS ARE WITHHELD; PROVIDING THAT FEES ASSESSED IN A MUNICIPAL COURT MAY NOT EXCEED THOSE FEES ASSESSED BY A JUSTICE'S COURT; EXPANDING THE LIABILITY FOR ISSUING A BAD CHECK TO INCLUDE A CONVERTED CHECK AND AN ELECTRONIC FUND TRANSFER; PROVIDING THAT MONEY PAID UNDER TITLE 53 TO PROVIDERS OF GOODS AND SERVICES IS NOT EXEMPT FROM LEVY OR OTHER LEGAL PROCEEDINGS; AND AMENDING SECTIONS 3-10-601, 25-9-302, 25-9-303, 25-13-402, 25-30-102, 27-1-717, 46-17-303, 46-19-102, AND 53-2-607, MCA 2073

511 *(Senate Bill No. 294; Gebhardt)* REVISING THE INTEREST RATE APPLIED TO THE REFUND OF PROPERTY TAXES OR FEES PAID UNDER PROTEST; PROVIDING THAT THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY MUST BE REMITTED TO THE STATE TREASURER; PROVIDING THAT A GOVERNING BODY OF A TAXING JURISDICTION MAY ACCESS PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; REQUIRING THE STATE TREASURER TO REFUND THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2079

512 *(Senate Bill No. 344; Laible)* REDUCING THE MINIMUM NONFORFEITURE AMOUNT TO 1.5 PERCENT A YEAR INTEREST FROM 3 PERCENT A YEAR INTEREST WITH RESPECT TO CERTAIN ANNUITY CONTRACTS PROVIDING FOR FLEXIBLE CONSIDERATIONS; AMENDING SECTION 33-20-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2082

513 *(Senate Bill No. 348; Keenan)* AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH AND REGULATE BEHAVIORAL HEALTH INPATIENT FACILITIES; ALLOWING THE MONTANA STATE HOSPITAL TO DIRECT THAT A PERSON WITH MENTAL DISORDERS WHO HAS BEEN INVOLUNTARILY COMMITTED TO THE STATE HOSPITAL BE TRANSFERRED TO A BEHAVIORAL HEALTH INPATIENT FACILITY WHEN A BED IS AVAILABLE; REVISING HEARING PROVISIONS FOR EXTENSION OF A COMMITMENT; PERMITTING A COUNTY ATTORNEY TO HAVE A PERSON WHO APPEARS TO HAVE A MENTAL DISORDER AND IS IN IMMINENT DANGER OF DEATH OR BODILY HARM TRANSPORTED TO A BEHAVIORAL HEALTH INPATIENT FACILITY IF A BED IS AVAILABLE; PERMITTING TRANSFER OF PERSONS SUFFERING FROM MENTAL DISORDERS TO BE

DIVERTED FROM DETENTION CENTERS TO BEHAVIORAL HEALTH INPATIENT FACILITIES IF A BED IS AVAILABLE; AMENDING SECTIONS 53-21-102, 53-21-120, 53-21-127, 53-21-128, 53-21-129, AND 53-21-138, MCA; AND PROVIDING AN EFFECTIVE DATE 2083

514 *(Senate Bill No. 386; Gebhardt)* ELIMINATING THE APPLICABILITY OF THE MONTANA MAJOR FACILITY SITING ACT TO CERTAIN PIPELINES AND ASSOCIATED FACILITIES; AMENDING SECTION 17, CHAPTER 293, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2091

515 *(Senate Bill No. 387; Cobb)* CONFORMING THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000 AND AN AGREEMENT AMONG STATES FOR SOURCING OF OTHER TELECOMMUNICATIONS SERVICES; AMENDING SECTIONS 15-53-129 AND 15-53-130, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE. 2092

516 *(Senate Bill No. 402; Cocchiarella)* CREATING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; REQUIRING RECORD RETENTION, SURETY BONDS, AND THE MAINTENANCE OF TRUST ACCOUNTS; PROHIBITING CERTAIN ACTIVITIES AND PROVIDING PENALTIES; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR SUSPENSION, REVOCATION, AND REINSTATEMENT OF LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2096

517 *(Senate Bill No. 434; Tropila)* EXTENDING IMMUNITY TO PRIVATE RESPONSE TEAMS CONTRACTED BY THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR A LOCAL OR TRIBAL EMERGENCY RESPONSE AUTHORITY RESPONDING TO A HAZARDOUS MATERIAL INCIDENT; REMOVING GOVERNMENTAL IMMUNITY FOR BAD FAITH; AMENDING SECTION 10-3-1217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2106

518 *(Senate Bill No. 454; Story)* REVISING THE SCHEDULE OF BLOCK GRANTS FOR COUNTYWIDE SCHOOL RETIREMENT AND COUNTYWIDE SCHOOL TRANSPORTATION AS ESTABLISHED BY CHAPTER 574, LAWS OF 2001, AND MODIFIED BY CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AMENDING SECTIONS 26 AND 27, CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AND PROVIDING AN EFFECTIVE DATE 2107

519 *(Senate Bill No. 480; Black)* CLARIFYING THAT DIVIDEND INCOME IS INCLUDED IN MONTANA ADJUSTED GROSS INCOME REGARDLESS OF WHETHER DIVIDEND INCOME IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2110

520 *(House Bill No. 277; Lindeen)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, OF THE MONTANA CONSTITUTION TO EXTEND TERM LIMITS FOR LEGISLATORS FOR AN ADDITIONAL 4 YEARS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2117

521 *(House Bill No. 721; Erickson)* REVISING THE LAWS RELATING TO WATER'S-EDGE ELECTIONS FOR CORPORATE INCOME TAX PURPOSES; INCLUDING TAXABLE INCOME SHIFTED TO A TAX

HAVEN IN THE APPORTIONMENT OF INCOME FOR THE PURPOSES OF A WATER'S-EDGE ELECTION; IDENTIFYING TAX HAVENS; PROVIDING THAT A PORTION OF THE TAX COLLECTIONS FROM WATER'S-EDGE CORPORATIONS BE ALLOCATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR FISCAL YEAR 2005; AMENDING SECTIONS 15-1-501, 15-31-121, 15-31-322, 15-31-323, 15-31-324, AND 15-31-326, MCA; AND PROVIDING AN APPLICABILITY DATE 2118

522 *(House Bill No. 748; Devlin)* CLARIFYING AND REVISING THE LAWS RELATING TO THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; CHANGING THE METHOD FOR DISTRIBUTING OIL AND NATURAL GAS PRODUCTION TAXES TO STATE FUNDS AND TO LOCAL TAXING UNITS; ESTABLISHING PERCENTAGE DISTRIBUTION AMOUNTS FOR LOCAL TAXING UNITS; PROVIDING A STATUTORY APPROPRIATION FOR THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES TO LOCAL TAXING UNITS; AMENDING SECTIONS 7-1-2111, 15-1-501, 15-36-304, 15-36-314, 15-36-315, 15-38-113, 15-38-202, 17-7-502, 75-10-743, 76-15-904, 82-11-135, 85-2-905, AND 90-2-1104, MCA; REPEALING SECTIONS 15-36-320 AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2121

523 *(Senate Bill No. 46; Gebhardt)* REMOVING THE REQUIREMENT THAT A COUNTY MUST ENTER INTO A CONTRACT FOR CERTAIN LARGE PURCHASES OR CONSTRUCTION CONTRACTS; AMENDING SECTION 7-5-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2141

524 *(Senate Bill No. 138; Cobb)* REVISING THE LAWS RELATING TO ALTERNATIVE ENERGY AND ENERGY CONSERVATION TAX POLICY; PROVIDING THAT GENERATION FACILITIES THAT HAVE 1 MEGAWATT OR GREATER CAPACITY POWERED BY AN ALTERNATIVE RENEWABLE ENERGY SOURCE ARE NOT EXEMPT FROM PROPERTY TAXES UNDER THE GENERAL PROPERTY TAX EXEMPTION LAWS BUT CONTINUE TO BE SUBJECT TO NEW AND EXPANDING INDUSTRY PROPERTY TAX INCENTIVES; REVISING THE DEDUCTION FOR ENERGY-CONSERVATION INVESTMENTS AND THE CREDITS FOR ENERGY-CONSERVING EXPENDITURES BY ELIMINATING THE TAX SAVING CEILING FOR THE DEDUCTION AND THE CARRYFORWARD PROVISION OF THE CREDIT; PROVIDING THAT PROPERTY PURCHASED UNDER THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT DOES NOT HAVE TO QUALIFY AS SPECIAL DEPRECIABLE PROPERTY UNDER THE INTERNAL REVENUE CODE OF 1954; AMENDING SECTIONS 15-6-225, 15-32-104, 15-32-109, AND 15-32-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2141

525 *(Senate Bill No. 320; Tester)* ALLOWING A MUNICIPALITY TO ADJUST BASE TAXABLE VALUE IN CERTAIN CASES OF TAX INCREMENT FINANCING FOR WHICH NO BONDS WERE ISSUED; AMENDING SECTION 7-15-4293, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2143

526 *(Senate Bill No. 384; Mangan)* ALLOWING A CITY OR TOWN TO EXTEND, RENEW, OR AMEND AN AGREEMENT FOR THE SUPERVISION OR OPERATION OF A PHYSICAL PLANT THAT PROVIDES WATER, SEWER, OR POWER SERVICES TO THE MUNICIPALITY WITHOUT PROCEEDING UNDER PUBLIC BIDDING

PROCEDURES IN CERTAIN INSTANCES; AND AMENDING SECTION 7-5-4301, MCA 2144

527 *(Senate Bill No. 399; Bohlinger)* ALLOWING A MUNICIPALITY OR COUNTY TO REQUEST THAT THE UNITED STATES DEPARTMENT OF TRANSPORTATION ESTABLISH RAILROAD CROSSING QUIET ZONES THROUGH WHICH LOCOMOTIVE HORNS AND BELLS ARE NOT ROUTINELY SOUNDED; REQUIRING THE MUNICIPALITY OR COUNTY TO DESCRIBE HOW REQUIRED SUPPLEMENTAL SAFETY MEASURES WILL BE IMPLEMENTED AT THOSE CROSSINGS; PROVIDING THAT A QUIET ZONE MAY NOT BE ESTABLISHED UNLESS CERTAIN PROCEDURES ARE FOLLOWED; ALLOWING A RAILROAD COMPANY TO PERMIT ITS TRAINS TO PASS THROUGH DESIGNATED QUIET ZONES WITHOUT SOUNDING THEIR HORNS AND BELLS; EXEMPTING A RAILROAD COMPANY AND EMPLOYEES FROM LIABILITY; AMENDING SECTIONS 61-8-347, 69-14-562, AND 69-14-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2145

528 *(Senate Bill No. 464; Keenan)* REVISING LAWS GOVERNING FOOD ESTABLISHMENTS; REVISING FOOD ESTABLISHMENT LICENSURE FEES; PROVIDING FOR LICENSURE OF FOOD ESTABLISHMENTS OPERATED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE UNLESS THEY EMPLOY A FULL-TIME SANITARIAN; REQUIRING ANNUAL INSPECTIONS; ALLOWING INSPECTIONS MORE THAN ONCE A YEAR; REQUIRING TRAINING FOR INSPECTORS; AMENDING SECTIONS 50-50-102, 50-50-103, 50-50-202, 50-50-205, AND 50-50-301, MCA; AND PROVIDING DELAYED EFFECTIVE DATES AND A TERMINATION DATE 2147

529 *(Senate Bill No. 478; Story)* CHANGING THE WAY THAT A POLITICAL SUBDIVISION MAY EXEMPT A PROPERTY TAX MILL LEVY FOR PREMIUM CONTRIBUTIONS FOR GROUP BENEFITS FROM THE PROPERTY TAX LIMITATION LAW; CHANGING THE OPERATIVE DATES; PROVIDING THAT THE HEARING ON THE EXEMPTION MUST COMPLY WITH NOTICE AND HEARING REQUIREMENTS; REQUIRING THAT THE EXEMPT MILL LEVY OR DOLLAR AMOUNT BE LISTED SEPARATELY ON THE PROPERTY TAX NOTICE; AMENDING SECTIONS 2-9-212 AND 2-18-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2152

530 *(House Bill No. 283; Fuchs)* DIRECTING THE ATTORNEY GENERAL TO PREPARE A PROACTIVE OPINION OF STATE OPTIONS REGARDING DELISTING AND POSSIBLE LITIGATION SCENARIOS RELATED TO RECOVERY OF DAMAGES AND COSTS ASSOCIATED WITH WOLF REINTRODUCTION IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2154

531 *(House Bill No. 722; Clark)* IMPOSING A UTILIZATION FEE ON RESIDENT BED DAYS OF INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE FEE AND DEPOSIT 70 PERCENT OF THE FEE IN A STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF FINANCING, ADMINISTERING, AND PROVIDING HEALTH AND HUMAN SERVICES; PROVIDING FOR THE DEPOSIT OF THE REMAINDER OF THE FEE IN THE STATE GENERAL FUND; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2154

532 *(House Bill No. 743; Clark)* INCLUDING BED DAYS AT THE MONTANA MENTAL HEALTH NURSING CARE CENTER IN THE NURSING FACILITY UTILIZATION FEE; PROVIDING FOR THE DISPOSITION OF UTILIZATION FEES FROM THE MONTANA MENTAL HEALTH NURSING CARE CENTER; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-60-101 AND 15-60-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION 2160

533 *(House Bill No. 767; Brueggeman)* GENERALLY REVISING MOTOR VEHICLE AND DRIVING RECORD LAWS; PROVIDING FOR SPECIAL MOTORCYCLE LICENSE PLATES; ESTABLISHING A FEE FOR THE SPECIAL MOTORCYCLE LICENSE PLATES AND REQUIRING THAT THE PROCEEDS BE USED FOR GRANTS TO NONPROFIT ORGANIZATIONS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF JUSTICE; STATUTORILY APPROPRIATING THE FEE PROCEEDS TO THE DEPARTMENT OF JUSTICE; REVISING LAWS GOVERNING THE RELEASE OF INFORMATION FROM DRIVING RECORDS BY THE DEPARTMENT OF JUSTICE, THE KIND OF INFORMATION THAT MAY BE RELEASED, AND THE FEES THAT MAY BE CHARGED; AMENDING SECTIONS 17-7-502, 61-11-105, 61-11-503, 61-11-509, AND 61-11-510, MCA; AND PROVIDING EFFECTIVE DATES. 2162

534 *(Senate Bill No. 112; McCarthy)* ASSISTING IN THE FUNDING OF MONTANA SEARCH AND RESCUE OPERATIONS; ASSESSING A SURCHARGE ON CERTAIN LICENSES AND DIRECTING THAT SURCHARGE PROCEEDS BE SPENT FOR COUNTY SEARCH AND RESCUE OPERATIONS AND TRAINING AND AS MATCHING FUNDS FOR THE PURCHASE OF EQUIPMENT BY LOCAL SEARCH AND RESCUE UNITS; CREATING A SEARCH AND RESCUE ACCOUNT, TO BE ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS, TO ASSIST IN FUNDING SEARCH AND RESCUE OPERATIONS; AMENDING SECTIONS 15-1-122, 23-2-517, 23-2-615, 23-2-616, 23-2-803, 87-1-601, AND 87-2-202, MCA; AND PROVIDING DELAYED EFFECTIVE DATES 2167

535 *(Senate Bill No. 414; Pease)* PROVIDING AN EXTENDED SCHEDULE FOR APPLICANTS TO COMPLY WITH THE INCENTIVE PROGRAM FOR PRODUCTION OF GASOHOL; AMENDING SECTION 15-70-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2177

536 *(Senate Bill No. 442; Stonington)* PROVIDING FOR THE REGULATION OF EXOTIC WILDLIFE; PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MAY ISSUE PERMITS FOR AUTHORIZING THE POSSESSION OR SALE OF CONTROLLED EXOTIC WILDLIFE AND CHARGE A REASONABLE FEE FOR THE PERMIT; PROVIDING FOR LISTS OF NONCONTROLLED, CONTROLLED, AND PROHIBITED EXOTIC WILDLIFE; ESTABLISHING A CLASSIFICATION REVIEW COMMITTEE TO ADVISE THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING THE IMPORTATION, POSSESSION, AND SALE OF EXOTIC WILDLIFE; PROVIDING EXCEPTIONS AND EXEMPTIONS FROM THE REGULATION OF EXOTIC WILDLIFE; PROVIDING AN AMNESTY PROGRAM FOR EXOTIC WILDLIFE POSSESSED AS OF JANUARY 1, 2004; AMENDING SECTIONS 87-5-701, 87-5-702, 87-5-704, 87-5-712, AND 87-5-716, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2179

537 *(Senate Bill No. 446; Barkus)* TEMPORARILY TRANSFERRING THE FLATHEAD BASIN COMMISSION FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 2-15-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2186

538 *(Senate Bill No. 489; Elliott)* DESIGNATING U.S. INTERSTATE HIGHWAYS IN MONTANA AS THE "PURPLE HEART TRAIL"; AND AMENDING SECTION 60-2-242, MCA. 2187

539 *(Senate Bill No. 491; Stonington)* AUTHORIZING THE USE OF THE RESEARCH AND COMMERCIALIZATION ACCOUNT FOR THE PAYMENT OF THE ADMINISTRATIVE COSTS INCURRED BY THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY IN ADMINISTERING RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 90-3-1001, 90-3-1002, AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE 2188

540 *(House Bill No. 259; Maedje)* INCREASING THE SPEED LIMIT TO 70 MILES AN HOUR ON U.S. HIGHWAY 93 BETWEEN THE CANADIAN BORDER AND REFERENCE MARKER 133 NORTHWEST OF WHITEFISH; AMENDING SECTION 61-8-303, MCA; AND PROVIDING AN EFFECTIVE DATE 2190

541 *(House Bill No. 705; Clark)* INCREASING THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR FUNDING INCREASES IN MEDICAID PAYMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE 2191

542 *(Senate Bill No. 101; Mahlum)* ALLOWING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO USE THE SERVICES OF VOLUNTEERS; REQUIRING WORKERS' COMPENSATION COVERAGE FOR THE VOLUNTEERS; AUTHORIZING REIMBURSEMENT OF CERTAIN EXPENSES OF THE VOLUNTEERS; AUTHORIZING THE COMMISSION TO SELL REAL AND PERSONAL PROPERTY; AUTHORIZING THE COMMISSION TO ESTABLISH TRUST FUNDS; AUTHORIZING THE COMMISSION TO OBTAIN FEDERAL MONEY AND REQUIRING THE DEPOSIT OF THE FEDERAL MONEY INTO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REQUIRING THE COMMISSION TO ESTABLISH A SUBCOMMITTEE OF COMMISSION MEMBERS AND MEMBERS OF THE MONTANA HISTORICAL SOCIETY BOARD; REQUIRING A MAJORITY VOTE OF THE SUBCOMMITTEE PRIOR TO SELLING PERSONAL PROPERTY FROM THE BOVEY ASSETS; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF PERSONAL PROPERTY FROM THE BOVEY ASSETS BE DEPOSITED IN A TRUST FUND; TRANSFERRING TITLE OF THE BOVEY ASSETS TO THE STATE OF MONTANA; AMENDING SECTIONS 22-3-1003 AND 22-3-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2193

543 *(Senate Bill No. 325; McGee)* REVISING THE RESTRICTIONS ON SUBDIVISION ACTIVITIES UNDER THE SANITATION IN SUBDIVISIONS LAWS; AMENDING SECTION 76-4-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2196

544 *(Senate Bill No. 407; DePratu)* CREATING THE MONTANA ECONOMIC DEVELOPMENT TAX ACT; PROVIDING FOR A LIMITED SALES TAX AND USE TAX ON CERTAIN PROPERTY AND SERVICES; REDUCING

INDIVIDUAL INCOME TAX RATES; ESTABLISHING A CAPITAL GAINS CREDIT; PROVIDING FOR COLLECTION OF THE LIMITED SALES TAX AND USE TAX; PROVIDING FOR DISTRIBUTION OF THE LIMITED SALES TAX AND USE TAX REVENUE; CLARIFYING THE DEFINITION OF "CONSUMER PRICE INDEX" RELATING TO INDIVIDUAL INCOME TAX PROVISIONS; AMENDING INDIVIDUAL INCOME TAX EXEMPTIONS; LIMITING THE INDIVIDUAL INCOME TAX DEDUCTION FOR FEDERAL INCOME TAX PAID; AMENDING THE INDIVIDUAL INCOME TAX STANDARD DEDUCTION; ALLOWING RESIDENTS A CREDIT AGAINST INDIVIDUAL INCOME TAXES FOR THEIR SHARE OF TAXES IMPOSED AND PAID TO ANOTHER STATE OR COUNTRY BY A PARTNERSHIP OF WHICH THE RESIDENT IS A PARTNER; INCREASING THE CIGARETTE TAX FROM 18 CENTS TO 70 CENTS ON A PACK OF CIGARETTES AND REVISING THE DISTRIBUTION OF THE CIGARETTE TAX; ADJUSTING THE CIGARETTE INSIGNIA DISCOUNTS; INCREASING THE TAX ON TOBACCO PRODUCTS FROM 12.5 PERCENT TO 25 PERCENT; PROVIDING FOR A TAX ON EACH OUNCE OF MOIST SNUFF; ADJUSTING THE WHOLESALER'S DISCOUNT FOR TOBACCO PRODUCTS; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-103, 15-30-112, 15-30-121, 15-30-122, 15-30-124, 15-30-142, 16-11-111, 16-11-114, 16-11-119, 16-11-201, 16-11-202, AND 16-11-206, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES . . . 2196

545 *(Senate Bill No. 408; Nelson)* PROVIDING AN ADJUSTMENT TO ADJUSTED GROSS INCOME FOR STATE INCOME TAX PURPOSES FOR LICENSED HEALTH CARE PROFESSIONALS WHO RECEIVE A LOAN REPAYMENT INCENTIVE TO PRACTICE IN CERTAIN AREAS IN MONTANA; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2226

546 *(Senate Bill No. 429; Esp)* GENERALLY REVISING THE PROVISIONS REGARDING REDISTRICTING; PROVIDING FOR CRITERIA; PROVIDING FOR THE USE OF DECENNIAL CENSUS DATA; PROVIDING FOR THE IMPLEMENTATION OF A SUCCESSFUL CONSTITUTIONAL AMENDMENT TO REVISE LEGISLATIVE REDISTRICTING TO CREATE A NONPARTISAN PROCESS TO ALLOW THE LEGISLATURE OPPORTUNITIES TO APPROVE A PLAN; PROVIDING THAT IF A PLAN IS NOT APPROVED, A THREE-JUDGE PANEL APPOINTED BY THE SUPREME COURT SHALL APPROVE A PLAN; PROVIDING FOR A REDISTRICTING PLAN UPON ORDER BY THE COURT; AMENDING SECTION 1, CHAPTER 4, LAWS OF 2003, AND SECTIONS 5-1-101, 5-1-102, 5-1-106, 5-1-108, 5-1-109, AND 5-1-111, MCA; REPEALING SECTION 5-1-110, MCA; CONTINGENTLY REPEALING CHAPTER 3, LAWS OF 2003; AND PROVIDING AN APPLICABILITY DATE 2233

547 *(Senate Bill No. 492; Johnson)* CLARIFYING THAT THE BOARD OF REGENTS, ON BEHALF OF THE UNIVERSITY SYSTEM UNITS, MUST APPROVE AN OPERATING BUDGET CONTAINING DETAILED REVENUE AND EXPENDITURES OF ALL MONEY APPROPRIATED IN THE GENERAL APPROPRIATIONS ACT; PROVIDING THAT TRANSFERS BETWEEN UNITS MAY BE MADE ONLY WITH THE APPROVAL OF THE BOARD OF REGENTS AFTER APPROVAL OF THE OPERATING BUDGET; REQUIRING THAT TRANSFERS BE SUBMITTED TO THE OFFICE OF BUDGET AND PROGRAM PLANNING AND THE LEGISLATIVE FISCAL ANALYST; AMENDING SECTION 17-7-138, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2237

548 *(House Bill No. 736; Brown)* ESTABLISHING A K-12 PUBLIC SCHOOL RENEWAL COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2239

549 *(Senate Bill No. 406; McGee)* PROVIDING THAT A CORNER RECORD MAY BE FILED IN LIEU OF A CERTIFICATE OF SURVEY IN CERTAIN INSTANCES; REQUIRING THAT THE COUNTY CLERK PROVIDE AN INDEX; PROVIDING THAT PARCELS CREATED FOR RIGHTS-OF-WAY OR UTILITY SITES ARE EXEMPT FROM THE SUBDIVISION REVIEW PROCESS UNLESS THERE IS A SUBSEQUENT CHANGE IN LAND USE; PROVIDING GUIDANCE ON EXEMPTIONS THAT ARE CREATED TO PROVIDE SECURITY FOR MORTGAGES, LIENS, OR TRUST INDENTURES; AND AMENDING SECTIONS 70-22-105, 70-22-109, 76-3-201, AND 76-3-404, MCA. 2241

550 *(Senate Bill No. 424; Nelson)* GENERALLY REVISING SCHOOL FINANCE; PROVIDING FOR ANNUAL INFLATION-RELATED ADJUSTMENTS TO THE BASE FUNDING PROGRAM AMOUNTS FOR SCHOOL DISTRICT BASIC ENTITLEMENTS AND PER-ANB ENTITLEMENTS; INCREASING THE BASIC AND PER-ANB ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2004 AND SUCCEEDING YEARS; INCREASING SCHOOL FACILITY ENTITLEMENTS; DEFINING "FACILITY GUARANTEED MILL VALUE PER ANB"; CHANGING THE WAY IN WHICH A SCHOOL DISTRICT OR COOPERATIVE CHARGES EMPLOYER CONTRIBUTIONS FOR RETIREMENT, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE; TERMINATING THE COUNTYWIDE SCHOOL RETIREMENT BLOCK GRANTS; REVISING THE SCHEDULE FOR STATE AND COUNTY TRANSPORTATION REIMBURSEMENT; ELIMINATING WEIGHTED RIDERSHIP; ESTABLISHING THREE SEPARATE BLOCK GRANTS; ALLOWING THE COMBINED FUND BLOCK GRANT TO BE DEPOSITED IN ANY BUDGETED FUND OF THE DISTRICT; AMENDING SECTIONS 20-9-306, 20-9-366, 20-9-370, 20-9-371, 20-9-501, 20-9-542, 20-10-101, AND 20-10-141, MCA; AMENDING SECTIONS 25 AND 26, CHAPTER 13, LAWS OF 2002; REPEALING SECTIONS 20-10-127 AND 20-10-128, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE. 2243

551 *(Senate Bill No. 473; Elliott)* PROVIDING FOR A PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT THE PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; PROVIDING AN ANNUAL APPLICATION FEE FOR THE PROGRAM; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS FOR THE STARTUP COST OF THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . . 2257

552 *(House Bill No. 13; Lewis)* PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', AND BLUE-COLLAR PAY PLANS; PROVIDING SALARY INCREASES; FREEZING THE STATEWIDE PAY SCHEDULE; INCREASING THE EMPLOYER CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAMS; APPROPRIATING FUNDS FOR THE INCREASES AND FOR A PERSONAL SERVICES CONTINGENCY POOL; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-312, 2-18-313, 2-18-315, AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE. 2260

553 *(House Bill No. 42; Barrett)* REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CALCULATE THE AMOUNT OF HABITAT AVAILABLE FOR ELK, DEER, AND ANTELOPE IN MONTANA;

REQUIRING A DETERMINATION OF SUSTAINABLE POPULATIONS BASED ON THE HABITAT CALCULATION; REQUIRING THE DEPARTMENT TO MANAGE WITH THE OBJECTIVE THAT POPULATIONS OF ELK, DEER, AND ANTELOPE ARE AT OR BELOW THE POPULATION ESTIMATE; PROVIDING A FUNDING SOURCE; PROVIDING FOR ADJUSTMENTS BASED ON MANAGEMENT PROVISIONS IN THE MAXIMUM LICENSE NUMBERS THAT CAN BE ALLOCATED FOR RESIDENTS; AMENDING SECTIONS 87-1-201, 87-1-301, 87-2-104, 87-2-501, AND 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2271

554 *(House Bill No. 56; Thomas)* PROVIDING FOR INVOLUNTARY COMMITMENT TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER; PROVIDING FOR DIRECT ADMISSION TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 53-21-127, 53-21-128, AND 53-21-414, MCA 2280

555 *(House Bill No. 90; Clark)* AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE VOLUNTARY PROTECTIVE SERVICES TO PARENTS OF CHILDREN ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED; DEFINING THE TERM "PROTECTIVE SERVICES"; PROVIDING FOR DISMISSAL OF ABUSE AND NEGLECT PETITIONS UPON SUCCESSFUL REUNIFICATION OF A CHILD WITH THE CHILD'S PARENTS; AND AMENDING SECTIONS 41-3-102, 41-3-202, 41-3-301, 41-3-302, AND 41-3-423, MCA 2283

556 *(House Bill No. 197; Becker)* GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2291

557 *(House Bill No. 201; Jent)* GENERALLY REVISING VOTER REGISTRATION AND ABSENTEE BALLOT PROVISIONS FOR ELECTORS ABSENT FROM THE POLLING PLACE ON ELECTION DAY; ESTABLISHING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FEDERAL UNIFORMED AND

OVERSEAS CITIZENS ABSENTEE VOTING ACT AND THE FEDERAL HELP AMERICA VOTE ACT OF 2002; PROVIDING DEFINITIONS; DESIGNATING THE SECRETARY OF STATE AS THE SINGLE POINT OF CONTACT FOR INFORMATION ABOUT ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS AND REQUIRING A REPORT ON ABSENTEE BALLOTS FOR THOSE ELECTORS; AUTHORIZING ABSENT UNIFORMED SERVICES ELECTORS NOT OVERSEAS TO USE THE FEDERAL WRITE-IN ABSENTEE BALLOT FOR REGISTRATION AND APPLICATION FOR ABSENTEE BALLOTS; PROVIDING THAT THE ABSENTEE BALLOT APPLICATION OF CERTAIN ELECTORS MUST APPLY TO CERTAIN FUTURE ELECTIONS; REVISING THE TIME PERIOD DURING WHICH ANY ELECTOR MAY APPLY FOR AN ABSENTEE BALLOT; REQUIRING THAT ANY APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; PROVIDING THAT IF AN APPLICATION BY CERTAIN ELECTORS IS REJECTED, THE ELECTORS MUST BE NOTIFIED OF THE REASON; CLARIFYING THE PROCEDURE FOR CASTING AND COUNTING THE FEDERAL WRITE-IN ABSENTEE BALLOT; AMENDING SECTIONS 13-2-212, 13-2-214, 13-2-215, 13-13-211, 13-13-212, 13-13-213, 13-13-214, 13-13-229, 13-13-271, 13-13-272, 13-13-273, 13-13-277, AND 13-13-278, MCA; AND REPEALING SECTIONS 13-2-211 AND 13-13-276, MCA 2308

558 *(House Bill No. 206; Younkin)* INCREASING AND CHANGING THE DISPOSITION OF FEES FOR DRIVER'S LICENSES AND DUPLICATE LICENSES; REQUIRING A BIENNIAL REPORT TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 61-5-111, 61-5-114, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE. 2317

559 *(House Bill No. 211; Newman)* GENERALLY REVISING THE LAWS RELATING TO ELIGIBILITY OF PRISONERS FOR PARDON AND PAROLE AND RELATING TO THE BOARD OF PARDONS AND PAROLE; ADDING TWO AUXILIARY BOARD MEMBERS; AUTHORIZING MULTIPLE BOARDS TO BE IMPANELED TO CONDUCT HEARINGS AROUND THE STATE AND TO MAKE PAROLE DECISIONS; AUTHORIZING THE BOARD TO ISSUE UP TO TWO 10-DAY FURLOUGHS; CLARIFYING FROM WHICH CORRECTIONAL FACILITIES AND PROGRAMS THE BOARD CAN GRANT PAROLE; REVISING THE CONDUCT OF HEARINGS; REQUIRING AN INTERIM REPORT ON DISPOSITION OF NATIVE AMERICAN PAROLE APPLICATIONS; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-215, 46-23-216, 46-23-218, 46-23-1025, AND 46-24-212, MCA; REPEALING SECTION 46-23-107, MCA; AND PROVIDING EFFECTIVE DATES 2321

560 *(House Bill No. 218; Bookout-Reinicke)* REQUIRING THAT THE OWNER OF HIGH-LEVEL RADIOACTIVE WASTE OR TRANSURANIC WASTE PAY FEES, SUBMIT A SAFETY PLAN, AND OBTAIN A PERMIT BEFORE SHIPPING THE WASTE THROUGH MONTANA; DEFINING TERMS; CREATING THE RADIOACTIVE WASTE TRANSPORTATION MONITORING, EMERGENCY RESPONSE, AND TRAINING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; SPECIFYING HOW MONEY IN THE ACCOUNT MUST BE USED; REQUIRING THAT INITIAL NOTICE OF SHIPMENTS BE PROVIDED TO THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AND TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THAT THE DISASTER AND EMERGENCY SERVICES DIVISION NOTIFY CERTAIN OTHER AGENCIES AND PERSONS WHEN IT IS INFORMED THAT WASTE WILL BE ROUTED THROUGH MONTANA; PROVIDING

RESPONSIBILITIES FOR OWNERS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO COLLECT THE FEES AND ISSUE PERMITS; REQUIRING INSPECTIONS; REQUIRING THAT THE PERMIT REMAIN WITH THE TRANSPORTER OF WASTE AS IT TRAVELS THROUGH THE STATE; REQUIRING THE HIGHWAY PATROL TO MONITOR OR ESCORT MOTOR CARRIERS THAT ARE CARRYING THE WASTE; PROVIDING FOR THE COORDINATION OF INSPECTIONS OF MOTOR CARRIERS; ALLOWING THE HIGHWAY PATROL TO BE REIMBURSED FOR COSTS INCURRED IN MONITORING OR ESCORTING THE MOTOR CARRIERS; SPECIFYING THAT THE PUBLIC SERVICE COMMISSION IS RESPONSIBLE FOR INSPECTING RAILS OR TRAINS THAT WILL BE INVOLVED IN CARRYING THE WASTE; PROVIDING CERTAIN RECOMMENDATIONS FOR TRANSPORT OF THE WASTE; ALLOWING THE PUBLIC SERVICE COMMISSION TO ENTER INTO RECIPROCAL AGREEMENTS WITH ADJACENT STATES AND CANADIAN PROVINCES FOR INSPECTION; REQUIRING THE PUBLIC SERVICE COMMISSION TO ESTABLISH RULES FOR CARRYING OUT THESE PROVISIONS; ASSIGNING LIABILITY; PROVIDING A PENALTY; AND PROVIDING A DELAYED EFFECTIVE DATE 2327

561 *(House Bill No. 247; Harris)* PROHIBITING LOCAL GOVERNMENTS FROM ENACTING ORDINANCES CONCERNING VAGRANCY; CLARIFYING THAT VAGRANCY DOES NOT INCLUDE AGGRESSIVE SOLICITATION THAT IS INCLUDED IN THE OFFENSE OF DISORDERLY CONDUCT; REMOVING EXISTING STATUTORY PROVISIONS CONCERNING VAGRANCY; AMENDING SECTIONS 7-1-111, 7-21-3322, 7-32-4304, AND 53-21-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2331

562 *(House Bill No. 261; Haines)* INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; INCREASING THE LOAN TO THE DEPARTMENT OF JUSTICE FOR THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM FROM $4.5 MILLION TO $22.5 MILLION; TEMPORARILY INCREASING THE FEE FOR ISSUANCE OF A CERTIFICATE OF OWNERSHIP FOR A MOTORBOAT OR SAILBOAT, A SNOWMOBILE, AN OFF-HIGHWAY VEHICLE, AND A MOTOR VEHICLE BY $5; TEMPORARILY IMPOSING A $10 FEE ON THE ISSUANCE OF A NEW CERTIFICATE OF TITLE; TEMPORARILY INCREASING THE FEE FOR OBTAINING A DUPLICATE CERTIFICATE OF OWNERSHIP; REQUIRING THE DEPOSIT OF THE NEW AND INCREASED FEES IN THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT FOR PURPOSES OF REPAYING THE LOAN; AMENDING SECTIONS 17-5-1608, 17-5-2001, 23-2-508, 23-2-611, 23-2-811, 61-3-103, 61-3-203, 61-3-204, AND 61-3-550, MCA, AND SECTIONS 5 AND 9, CHAPTER 394, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY DATE 2334

563 *(House Bill No. 298; Younkin)* ALLOWING A COUNTY OR MUNICIPALITY TO CHARGE FEES FOR AN EXAMINATION OF A DIVISION OF LAND TO DETERMINE WHETHER IT IS EXEMPT FROM SUBDIVISION REVIEW; AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2351

564 *(House Bill No. 403; Keane)* REQUIRING EACH CONTRACTOR TO ENSURE THAT AT LEAST 50 PERCENT OF THE CONTRACTOR'S WORKERS PERFORMING LABOR ON A STATE CONSTRUCTION PROJECT ARE BONA FIDE MONTANA RESIDENTS; AMENDING

SECTION 18-2-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2352

565 *(House Bill No. 509; Olson)* REVISING LAWS RELATED TO ELECTRICAL ENERGY; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE ONLY AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; ESTABLISHING AN ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; REVISING CERTAIN LEGISLATIVE FINDINGS AND POLICY; DESIGNATING THE DEFAULT SUPPLIER AS THE DISTRIBUTION SERVICES PROVIDER OF A UTILITY; MODIFYING CERTAIN DEFINITIONS; DEFINING "DEFAULT SUPPLY SERVICE" AND "ELECTRICITY SUPPLY COSTS"; EXTENDING THE TRANSITION PERIOD TO JULY 1, 2027; MODIFYING PILOT PROGRAMS TO REQUIRE UTILITIES AND ELECTRICITY SUPPLIERS TO USE A SELECT SET OF SMALL CUSTOMERS TO MEASURE THE POTENTIAL FOR DEVELOPING AND OFFERING CUSTOMER CHOICE IN THE FUTURE; ESTABLISHING OPTIONS AND REQUIREMENTS FOR CUSTOMER CHOICE OF ENERGY SUPPLY; REQUIRING THE COMMISSION TO ESTABLISH RATES, FEES, RULES, AND PROCEDURES TO ENABLE CUSTOMERS TO REASONABLY CHOOSE AN ELECTRICITY SUPPLIER WHILE PROTECTING SMALL CUSTOMERS; ALLOWING THE COMMISSION TO ESTABLISH DIFFERENT CATEGORIES OF DEFAULT SUPPLY CUSTOMERS; PROHIBITING A CUSTOMER RECEIVING DEFAULT SUPPLY SERVICE FROM RESELLING ELECTRICITY; ALLOWING THE DEFAULT SUPPLIER TO IMPLEMENT DEMAND REDUCTION PROGRAMS; CLARIFYING CERTAIN PUBLIC UTILITY RESPONSIBILITIES AS A SUCCESSOR IN INTEREST; MODIFYING THE REQUIREMENT THAT PUBLIC UTILITIES EDUCATE CUSTOMERS ABOUT CUSTOMER CHOICE; MODIFYING PUBLIC UTILITY FUNCTIONAL SEPARATION REQUIREMENTS; MODIFYING DISTRIBUTION SERVICES REQUIREMENTS; MODIFYING PUBLIC UTILITY ELECTRICITY SUPPLY REQUIREMENTS; REQUIRING THAT A PUBLIC UTILITY'S DISTRIBUTION SERVICES PROVIDER PROVIDE DEFAULT SUPPLY SERVICE; REQUIRING THE COMMISSION TO ESTABLISH DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT GUIDELINES; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM; PROVIDING FOR COMMISSION REVIEW OF ELECTRICITY SUPPLY COSTS; ALLOWING THE COMMISSION TO REQUIRE A DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING A DEFAULT SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS TO DECEMBER 31, 2005; PROVIDING FOR REIMBURSEMENT AND AUTHORIZING FINES IF AN ELECTRICITY SUPPLIER FAILS TO PROVIDE ELECTRICITY SUPPLY AND RELATED SERVICES TO RETAIL CUSTOMERS; MODIFYING COMMISSION AUTHORITY; REQUIRING THE COMMISSION TO MONITOR WHETHER OR NOT WORKABLE COMPETITION HAS DEVELOPED FOR SMALL CUSTOMERS; PROVIDING THAT THE COMMISSION REPORT TO THE LEGISLATURE IF IT DETERMINES THAT WORKABLE COMPETITION HAS DEVELOPED; MODIFYING BILL INFORMATION REQUIREMENTS; ELIMINATING DEFAULT SUPPLIER LICENSING REQUIREMENTS; ELIMINATING THE TRANSITION ADVISORY COMMITTEE AND TAX REVENUE ANALYSIS REQUIREMENTS;

AMENDING SECTIONS 5-5-202, 5-5-223, 35-19-104, 69-8-102, 69-8-103, 69-8-104, 69-8-201, 69-8-203, 69-8-204, 69-8-208, 69-8-210, 69-8-211, 69-8-301, 69-8-402, 69-8-403, 69-8-408, 69-8-409, AND 69-8-503, MCA; REPEALING SECTIONS 35-19-103, 69-8-416, 69-8-417, 69-8-501, AND 69-8-502, MCA; AND PROVIDING AN EFFECTIVE DATE. 2353

566 *(House Bill No. 539; Brueggeman)* REVISING THE PROVISIONS OF THE FAMILY EDUCATION SAVINGS ACT; CHANGING TERMINOLOGY TO CONFORM TO CHANGES IN FEDERAL LAW; CLARIFYING THE DUTIES OF THE BOARD OF REGENTS AND THE PROGRAM MANAGER'S RESPONSIBILITIES RELATING TO NONQUALIFIED WITHDRAWALS; CLARIFYING THE PROCEDURES INVOLVING INVESTMENT PRODUCTS WHEN A PROGRAM MANAGER IS TERMINATED; DEFINING "INVESTMENT PRODUCTS"; AND AMENDING SECTIONS 15-30-604, 15-62-103, 15-62-201, 15-62-203, 15-62-206, 15-62-207, 20-25-901, AND 20-25-902, MCA 2380

567 *(House Bill No. 564; Lindeen)* CREATING THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT TO ASSIST COMMUNITY ECONOMIC DEVELOPMENT BY PROVIDING TRAINING FOR EXISTING WORKERS AND INCENTIVES FOR BUSINESSES TO LOCATE AND EXPAND WITHIN THE STATE THROUGH GOVERNMENT-ASSISTED NEW JOBS TRAINING; PROVIDING CRITERIA FOR GRANT ELIGIBILITY; PROVIDING TEMPORARY FUNDING FOR WORKFORCE TRAINING GRANTS THROUGH BOARD OF INVESTMENT LOANS, WHICH WILL BE REPAID THROUGH A NEW JOBS CREDIT THAT IS GENERATED FROM THE CREATION OF PERMANENT, FULL-TIME JOBS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2388

568 *(House Bill No. 608; Windy Boy)* RELATING TO THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE MONTANA INDIAN TRIBES AND THE STATE OF MONTANA; PROVIDING FOR TRIBAL CONSULTATION IN THE DEVELOPMENT OF STATE AGENCY POLICIES THAT DIRECTLY AFFECT INDIAN TRIBES; AUTHORIZING CERTAIN STATE EMPLOYEES TO RECEIVE ANNUAL TRAINING; PROVIDING FOR ANNUAL MEETINGS BETWEEN STATE AND TRIBAL OFFICIALS; AND REQUIRING AN ANNUAL REPORT BY A STATE AGENCY 2394

569 *(House Bill No. 609; Windy Boy)* HONORING THE SACRIFICE, PATRIOTISM, AND LONG TRADITION OF MILITARY PARTICIPATION BY MONTANA'S AMERICAN INDIAN CITIZENS BY REQUIRING SPECIFIC RECOGNITION OF MONTANA'S PAST, PRESENT, AND FUTURE AMERICAN INDIAN WAR VETERANS IN THE CONSTRUCTION OF THE AMERICAN INDIAN MONUMENT AND TRIBAL FLAG CIRCLE; AMENDING SECTION 22-2-601, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE 2396

570 *(House Bill No. 642; Devlin)* PROVIDING THAT STATE AND LOCAL TAXES AND FEES PAID BY A PUBLIC UTILITY MAY BE SEPARATELY DISCLOSED IN A PUBLIC UTILITY CUSTOMER'S BILL; REQUIRING AN AUTOMATIC RATE ADJUSTMENT TO REFLECT STATE AND LOCAL TAXES AND FEES PAID BY A PUBLIC UTILITY; AMENDING SECTIONS 69-3-302 AND 69-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2397

571 *(House Bill No. 680; Noennig)* PROVIDING STANDARDS FOR DOCUMENTS THAT ARE RECORDED AND FILED WITH THE OFFICE OF THE CLERK AND RECORDER; ESTABLISHING FEES FOR

RECORDING CERTAIN DOCUMENTS; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 2399

572 *(House Bill No. 689; Olson)* REVISING THE LAWS RELATING TO LOBBYING REGISTRATION AND REPORTING BY PRINCIPALS; REVISING DEFINITIONS; REVISING REPORTING REQUIREMENTS; PROVIDING FOR ADJUSTMENT OF REPORTING THRESHOLD AMOUNTS FOR INFLATION; AMENDING SECTIONS 5-7-102, 5-7-103, 5-7-105, AND 5-7-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 2402

573 *(House Bill No. 693; Sinrud)* PROVIDING THAT CHILD SUPPORT OBLIGATIONS DETERMINED PURSUANT TO ADMINISTRATIVE PROCEDURE ARE EFFECTIVE IMMEDIATELY UPON SERVICE OF A NOTICE OF FINANCIAL RESPONSIBILITY ON THE PARENT OR PARENTS AND THAT FINAL ORDERS ARE RETROACTIVE TO THAT DATE; PROVIDING THAT A NOTICE OF FINANCIAL RESPONSIBILITY MUST INCLUDE A STATEMENT REGARDING ITS IMMEDIATE EFFECTIVENESS; AMENDING SECTION 40-5-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2406

574 *(House Bill No. 720; Hurwitz)* REVISING THE LAWS GOVERNING WATER USE PERMITS AND CHANGES IN APPROPRIATION RIGHTS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REGARDING DETERMINATION OF WHETHER OR NOT AN APPLICATION FOR A WATER USE PERMIT AND AN OBJECTION TO AN APPLICATION FOR A WATER USE PERMIT ARE CORRECT AND COMPLETE; PROVIDING THAT AN APPLICATION MUST BE TREATED AS IF IT IS CORRECT AND COMPLETE IF DEFICIENCIES ARE NOT IDENTIFIED WITHIN 180 DAYS; AND AMENDING SECTIONS 85-2-302 AND 85-2-308, MCA . . 2409

575 *(House Bill No. 727; Clark)* PROVIDING FOR THE DISCONTINUANCE OF THE EASTMONT HUMAN SERVICES CENTER; PROVIDING FOR THE TRANSFER OF THE FACILITY TO THE DEPARTMENT OF CORRECTIONS; PROVIDING A TIMEFRAME FOR THE CLOSURE AND TRANSFER; AMENDING SECTIONS 53-1-402, 53-1-602, AND 53-20-102, MCA; REPEALING SECTIONS 53-20-501 AND 53-20-502, MCA; AND PROVIDING AN EFFECTIVE DATE 2411

576 *(House Bill No. 744; Clark)* DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SEEK FEDERAL FUNDS TO OFFSET GENERAL FUND EXPENDITURES TO THE MAXIMUM EXTENT POSSIBLE; DIRECTING THE DEPARTMENT TO EVALUATE THE PROPOSED MEDICAID BLOCK GRANT AS PART OF REFINANCING ACTIVITIES AND REPORT FINDINGS AT EACH REGULAR MEETING OF THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING FOR THE USE OF FUNDING OBTAINED PURSUANT TO THE DIRECTIVE; AUTHORIZING THE DEPARTMENT TO REINSTATE SERVICES IF AUTHORIZED BY THE OFFICE OF BUDGET AND PROGRAM PLANNING; AMENDING SECTIONS 17-2-108 AND 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE. 2414

577 *(Senate Bill No. 126; Story)* REVISING THE GENERAL LAW RELATING TO CATEGORIES OF PROPERTY THAT ARE EXEMPT FROM PROPERTY TAXATION BY INCORPORATING CONTINGENT AMENDMENTS INTO A SINGLE VERSION OF THE SECTION; CLARIFYING THE CATEGORIES OF PROPERTY THAT ARE EXEMPT FROM PROPERTY TAXATION; PROVIDING THAT BIOLOGICAL CONTROL INSECTS ARE AN AGRICULTURAL PRODUCT AND RECEIVE AN AGRICULTURAL PRODUCT EXEMPTION; CLARIFYING PROPERTY TAX PROVISIONS RELATING TO INSURANCE

COMPANIES BY REPEALING SPECIFIC LAWS THAT ARE REDUNDANT WITH GENERAL PROPERTY TAX LAWS; AMENDING SECTIONS 15-1-101, 15-6-201, AND 15-6-207, MCA, AND SECTION 31, CHAPTER 285, LAWS OF 1999; AND REPEALING SECTIONS 15-24-601 AND 15-24-602, MCA 2418

578 *(Senate Bill No. 270; Harrington)* REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO APPOINT AN INTERIM ADVISORY COMMITTEE TO STUDY ISSUES RELATED TO INDEPENDENT CONTRACTORS AND TO MAKE RECOMMENDATIONS TO THE 59TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2430

579 *(Senate Bill No. 370; Gebhardt)* REVISING WHICH ENTITIES PAY FOR THE MEDICAL EXPENSES OF INMATES HELD IN COUNTY DETENTION FACILITIES; PROVIDING CIRCUMSTANCES UNDER WHICH THE INMATE IS RESPONSIBLE FOR PAYMENT; REQUIRING THE HEALTH CARE PROVIDER TO COLLECT PAYMENTS FOR TREATMENT FROM INMATES WHO ARE ABLE TO PAY; PROVIDING CIRCUMSTANCES UNDER WHICH THE COUNTY IS RESPONSIBLE FOR PAYMENT; AMENDING SECTIONS 7-32-2222 AND 7-32-2245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2431

580 *(Senate Bill No. 375; Elliott)* RESTRICTING THE USE OF BALED WASTE TIRES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2434

581 *(Senate Bill No. 381; Keenan)* PROVIDING THAT THE USE OF ARBITRATION FOR DISPUTE RESOLUTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975 IS NOT MANDATORY; AND AMENDING SECTIONS 75-7-111, 75-7-112, 75-7-113, 75-7-116, 75-7-117, AND 75-7-121, MCA. 2434

582 *(Senate Bill No. 484; Mangan)* AUTHORIZING MUNICIPALITIES, CONSOLIDATED LOCAL GOVERNMENTS, AND COUNTIES TO CREATE EMPOWERMENT ZONES TO ENCOURAGE THE CREATION OF JOBS WITHIN THE ZONES; ALLOWING A TAX CREDIT AGAINST INDIVIDUAL INCOME TAXES, CORPORATION INCOME OR LICENSE TAXES, OR INSURANCE PREMIUM TAXES FOR QUALIFYING 3-YEAR JOBS CREATED IN AN EMPOWERMENT ZONE; AND AUTHORIZING THE DEPARTMENT TO ADOPT RULES 2438

583 *(Senate Bill No. 490; Grimes)* REVISING THE LAWS GOVERNING STATE ASSUMPTION OF DISTRICT COURT COSTS; REVISING CERTAIN DISTRICT COURT EXPENSES; CLARIFYING WHEN DISTRICT COURT EXPENSES MUST BE PAID DIRECTLY BY THE STATE OR PAID BY THE COUNTIES AND REIMBURSED BY THE STATE; PROVIDING FOR RETROACTIVE COUNTY RESPONSIBILITY FOR ACCUMULATED SICK AND VACATION LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES UPON STATE ASSUMPTION OF DISTRICT COURT EXPENSES; CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE SUPREME COURT FOR PAYMENT OF ACCUMULATED VACATION AND SICK LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES ON JULY 1, 2002; AMENDING SECTIONS 3-1-130, 3-5-604, 3-5-901, 3-5-902, 41-5-111, 46-8-202, 53-21-116, AND 53-21-132, MCA, AND SECTION 57, CHAPTER 585, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2442

584 *(House Bill No. 536; Brueggeman)* PROVIDING FOR THE DISCLOSURE OF THE POTENTIAL FOR MOLD IN INHABITABLE PROPERTY WITH AGREEMENTS FOR THE SALE AND PURCHASE OF INHABITABLE PROPERTY; PROVIDING FOR THE DISCLOSURE OF PRIOR TESTING

AND MITIGATION AND PROVIDING IMMUNITY FOR SELLERS, LANDLORDS, SELLER'S AGENTS, BUYER'S AGENTS, AND PROPERTY MANAGERS WHO COMPLY WITH THE DISCLOSURE REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2451

585 *(House Bill No. 489; Lehman)* PROVIDING FOR THE CONTINUED PAYMENT OF DISTRICT COURT EXPENSES ASSOCIATED WITH CIVIL JURY TRIALS AFTER STATE ASSUMPTION OF DISTRICT COURTS COSTS; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN EFFECTIVE DATE 2452

586 *(House Bill No. 5; Kasten)* APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2005; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING THAT FOR THE PURPOSE OF FOSTERING PRIVATE EFFORTS TO RESTORE, MAINTAIN, AND DEVELOP THE OLD MAIN BUILDING AT THE MONTANA VETERANS' HOME, THE DEPARTMENT OF ADMINISTRATION MAY WAIVE REQUIREMENTS PERTAINING TO BIDDING AND BONDING FOR STATE BUILDING PROJECTS IN TITLE 18, MCA, TO LABOR REQUIREMENTS IN TITLE 18, MCA, AND TO CONTRACTOR REGISTRATION IN TITLE 39, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2454

587 *(House Bill No. 11; Kasten)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM AND APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; APPROPRIATING FUNDS FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; TERMINATING CERTAIN TREASURE STATE ENDOWMENT GRANTS; AMENDING SECTION 1, CHAPTER 213, LAWS OF 1995; REPEALING SECTION 9, CHAPTER 435, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES 2459

588 *(House Bill No. 363; Brown)* AMENDING THE DEFINITION OF "ADEQUATELY FUNDED" TO ELIMINATE THE REQUIREMENT THAT THE STATE COMPENSATION INSURANCE FUND RESERVE AN ADDITIONAL AMOUNT EQUAL TO 10 PERCENT OF THE TOTAL COST OF FUTURE BENEFITS REMAINING TO BE PAID FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990, AND THE COSTS OF ADMINISTERING THE CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990; TRANSFERRING TO THE GENERAL FUND MONEY FROM CLAIMS OCCURRING BEFORE JULY 1, 1990; IMMEDIATELY TRANSFERRING THE EXISTING 10 PERCENT RESERVE TO THE STATE GENERAL FUND; AMENDING SECTION 39-71-2352, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2465

589 *(House Bill No. 424; Jent)* REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AND ENFORCE A TELEPHONE SOLICITATION NO-CALL LIST; PROHIBITING TELEPHONE SOLICITATION OF RESIDENTIAL SUBSCRIBERS WHO ARE ON THE

NO-CALL LIST; PROVIDING THAT THE NO-CALL LIST DATABASE IS NOT A PUBLIC RECORD; PROVIDING THAT RESIDENTIAL SUBSCRIBERS MAY BE PLACED ON THE NO-CALL LIST WITHOUT COST; PROHIBITING INTERFERENCE WITH CALLER IDENTIFICATION SERVICES; PROVIDING FOR CIVIL, CRIMINAL, AND INJUNCTIVE ACTIONS AGAINST PERSONS OR ENTITIES VIOLATING TELEPHONE SOLICITATION NO-CALL PROVISIONS; PROVIDING FOR DISSEMINATION OF INFORMATION ON THE NO-CALL LIST; CREATING A TELEPHONE SOLICITATION NO-CALL LIST ADMINISTRATION ACCOUNT; AND PROVIDING AN EFFECTIVE DATE 2467

590 *(House Bill No. 452; Raser)* PROVIDING A TAX CREDIT FOR CONTRIBUTIONS TO AN ACCOUNT TO BE USED FOR PROVIDING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; PROVIDING FOR THE USE OF MONEY IN THE ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 2470

591 *(House Bill No. 558; Brown)* REVISING THE TERMS OF THE NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT; REMOVING THE REGISTRATION EXEMPTION FOR SNOWMOBILES REGISTERED IN ANOTHER STATE OR COUNTRY THAT ARE INTENDED TO BE TEMPORARILY USED WITHIN THIS STATE FOR NOT MORE THAN 30 DAYS; INCREASING THE FEE FOR A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT AND DIRECTING EXPENDITURE OF THE FEE FOR SNOWMOBILE TRAIL GROOMING ASSISTANCE IN IMPACTED AREAS, FOR INCREASED ENFORCEMENT OF SNOWMOBILE LAWS, AND FOR THE STATEWIDE SNOWMOBILE TRAIL GROOMING PROGRAM; PROVIDING THAT A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT IS VALID DURING THE FISCAL YEAR IN WHICH IT IS ISSUED; PROVIDING THAT A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT IS NOT REQUIRED FOR A SNOWMOBILE THAT WILL BE USED ONLY ON TRAILS THAT ARE MANAGED JOINTLY BY AGREEMENT BETWEEN MONTANA AND ANOTHER STATE; AMENDING SECTIONS 23-2-614 AND 23-2-615, MCA; AND PROVIDING AN EFFECTIVE DATE. 2471

592 *(House Bill No. 559; Gallus)* REVISING PROVISIONS RELATING TO REGISTRATION OF CERTAIN MOTOR VEHICLES, MOTOR BOATS, SAILBOATS, PERSONAL WATERCRAFT, AND SNOWMOBILES; PROVIDING FOR A REGISTRATION DECAL AS EVIDENCE OF PAYMENT OF FEES IMPOSED FOR A VEHICLE OR VESSEL REGISTRATION PERIOD; PRESCRIBING PLACEMENT OF THE REGISTRATION DECAL; SIMPLIFYING THE FEES IN LIEU OF TAX IMPOSED ON BOATS AND CERTAIN OTHER WATERCRAFT, SNOWMOBILES, OFF-HIGHWAY VEHICLES, TRAVEL TRAILERS AND CERTAIN OTHER TRAILERS, AND MOTORCYCLES AND QUADRICYCLES; CHANGING FROM ANNUAL TO ONE-TIME-ONLY THE REGISTRATION, LICENSING, AND IMPOSITION OF THE FEE IN LIEU OF TAX AND CERTAIN OTHER FEES PAYABLE ON CERTAIN BOATS AND OTHER WATERCRAFT, SNOWMOBILES, OFF-HIGHWAY VEHICLES, TRAVEL TRAILERS AND CERTAIN OTHER TRAILERS, AND MOTORCYCLES AND QUADRICYCLES; ELIMINATING THE FEE IN LIEU OF TAX ON CERTAIN WATERCRAFT; ELIMINATING THE REGISTRATION OF AND VARIOUS FEES PAYABLE ON CAMPERS; INCREASING FEES FOR ANNUALLY REGISTERED MOTOR VEHICLES; AMENDING SECTIONS 15-1-122, 15-16-202, 23-2-502, 23-2-510, 23-2-511, 23-2-512, 23-2-513, 23-2-514, 23-2-515,

23-2-516,23-2-517, 23-2-518, 23-2-519, 23-2-601, 23-2-612, 23-2-614, 23-2-616, 23-2-617, 23-2-626, 23-2-642, 23-2-803, 23-2-804, 23-2-807, 23-2-809, 23-2-817, 61-1-129, 61-3-303, 61-3-311, 61-3-312, 61-3-313,61-3-317, 61-3-321, 61-3-332, 61-3-333, 61-3-463, 61-3-474, 61-3-521, 61-3-523, 61-3-526, 61-3-527, 61-3-530, 61-3-535, 61-3-560, AND 61-3-570, MCA; REPEALING SECTIONS 23-2-520, 23-2-618, 23-2-620, 23-2-810, 61-3-519, 61-3-524, 61-3-525, AND 61-3-606, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 2474

593 *(House Bill No. 775; Laszloffy)* REVISING THE CONDITIONS UNDER WHICH A TAX APPEAL BOARD MAY ADJUST THE ESTIMATED VALUE OF REAL OR PERSONAL PROPERTY; AMENDING SECTION 1, CHAPTER 5, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2519

594 *(Senate Bill No. 47; Gebhardt)* INCREASING THE BID THRESHOLD FOR LOCAL GOVERNMENT CONSTRUCTION CONTRACTS PAID FOR WITH GASOLINE AND VEHICLE FUELS TAX REVENUE; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2520

595 *(Senate Bill No. 57; Keenan)* DEFINING "MENTAL DISEASE OR DEFECT" FOR PURPOSES OF CRIMINAL PROCEEDINGS; AND AMENDING SECTION 46-14-101, MCA 2523

596 *(Senate Bill No. 130; McGee)* PROVIDING AUTHORITY FOR AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO COMPENSATE STATE TRUST LAND BENEFICIARIES FOR THE USE AND IMPACTS ASSOCIATED WITH HUNTING, FISHING, AND TRAPPING ON LEGALLY ACCESSIBLE STATE TRUST LANDS AS DEFINED IN DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RULES; PROVIDING THAT 10 PERCENT OF THE GROSS REVENUE RECEIVED AS A RESULT OF THE AGREEMENT BE DEPOSITED IN THE STATE LANDS RECREATIONAL USE ACCOUNT AND 90 PERCENT OF THE REVENUE RECEIVED BE ALLOCATED AMONG THE TRUSTS; PROVIDING THAT AN AGREEMENT BETWEEN THE DEPARTMENTS DOES NOT CONSTITUTE CONSIDERATION WITH REGARD TO THE RESTRICTION OF LIABILITY OF A LANDOWNER; INCLUDING FEES FOR HUNTING, FISHING, AND TRAPPING PURPOSES PURSUANT TO AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AS ONE OF THE ACTIONS FOR WHICH THE BOARD OF LAND COMMISSIONERS SHALL CONSIDER VARIOUS IMPACTS INCLUDING MANAGEMENT EXPENSES, WATER DEVELOPMENT, WEED CONTROL, AND FIRE CONTROL; PROVIDING AN EXEMPTION TO THE REQUIREMENT FOR A RECREATIONAL USE LICENSE FOR RECREATIONAL USE OF STATE TRUST LAND FOR HUNTING, FISHING, AND TRAPPING PURPOSES IF AN AGREEMENT IS REACHED BETWEEN THE TWO DEPARTMENTS; PROVIDING AN ALLOCATION SCHEME FOR REVENUE RECEIVED AS A RESULT OF AN AGREEMENT; ADDING MAINTENANCE OF ROADS NECESSARY FOR PUBLIC RECREATIONAL USE OF STATE TRUST LAND AS A QUALIFIED USE OF FUNDS IN THE RECREATIONAL USE ACCOUNT; INCREASING THE RESIDENT AND NONRESIDENT WILDLIFE CONSERVATION LICENSE FEES BY $2 EACH; AMENDING SECTIONS 70-16-302, 77-1-106, 77-1-801, 77-1-802, 77-1-808, AND 87-2-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . 2523

597 *(Senate Bill No. 271; Stapleton)* REQUIRING THAT THE PROCESS ORIENTED INTEGRATED SYSTEM (POINTS) COMPUTER SYSTEM OF THE DEPARTMENT OF REVENUE TO BE REPLACED WITH A DIFFERENT COMPUTER SYSTEM; REQUIRING THAT CURRENT DATA NEEDED FOR THE REPLACEMENT SYSTEM BE CORRECTED; PROVIDING THAT UNEMPLOYMENT INSURANCE TAX COLLECTIONS WILL NOT BE PROCESSED UNDER THE REPLACEMENT SYSTEM BY TERMINATING THE DELEGATION TO THE DEPARTMENT OF REVENUE OF RESPONSIBILITY FOR COLLECTING UNEMPLOYMENT INSURANCE TAXES FOR THE DEPARTMENT OF LABOR AND INDUSTRY; INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AUTHORIZING A LOAN TO THE DEPARTMENT OF REVENUE FOR THE REPLACEMENT SYSTEM; REQUIRING THE DEPARTMENT OF REVENUE TO IMPOSE AN ADMINISTRATIVE CHARGE FOR TAX COLLECTION SERVICES; REQUIRING THE ADMINISTRATIVE CHARGE TO BE DEPOSITED IN AN ACCOUNT TO BE USED TO PAY THE DEBT SERVICE ON LOANS ISSUED FOR THE REPLACEMENT SYSTEM; APPROPRIATING MONEY FOR DEPARTMENT OF REVENUE'S TRANSITION COSTS AND FOR LOAN REPAYMENT; AMENDING SECTIONS 15-1-501, 17-5-1608, 17-5-2001, 39-51-301, 39-51-1109, 39-51-1301, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES. 2530

598 *(Senate Bill No. 304; Johnson)* DIRECTING A COMMITTEE TO STUDY THE ROLE OF THE STATE COMPENSATION INSURANCE FUND AND TO DETERMINE IF IT IS COST-EFFECTIVE AND IN THE BEST INTEREST OF THE STATE, MONTANA EMPLOYEES, AND MONTANA EMPLOYERS TO SELL ALL OR A PORTION OF THE STATE COMPENSATION INSURANCE FUND ASSETS AND LIABILITIES AND TO STUDY THE CREATION OF AN ASSIGNED RISK POOL; PROVIDING FOR A REPORT TO THE 59TH LEGISLATURE; REQUIRING LEGISLATIVE APPROVAL OF A SALE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2539

599 *(Senate Bill No. 326; McGee)* GENERALLY REVISING THE LAWS RELATED TO GROWTH POLICIES AND PLANNING BOARDS; REVISING THE DEFINITION OF "GROWTH POLICY"; ELIMINATING THE DEFINITION OF A TERM THAT IS NOT USED IN THE GROWTH POLICY LAWS; REQUIRING THE GOVERNING BODY TO ASSIGN STAFF TO THE PLANNING BOARD AND ELIMINATING THE AUTHORITY OF THE PLANNING BOARD TO APPOINT STAFF; CLARIFYING THAT PREPARATION AND ADOPTION OF A GROWTH POLICY IS OPTIONAL; PROVIDING THAT A GROWTH POLICY MUST INCLUDE REQUIRED ELEMENTS BY OCTOBER 1, 2006, AND CLARIFYING THAT THE EXTENT TO WHICH THE REQUIRED ELEMENTS OF A GROWTH POLICY ARE ADDRESSED IS AT THE FULL DISCRETION OF THE GOVERNING BODY; PROVIDING THAT A GROWTH POLICY MAY COVER PART OF A JURISDICTIONAL AREA; REVISING THE PROCEDURES FOR ADOPTION, REVISION, AND REPEAL OF A GROWTH POLICY; REVISING THE PROVISIONS GOVERNING THE USE OF AN ADOPTED GROWTH POLICY; CONFORMING PROVISIONS IN THE ZONING AND SUBDIVISION LAWS TO THESE REVISIONS IN THE GROWTH POLICY LAWS; ELIMINATING THE REQUIREMENT THAT SUBDIVISION REGULATIONS BE IN ACCORDANCE WITH THE GOALS AND OBJECTIVES OF THE GROWTH POLICY WITHIN 1 YEAR OF ADOPTION OF A GROWTH POLICY; AMENDING SECTIONS 76-1-103, 76-1-106, 76-1-306, 76-1-601, 76-1-603, 76-1-604, 76-1-605, 76-2-201,

76-2-310, 76-3-210, 76-3-504, 76-3-505, 76-4-122, AND 76-4-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2540

600 *(Senate Bill No. 330; Mangan)* REQUIRING THE PUBLIC SERVICE COMMISSION TO TAKE INTO ACCOUNT THE ECONOMIC BENEFITS ASSOCIATED WITH THE DEFAULT SUPPLIER'S PROCUREMENT OF ELECTRICITY SUPPLY; AMENDING SECTION 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 2549

601 *(Senate Bill No. 336; Mahlum)* IMPLEMENTING RECOMMENDATIONS OF THE STATE PARK FUTURES II COMMITTEE TO IMPROVE THE OPERATION AND FUNDING OF THE STATE PARK SYSTEM; ASSESSING AN OPTIONAL $4 FEE FOR EACH PASSENGER CAR OR TRUCK UNDER 8,001 POUNDS GVW THAT IS REGISTERED FOR LICENSING AND DIRECTING THAT THE FEE BE USED FOR STATE PARKS, FOR FISHING ACCESS SITES, AND FOR THE OPERATION OF STATE-OWNED FACILITIES AT VIRGINIA CITY AND NEVADA CITY; ALLOWING THE REGISTRANT OF A PASSENGER CAR OR TRUCK UNDER 8,001 POUNDS GVW TO MAKE A WRITTEN ELECTION NOT TO PAY THE ADDITIONAL $4 FEE IF THE REGISTRANT DOES NOT INTEND TO USE STATE PARKS AND FISHING ACCESS SITES; PROVIDING THAT PERSONS WHO PAY THE OPTIONAL FEE MAY NOT BE REQUIRED TO PAY A DAY-USE FEE FOR ACCESS TO STATE PARKS; AMENDING SECTIONS 15-1-122, 23-1-105, AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2550

602 *(Senate Bill No. 347; Keenan)* GENERALLY REVISING THE LAWS RELATING TO PUBLIC MENTAL HEALTH SERVICES; PROVIDING FOR DEVELOPMENT OF SERVICE AREA AUTHORITIES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING FOR DEPARTMENT DUTIES, INCLUDING PREPARATION AND MAINTENANCE OF A COMPREHENSIVE MENTAL HEALTH PLAN, MENTAL HEALTH SERVICE AREAS, AND PROVIDER CERTIFICATION STANDARDS; PROVIDING FOR DEVELOPMENT OF REGIONAL SERVICE AREA AUTHORITIES AND SERVICE PLANS WITH DEPARTMENT SUPPORT; REVISING RESPONSES TO THE MENTAL DISABILITIES BOARD OF VISITORS BY MENTAL HEALTH FACILITIES; REPEALING PROVISIONS REGARDING REGIONAL MENTAL HEALTH CORPORATIONS AND COMMUNITY MENTAL HEALTH CENTERS; AMENDING SECTIONS 19-3-108, 53-1-602, 53-6-101, 53-21-104, AND 53-21-138, MCA; REPEALING SECTIONS 53-21-201, 53-21-202, 53-21-203, 53-21-204, 53-21-205, 53-21-206, 53-21-211, 53-21-212, 53-21-213, AND 53-21-214, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 2554

603 *(Senate Bill No. 360; Thomas)* REQUIRING THE STATE FUND TO INCLUDE A PROVISION IN EVERY POLICY OF INSURANCE ISSUED THAT INCORPORATES A RESTRICTION ON THE USE AND TRANSFER OF MONEY COLLECTED BY THE STATE FUND; PROHIBITING THE LEGISLATURE FROM TRANSFERRING THE ASSETS OF THE STATE FUND FOR CLAIMS FOR INJURIES OCCURRING ON OR AFTER JULY 1, 1990, TO OTHER FUNDS OR FOR OTHER PROGRAMS; AMENDING SECTIONS 39-71-2316, 39-71-2320, 39-71-2322, AND 39-71-2327, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2567

604 *(Senate Bill No. 395; Perry)* PROVIDING FOR THE SPORT HUNTING OF WILD BUFFALO OR BISON AS A MANAGEMENT TOOL THROUGH ESTABLISHMENT OF A SPECIAL WILD BUFFALO OR BISON LICENSE; ESTABLISHING REGULATIONS RELATED TO THE

SPECIAL WILD BUFFALO OR BISON LICENSE AND SETTING A PRICE FOR THE LICENSE; CLARIFYING DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN ADMINISTERING THE SPECIAL WILD BUFFALO OR BISON LICENSE, INCLUDING CONSULTATION AND COOPERATION WITH THE DEPARTMENT OF LIVESTOCK IN DEVELOPING AND IMPLEMENTING RULES REGARDING THE SAFE HANDLING OF WILD BUFFALO OR BISON PARTS; AMENDING SECTIONS 81-2-120, 87-1-216, AND 87-2-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2569

605 *(Senate Bill No. 415; Thomas)* REVISING THE QUALIFICATIONS FOR A GOLF COURSE BEER AND WINE LICENSE; CHANGING THE REQUIREMENTS FOR NUMBER OF HOLES, COURSE LENGTH, AND PROXIMITY TO A MUNICIPALITY; AMENDING SECTION 16-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2573

606 *(Senate Bill No. 461; Story)* TO MITIGATE THE EFFECTS OF THE PERIODIC PROPERTY TAX REVALUATION CYCLE THAT BEGINS IN 2003; DECREASING THE CLASS FOUR PROPERTY TAX RATE FROM 3.46 PERCENT TO 3.01 PERCENT OVER A 6-YEAR PERIOD; PROVIDING RATE ADJUSTMENTS TO CLASS FOUR PROPERTY TAX RATES FOR CERTAIN RESIDENCES WITH EXTRAORDINARY INCREASES IN MARKET VALUE; ESTABLISHING NEW CLASS FOUR PROPERTY TAX EXEMPTION RATES FOR RESIDENTIAL PROPERTY AND COMMERCIAL AND INDUSTRIAL PROPERTY THAT ADJUST THE EXEMPT PERCENTAGE OF VALUE OVER 6 YEARS; PROVIDING AN EXTENSION OF 2003 ADMINISTRATIVE DEADLINES RELATING TO PROPERTY TAXATION; PROVIDING FOR AN INTERIM PROPERTY TAX REAPPRAISAL STUDY COMMITTEE AND A TAX REFORM STUDY COMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-6-134, 15-6-201, AND 15-7-111, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE 2575

607 *(Senate Bill No. 483; Keenan)* GENERALLY REVISING LAWS CONCERNING THE BUDGET AND BUDGET ANALYSIS; REQUIRING THE STATE TREASURER TO PROVIDE INFORMATION ON THE STATE WEBSITE ON HOW TO DONATE FUNDS TO ANY STATE FUNCTION; REQUIRING A POSITIVE GENERAL FUND ENDING BALANCE AT THE END OF A BIENNIUM; REVISING THE DEFINITION OF "PROJECTED GENERAL FUND BUDGET DEFICIT"; AND AMENDING SECTIONS 17-1-111, 17-7-102, 17-7-131, AND 17-7-140, MCA 2593

608 *(Senate Bill No. 485; Cobb)* REVISING THE ALLOCATION AND USE OF A PORTION OF TOBACCO SETTLEMENT PROCEEDS FUNDS FOR THE BIENNIUM BEGINNING JULY 1, 2003; TRANSFERRING TOBACCO SETTLEMENT PROCEEDS FUNDS TO A PREVENTION AND STABILIZATION ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE USED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO FINANCE, ADMINISTER, AND PROVIDE HEALTH AND HUMAN SERVICES; AUTHORIZING THE USE OF TOBACCO SETTLEMENT PROCEEDS FUNDS TO PROVIDE MATCHING FUNDS FOR THE MEDICAID PROGRAM; ESTABLISHING THE PREVENTION AND STABILIZATION ACCOUNT AND ALLOCATING ACCOUNT PROCEEDS; APPROPRIATING FUNDS FROM THE PREVENTION AND STABILIZATION ACCOUNT; AMENDING SECTION 17-6-606, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2597

609 *(Senate Bill No. 487; Pease)* REVISING LAWS RELATED TO WIND ENERGY TAXATION AND ECONOMIC DEVELOPMENT; ELIMINATING THE TAX CREDIT LIMITATION FOR WIND ENERGY DEVELOPMENT; INCREASING THE MAXIMUM AMOUNT OF OUTSTANDING ECONOMIC DEVELOPMENT BONDS THAT THE BOARD OF INVESTMENTS MAY ISSUE; INCREASING THE ALLOWABLE AMOUNT OF MONEY THAT THE BOARD OF INVESTMENTS MAY USE FOR FINANCING A MAJOR PROJECT; AMENDING SECTIONS 15-32-404, 17-5-1506, AND 17-5-1527, MCA; REPEALING SECTION 15-32-403, MCA; AND PROVIDING EFFECTIVE DATES 2599

610 *(Senate Bill No. 493; Keenan)* REVISING THE AUTHORIZED USE OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT; AMENDING SECTION 61-3-550, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2602

611 *(Senate Bill No. 362; Grimes)* INCREASING THE PENALTIES FOR ILLEGAL POSSESSION OR CONSUMPTION OF AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE; REQUIRING CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT IN CERTAIN CASES; REQUIRING COURTS TO REPORT THE NAMES OF MINORS WHO ARE CONVICTED OF THE OFFENSE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND REQUIRING THAT DEPARTMENT TO MAKE THE NAMES AVAILABLE UPON REQUEST TO PEACE OFFICERS AND COURTS; AND AMENDING SECTIONS 45-5-624 AND 61-2-302, MCA. 2603

612 *(House Bill No. 2; Lewis)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2005; AND PROVIDING AN EFFECTIVE DATE 2608

HOUSE JOINT RESOLUTIONS

HJR Page

2 *(Devlin)* ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED GENERAL FUND REVENUE FOR EACH YEAR OF THE 2004-05 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED GENERAL FUND BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A PRELIMINARY JUNE 30, 2002, UNRESERVED GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THAT THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 2003, 2004, AND 2005. 2669

3 *(Lawson)* REQUESTING AN INTERIM COMMITTEE STUDY TO EXAMINE CHILD ABUSE AND NEGLECT PROCEEDINGS IN ORDER TO DETERMINE HOW TO PROVIDE REPRESENTATION FOR INDIGENT FAMILIES AND TO DETERMINE THE APPROPRIATE EARLIEST OPPORTUNITY. 2678

4 *(Lange)* REQUESTING AN INTERIM STUDY TO INVESTIGATE OPTIONS FOR IMPROVING THE SUPPLY AND DISTRIBUTION OF WATER IN MONTANA AND TO EVALUATE THE WATER STORAGE

POLICY ESTABLISHED IN SECTION 85-1-703, MCA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE AND THE MONTANA CONGRESSIONAL DELEGATION 2680

5 *(Lewis)* URGING LEWIS AND CLARK COUNTY TO WORK COOPERATIVELY WITH THE BOARD OF REGENTS TO SECURE FINANCING FOR A NEW BUILDING AT THE HELENA COLLEGE OF TECHNOLOGY OF THE UNIVERSITY OF MONTANA BY ISSUING BONDS TO FINANCE THE CONSTRUCTION OF THE PROJECT AND TO ENTER INTO AN AGREEMENT TO LEASE THE FACILITY, UPON COMPLETION, TO THE BOARD OF REGENTS UNTIL THE BONDS ARE RETIRED 2681

6 *(Brown)* URGING THE UNITED STATES CONGRESS AND PRESIDENT GEORGE W. BUSH TO INCREASE FUNDING FOR SPECIAL EDUCATION TO MEET THE FEDERAL COMMITMENT UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2682

8 *(Juneau)* REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO GATHER INFORMATION RELATING TO THE DROPOUT RATES, GRADUATION RATES, AND AT-RISK FACTORS AMONG AMERICAN INDIAN STUDENTS IN MONTANA'S PUBLIC SCHOOLS AND TO DEVELOP A STRATEGIC STATE PLAN TO REDUCE THE DROPOUT RATE AMONG ALL STUDENTS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY AND RECOMMENDATIONS TO THE 59TH LEGISLATURE 2683

9 *(Smith)* REQUESTING THAT CONGRESS INVESTIGATE WAYS OF DEALING WITH THE COST OF MEDICATIONS IN ORDER TO MAKE THEM AFFORDABLE. 2684

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SESSION LAWS

Enacted by the

FIFTY-EIGHTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 6, 2003, through April 26, 2003

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AMENDING SECTION 1, CHAPTER 1, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the general fund for fiscal years 2003, 2004, and 2005 for the operation of the 58th legislature and the costs of preparing for the 59th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	$2,062,881
2. House of Representatives (26)	3,339,035
3. Legislative Services Division (22)	632,510

Section 2. Section 1, Chapter 1, Laws of 2001, is amended to read:

"Section 1. Appropriations. *(1)* The following amounts are appropriated from the general fund for fiscal years 2001, 2002, and 2003 for the operation of the 57th legislature and costs of preparing for the 58th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	~~$2,355,658~~ *$2,205,658*
2. House of Representatives (26)	~~3,701,192~~ *3,451,192*
3. Legislative Services Division Feed Bill (22)	~~643,554~~ *578,554*

(2) The following amounts are appropriated from the general fund for fiscal year 2003 for the operation of the 58th legislature:

1. Senate (25)	*$150,000*
2. House of Representatives (26)	*250,000*
3. Legislative Services Division Feed Bill (22)	*65,000*"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved January 31, 2003

CHAPTER NO. 2

[HB 21]

AN ACT DESIGNATING WOLF POINT, MONTANA, AS THE SITE OF THE MONTANA COWBOY HALL OF FAME AND DIRECTING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO IDENTIFY IT AS SUCH ON OFFICIAL STATE MAPS.

WHEREAS, Wolf Point has the oldest continually held rodeo in Montana; and

WHEREAS, Montana Professional Rodeo Cowboys Association (PRCA) yearend winners and Montana PRCA Circuit Finals contestants have chosen

the Wolf Point Wild Horse Stampede Committee 12 times in the last 13 years as the Montana Pro Rodeo Committee of the Year; and

WHEREAS, Wolf Point is home of rodeo legend stock contractor, Marvin Brookman, who is currently the oldest active PRCA cardholder in the United States; and

WHEREAS, according to local history that is provided in Marvin Presser's book Wolf Point: A City of Destiny, it was during the midteens of the 1900s that "local Cowboys and Indians would hold an impromptu gathering and stage a little afternoon rodeo on the downtown dirt streets on a summer afternoon"; and

WHEREAS, Wolf Point is located on the stretch of U.S. Highway 2, a coast-to-coast artery of the United States, that was originally part of the Theodore Roosevelt International Highway when it was first constructed in 1919; and

WHEREAS, local history reflects traditions of the Indian horsemen, along with some of the largest cattle and horse ranches in Montana; and

WHEREAS, Wolf Point is the birthplace of renowned Hollywood movie star, trick-rope performer, and American cowboy hero Montie Montana; and

WHEREAS, the hall of fame would be housed in conjunction with a museum facility currently in development along U.S. Highway 2 in Wolf Point.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana cowboy hall of fame — Wolf Point. (1) The city of Wolf Point is designated as the site of the Montana cowboy hall of fame.

(2) The department of commerce and the department of transportation shall identify the city of Wolf Point as the location of the Montana cowboy hall of fame on official state maps.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Ap proved Feb ru ary 3, 2003

CHAPTER NO. 3

[HB 309]

AN ACT PROVIDING A POPULATION CRITERION FOR THE REDISTRICTING OF LEGISLATIVE DISTRICTS; PROHIBITING THE SECRETARY OF STATE FROM ACCEPTING A PLAN NOT IN COMPLIANCE WITH CERTAIN CRITERIA; AMENDING SECTION 5-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Redistricting criteria. (1) In the drawing of legislative districts, the districting and apportionment commission shall comply with the following criteria:

(a) the districts must be compact and contiguous; and

(b) the districts must be as equal as practicable.

(2) For the purposes of this section, "as equal as practicable" means within a plus or minus 1% relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census.

Section 2. Section 5-1-111, MCA, is amended to read:

"5-1-111. Final plan — dissolution of commission. (1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(2) Within 30 days after receiving the legislative redistricting plan and the legislature's recommendations, the commission shall file its final legislative redistricting plan with the secretary of state ~~and it shall become law~~. *The secretary of state may not accept any plan that does not comply with the criteria in [section 1]. Upon acceptance of a plan by the secretary of state, the plan is considered filed and becomes law.*

(3) Upon *the acceptance and* filing *of* both plans, the commission ~~shall be~~ *is* dissolved."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 1, part 1, and the provisions of Title 5, chapter 1, part 1, apply to [section 1].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to any legislative redistricting plan of the districting and apportionment commission that was not filed with the secretary of state on [the effective date of this act].

Ap proved Feb ru ary 4, 2003

CHAPTER NO. 4

[SB 258]

AN ACT PROVIDING FOR THE ASSIGNMENT OF HOLDOVER SENATORS TO NEW DISTRICTS FOR THE REMAINDER OF THEIR TERMS IN THE SESSION DURING WHICH THE LEGISLATIVE REDISTRICTING PLAN IS SUBMITTED TO THE LEGISLATURE FOR RECOMMENDATIONS; PROHIBITING THE DISTRICTING AND APPORTIONMENT COMMISSION FROM ASSIGNING HOLDOVER SENATORS TO NEW DISTRICTS; PROVIDING FOR THE ASSIGNMENT OF HOLDOVER SENATORS TO DISTRICTS BY JOINT RESOLUTION; PROVIDING THAT THE ASSIGNMENT OF A HOLDOVER SENATOR BE BASED UPON THE GREATEST PERCENTAGE OF POPULATION IN THE NEW DISTRICT THAT VOTED FOR THE SENATOR IN THE PRIOR ELECTION AND THE SENATOR'S RESIDENCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Assignment of holdover senators. (1) In the session in which the legislative redistricting plan is submitted to the legislature for recommendations, the legislature, by joint resolution, shall assign holdover senators to a district for the remainder of those senators' terms. The districting and apportionment commission may not assign holdover senators to districts for the remainder of those senators' terms. The assignments must occur after the plan becomes law.

(2) In making the assignments provided for in subsection (1), the legislature, if possible, shall assign a holdover senator to a district based upon the greatest percentage of population in the new district that voted for the senator in the prior election and the senator's residence.

(3) For the purposes of this section, a holdover senator is a senator who is not required to seek election at the general election held immediately following the districting plan becoming law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 1, part 1, and the provisions of Title 5, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 4, 2003

CHAPTER NO. 5

[HB 188]

AN ACT CREATING A TRESPASS EXCEPTION FOR DEPARTMENT OF REVENUE PROPERTY VALUATION EMPLOYEES ACTING WITHIN THE COURSE AND SCOPE OF THEIR DUTIES; REQUIRING THAT THE DEPARTMENT PUBLISH NOTICE OF INTENT TO ENTER ONTO PROPERTY FOR APPRAISAL AND AUDIT PURPOSES; REQUIRING THAT THE DEPARTMENT MAIL A ONE-TIME NOTICE TO OWNERS OF PRIVATE POSTED LAND THAT DEPARTMENT EMPLOYEES MAY ENTER THE PROPERTY FOR APPRAISAL AND AUDIT PURPOSES; REQUIRING THAT COUNTY TREASURERS ANNUALLY PROVIDE NOTICE TO LANDOWNERS THAT DEPARTMENT EMPLOYEES MAY ENTER PRIVATE LAND FOR APPRAISAL AND AUDIT PURPOSES; PROVIDING THAT PROPERTY VALUATION EMPLOYEES MAY ENTER PROPERTY UNDER SPECIFIC GUIDELINES; ALLOWING THE LANDOWNER TO REQUIRE THAT THE LANDOWNER OR LANDOWNER'S AGENT BE PRESENT WHEN DEPARTMENT EMPLOYEES ENTER THE LANDOWNER'S PROPERTY; ALLOWING THE DEPARTMENT TO ESTIMATE THE VALUE OF PROPERTY WHEN ACCESS IS DENIED; PROHIBITING, UNDER CERTAIN CONDITIONS, A COUNTY TAX APPEAL BOARD AND THE STATE TAX APPEAL BOARD FROM ADJUSTING ESTIMATED PROPERTY VALUES; AMENDING SECTION 45-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules. (1) Subject to the conditions and restriction

of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the department and acting within the course and scope of the employees' official duties.

(2) A person qualified under subsection (1) may enter private land to appraise or audit property for property tax purposes.

(3) (a) No later than November 30 of each year, the department shall publish in a newspaper of general circulation in each county a notice that the department may enter property for the purpose of appraising or auditing property.

(b) The published notice must indicate:

(i) that a landowner may require that the landowner or the landowner's agent be present when the person qualified in subsection (1) enters the land to appraise or audit property;

(ii) that the landowner shall notify the department in writing of the landowner's requirement that the landowner or landowner's agent be present; and

(iii) that the landowner's written notice must be mailed to the department at an address specified and be postmarked not more than 30 days following the date of publication of the notice. The department may grant a reasonable extension of time for returning the written notice.

(4) The written notice described in subsection (3)(b)(ii) must be legible and include:

(a) the landowner's full name;

(b) the mailing address and property address; and

(c) a telephone number at which an appraiser may contact the landowner during normal business hours.

(5) When the department receives a written notice as described in subsection (4), the department shall contact the landowner or the landowner's agent to establish a date and time for entering the land to appraise or audit the property.

(6) If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land.

(7) A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent gives permission to the department to enter the land to appraise or audit the property.

(8) A person qualified under subsection (1) who enters land pursuant to this section shall carry on the person identification sufficient to identify the person and the person's employer and shall present the identification upon request.

(9) The authority granted by this section does not authorize entry into improvements, personal property, or buildings or structures without the permission of the owner or the owner's agent.

(10) Vehicular access to perform appraisals and audits is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(11) The department shall adopt rules that are necessary to implement [sections 1 and 2]. The rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to respond to notices from the department.

Section 2. Notice appraisal and audit — statement of rights. Each county treasurer shall include in the notice required by 15-16-101(1), 15-16-119, and 15-24-202 a statement that property valuation staff employed by the department may enter private property to appraise or audit property for property tax purposes as provided in [section 1]. The notice must include a statement of landowner rights in words substantially similar to: "You or your agent have the right to be present when your property is appraised or audited. If you wish to make an appointment for the next tax year, call [insert local department of revenue office phone number] or write your local department of revenue office between December 1 and December 31 of this year."

Section 3. Notification appraisal and audit. For property identified by the department of revenue as posted private land pursuant to 45-6-201, the department shall, not later than [60 days after the effective date of this act], mail notice to the owner of the posted private land that property valuation staff employed by the department may enter the property to appraise or audit property for property tax purposes. The notice must include the provisions of [section 1(3) and (4)].

Section 4. Section 45-6-203, MCA, is amended to read:

"45-6-203. Criminal trespass to property. (1) Except as provided in *[section 1] and* 70-16-111, a person commits the offense of criminal trespass to property if the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 7, part 1, and the provisions of Title 15, chapter 7, part 1, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [Section 3] terminates September 1, 2003.

Ap proved Feb ru ary 6, 2003

CHAPTER NO. 6

[HB 16]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION COSTS FOR THE BIENNIUM ENDING JUNE 30, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation — time limits. (1) Subject to subsection (2), up to $6,571,766 is appropriated from the general fund to the department of natural resources and conservation forestry program.

(2) The appropriation contained in subsection (1) is intended to provide the necessary funding for the supplemental fiscal year transfer for fire costs in fiscal year 2002 and for fire costs in the fiscal year ending June 30, 2003. The unspent balance of the appropriation must revert to the general fund.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 7

[HB 25]

AN ACT PROVIDING THAT A PRIMARY ELECTION CANDIDATE MAY FILE A DECLARATION FOR ONLY ONE PARTY'S NOMINATION; AND AMENDING SECTION 13-10-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall ~~send~~ *file* a declaration for nomination ~~to~~ *with* the secretary of state or election administrator. Each candidate for governor shall ~~send~~ *file* a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. *For a partisan election, an elector may not file a declaration for more than one party's nomination.*

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature

changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 8

[HB 31]

AN ACT REVISING FERTILIZER LAWS; INCREASING FERTILIZER REGISTRATION FEES; REQUIRING ANALYTICAL INFORMATION WITH FERTILIZER REGISTRATION APPLICATIONS; REVISING THE MONTANA COMMERCIAL FERTILIZER LAWS TO ALLOW FOR AN INCREASE IN THE INSPECTION FEE PER TON OF ANHYDROUS AMMONIA AND TO PROVIDE THE MINIMUM AND MAXIMUM AMOUNTS TO WHICH THE FEE MAY BE ADJUSTED BY RULE; ELIMINATING THE MANDATORY HEARING BEFORE INSPECTION FEES CAN BE CHANGED BY RULE; AMENDING SECTIONS 80-10-201 AND 80-10-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-10-201, MCA, is amended to read:

"80-10-201. Registration. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures ~~shall~~ *must* be registered by or on behalf of the manufacturer before distribution in this state. The application for registration ~~shall~~ *must* be submitted to the department on a form furnished or approved by the department and ~~shall~~ *must* be accompanied by a nonrefundable fee of ~~$10~~ *$20* per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers, which ~~shall~~ *must* be registered at a nonrefundable fee of ~~$25~~ *$35* each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration ~~shall~~ *must* include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) a copy or facsimile of each label and of promotional material when requested by the department~~.~~*; and*

(vi) analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.

(b) ~~Further, the~~ *The* department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product ~~which~~ *that* is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor may not be required to register any brand or grade of commercial fertilizer ~~which~~ *that* is already registered under this section by another person.

(4) ~~No~~ *A* manufacturer may *not* reregister ~~his~~ *a* product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department."

Section 2. Section 80-10-207, MCA, is amended to read:

"80-10-207. Fees. (1) (a) A manufacturer registering under 80-10-201(1) shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(i) *for* inspection of fertilizers other than anhydrous ammonia, 20 cents per ton. The department may by rule ~~after hearing~~ adjust the inspection fee ~~not to exceed a maximum of 25 cents per ton~~ to maintain adequate funding for the administration of this part. *The fee may not be less than 20 cents per ton or more than 25 cents per ton.* A change in fee becomes effective on the first day of a reporting period. All manufacturers must be given notice of a change in fees before the effective date.

(ii) *for* inspection of anhydrous ammonia, ~~20~~ *65* cents per ton. The department may by rule ~~after hearing~~ adjust the anhydrous ammonia inspection fee ~~not to exceed a maximum of 65 cents per ton~~ to maintain adequate funding for the administration and enforcement of part 5 of this chapter. *The fee may not be less than 65 cents per ton or more than $1.30 per ton.* A change in fee becomes effective on the first day of a reporting period. All registrants and manufacturers of anhydrous ammonia must be given notice of a change in fees before the effective date of the fee adjustment.

(iii) *for* assessment, the fee prescribed in 80-10-103. The assessment fee must be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment.

(2) There must be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold in a 6-month period, there must be paid to the department a fee of $5 for each soil amendment for each 6-month period in lieu of the fee of 10 cents per ton. Inspection fees must be used by the department for administration of this part.

(3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer or soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period.

(ii) Each manufacturer who registers or a person who registers on the manufacturer's behalf a soil amendment or commercial fertilizer in this state, except specialty fertilizer and unmanipulated manures, shall file with the department on forms furnished or approved by the department a monthly statement setting forth the number of net tons of each registered commercial fertilizer and soil amendment distributed in this state during the month and to whom it was distributed. The report is due on or before the 30th day of the following month. The manufacturer or person registering on behalf of the manufacturer shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report required by subsection (3)(a)(ii) is not filed and the payment of fees is not made within 30 days after the end of the period, a collection fee amounting to 10% of the amount due but not less than $10 must be assessed against the manufacturer and the amount of fees due constitutes a debt and becomes the basis of a judgment against the manufacturer.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and money collected as penalties must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii) ~~of this section~~ pursuant to the provisions of 17-6-201. The income from the investment must be deposited in the anhydrous ammonia account in the state special revenue fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 9

[HB 34]

AN ACT PROVIDING THAT THE PURCHASE OF RETAIL INSTALLMENT CONTRACTS ENTERED INTO IN THIS STATE IS SUBJECT TO REGULATION BY THE DEPARTMENT OF ADMINISTRATION; AND AMENDING SECTION 31-1-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-221, MCA, is amended to read:

"31-1-221. Licensing of sales finance companies required. (1) ~~No~~ *A* person ~~shall~~ *may not* engage in the business of a sales finance company, *including the purchase of retail installment contracts that are entered into* in this state, without a license ~~therefor~~ as provided in this part, except that ~~no~~ *a* bank, trust company, or savings and loan association authorized to do business in this state ~~shall be~~ *is not* required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for ~~such~~ *a* license ~~shall~~ *must* be in writing, under oath, and in the form prescribed by the department. The application ~~shall~~ *must* contain:

(a) the name of the applicant;

(b) *the* date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information ~~as~~ *with regard* to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) ~~such~~ other pertinent information as the department may require.

(3) The license fee for each calendar year or part ~~thereof~~ *of a year* ~~shall be the sum of~~ *is* $100 for each place of business of the licensee in this state.

(4) Each license ~~shall~~ *must* specify the location of the office or branch and must be conspicuously displayed there. ~~In case such~~ *If the* location ~~be~~ *is* changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of ~~such~~ *a license* application and the payment of ~~said~~ *the license* fee, the department shall issue a license to the applicant to engage in the business of a sales finance company ~~under and~~ in accordance with the provisions of this part for a period ~~which shall expire~~ *that expires* December 31 ~~next~~ following the date of ~~its~~ *the license's* issuance. ~~Such~~ *The* license ~~shall~~ *is* not ~~be~~ transferable or assignable. ~~No~~ *A* licensee ~~shall~~ *may not* transact any business provided for by this part under any other name.

(6) Fees collected under this chapter ~~shall~~ *must* be deposited in the state special revenue fund for the use of the department in its supervision function."

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 10

[HB 58]

AN ACT PROVIDING THAT UNPAID INDIVIDUAL INCOME TAXES ARE DUE ON OR BEFORE THE DATE REQUIRED FOR FILING A TAX RETURN AND NOT NECESSARILY AT THE TIME OF THE FILING OF THE TAX RETURN; AND AMENDING SECTION 15-30-142, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) For both resident and nonresident taxpayers, each

single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than $1,500, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $3,000, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, ~~at the time of filing the return required by this chapter~~ *on or before the date required by this chapter for filing a return*, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 11

[HB 62]

AN ACT REVISING THE STATE APIARY LAWS BY PROVIDING FOR A STATE SPECIAL REVENUE ACCOUNT AND FUNDING SOURCE; FURTHER DEFINING THE TERM "APIARY"; EXPANDING THE DEFINITION OF "PEST"; ESTABLISHING MAXIMUM AND MINIMUM REGISTRATION AND INSPECTION FEES AND ALLOWING THE DEPARTMENT OF AGRICULTURE TO REVISE THESE FEES BY RULE; PROVIDING FOR THE DISPOSITION OF FUNDS RECEIVED AS THE RESULT OF A PENALTY; AMENDING SECTIONS 80-6-101, 80-6-105, 80-6-202, AND 80-6-303, MCA; REPEALING SECTION 80-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State special revenue account — source of funds. (1) There is an apiary account in the state special revenue fund established in 17-2-102. All funds received by the department under parts 1 through 3 must be deposited in the apiary account.

(2) The department may direct the board of investments to invest the funds collected under subsection (1), pursuant to the provisions of 17-6-201. The interest and income from the investments must be credited to the account provided for in subsection (1).

Section 2. Section 80-6-101, MCA, is amended to read:

"80-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Apiary" means a ~~place~~ *location* where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means a disease or abnormal condition of egg, larval, pupal, or adult stages of bees. Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means an apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata) ~~and~~, those honeybees Africanized by interbreeding with the African honeybee~~,~~, *and any other parasite or predator that attacks the egg, larval, pupal, or adult stages of the honeybee that are subject to regulation under parts 1 through 3 of this chapter* as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112."

Section 3. Section 80-6-105, MCA, is amended to read:

"80-6-105. Registration fees. (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee. *Except as provided in this subsection, the fee is $11. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than $8 an apiary or more than $20 an apiary.* ~~in accordance with the following schedule of fees for the total number of colonies owned or possessed:~~

~~1 to 10 colonies of bees.....$ 20~~

~~11 to 200 colonies .....50~~

~~201 to 500 colonies ..... 80~~

~~501 to 1,000 colonies ..... 140~~

~~1,001 to 3,000 colonies ..... 200~~

~~3,001 to 5,000 colonies ..... 280~~

~~5,001 colonies and upward .....400~~

(2) If, after registration, additional or new ~~colonies~~ *apiary locations* are authorized for a registered apiary, fees must be paid by the registrant in accordance with ~~the schedule in~~ subsection (1) ~~for the total number of colonies for that year~~."

Section 4. Section 80-6-202, MCA, is amended to read:

"80-6-202. Inspection of bees or used beekeeping equipment transported interstate. (1) A person may not transport or bring into the state bees or used beekeeping equipment or containers, including honey to be extracted, unless under a compliance agreement or certified and ~~duly~~ marked as being apparently pest- and disease-free by an official responsible for apiary regulations of the state from which they are being moved. The department must be advised in advance of the date of entry and the destination of the bees or material. Used equipment or bees transported into the state may be

quarantined by the department, in accordance with 80-6-201(1)(c), from the time they enter the state until they have been inspected and found to be apparently free of pests and diseases or until they have been in use while under quarantine for a minimum of 90 days and at least until the following July 1. The beekeeping materials are also subject to quarantine as provided in this section. The department may also inspect and certify as being apparently pest- and disease-free bees or beekeeping equipment to be transported from Montana to a state that requires an inspection in the state of origin.

(2) (a) The costs of making the inspections provided for in subsection (1) must be paid in advance by the owner of the bees or equipment.

(b) Inspection fees for persons without a valid Montana compliance agreement must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses;

(iii) an hourly rate established by department rule; and

(iv) *except as provided in this subsection (2)(b)(iv),* a fee of ~~$50~~ *$75* for the issuance of a certificate of health. *The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than $50 or more than $100.*

(c) Persons transporting bees interstate with a valid Montana compliance agreement shall pay inspection fees that include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses; and

(iii) *except as provided in this subsection (2)(c)(iii),* a fee of ~~$50~~ *$75* for the issuance of a certificate of health. *The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than $50 or more than $100.*

(d) If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of bees or beekeeping materials, including honey for extracting, from that other state must be denied unless the materials, bees, or honey is first inspected by the department and there is obtained from it a certificate of inspection showing that the materials, bees, or honey is apparently free from pests and contagious or infectious disease. The costs of making the inspection must be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses;

(iii) an hourly rate established by department rule; and

(iv) *except as provided in this subsection (2)(d)(iv),* a fee of ~~$50~~ *$75* for the issuance of the certificate of inspection. *The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than $50 or more than $100."*

Section 5. Section 80-6-303, MCA, is amended to read:

"80-6-303. Penalty. (1) A person violating or aiding in the violation of parts 1 through 3 or rules adopted under parts 1 through 3 is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection ~~(a)~~ *(1)(a)* may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the ~~general fund~~ *state special revenue account provided for in [section 1]*.

(b) if the offense is a misdemeanor, a fine of not less than $25 or more than $500 or imprisonment in the county jail not exceeding 1 year, or both.

(2) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts of penalties for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(3) This part may not be construed as requiring the department or its representatives to report violations of this part when it is believed that the public interest will be best served by a suitable notice of warning."

Section 6. Repealer. Section 80-6-302, MCA, is repealed.

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 6, part 3, and the provisions of Title 80, chapter 6, part 3, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 12

[HB 69]

AN ACT REVISING LAWS RELATING TO NOTARY PUBLIC PROCESSES AND FORMS; AND AMENDING SECTIONS 1-5-405, 1-5-416, AND 1-5-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-405, MCA, is amended to read:

"1-5-405. Bond and commission — dates — fees and documents. (1) Each notary public shall submit an application, a signed oath of office, and an official bond in the amount of $10,000 for each 4-year term of office. The application and bond must be approved by the secretary of state. Upon the approval of the application and the bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of the notary public, the secretary of state may issue a commission.

(2) The effective date of the surety bond and the notary commission must be the same.

(3) All required fees and required and properly completed documents must be submitted to the office of the secretary of state within 30 days before or ~~by~~ *within 30 days after* the effective date of the surety bond."

Section 2. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;

(d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;

(e) authenticate with the notary public's official seal, and the notary's original signature as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the *town or city of the* notary public's post office)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary.

(2) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document."

Section 3. Section 1-5-610, MCA, is amended to read:

"1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416 and 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s))

_____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of _____

(County) of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement)

_____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____

(County) of _____

Signed or attested before me on (date) by (name(s) of person(s))

_____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]

(5) For attestation of a copy of a document:

State of _____

(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____.

Dated _____

_____

(Signature of notarial officer)

(Seal, if any)

_____

(Name - typed, stamped, or printed)

_____

Title (and Rank)

_____

(Residing at)

[My commission expires: _____]"

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 13

[HB 70]

AN ACT CLARIFYING THE PROCEDURE FOR DISMISSAL OF A DEFENDANT'S APPEAL OF A CONVICTION TO THE DISTRICT COURT; AND AMENDING SECTION 46-17-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 14

[HB 83]

AN ACT GENERALLY REVISING WELL LOG REPORTING REQUIREMENTS; REQUIRING WELL LOG REPORTS TO BE FILED WITH THE MONTANA STATE BUREAU OF MINES AND GEOLOGY; REQUIRING THE WELL LOG REPORT FORM OR FORMAT TO BE SPECIFIED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION IN CONSULTATION WITH THE BOARD OF WATER WELL CONTRACTORS AND THE MONTANA STATE BUREAU OF MINES AND GEOLOGY; AUTHORIZING THE SUBMISSION OF WELL LOG REPORTS IN AN ELECTRONIC FORMAT; AMENDING SECTION 85-2-516, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-516, MCA, is amended to read:

"85-2-516. Well logs. *(1)* Within 60 days after any well is completed, the driller shall file with the ~~department~~ *bureau* a well log report.

(2) Except as provided in subsection (3), the well log report must be filed on a form ~~provided~~ *specified* by the department ~~through its offices~~ *in consultation with the board of water well contractors provided for in 2-15-3307 and the bureau.*

(3) The bureau may allow submission of the well log report in an electronic format that is in accordance with the form specified as provided in subsection (2).

(4) The ~~department~~ *bureau* may return the report for refiling if it is incomplete or incorrect. ~~The department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.~~"

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 11, 2003

CHAPTER NO. 15

[HB 132]

AN ACT REVISING THE LAWS RELATING TO MUNICIPAL CLASSIFICATION; ALLOWING A CITY WITH A POPULATION OF BETWEEN 9,000 AND 10,000 TO BE EITHER A FIRST-CLASS OR SECOND-CLASS CITY; REMOVING THE REFERENCE TO AN ANNUAL ELECTION WHEN AN ELECTION IS REQUIRED BECAUSE OF RECLASSIFICATION; AMENDING SECTIONS 7-1-4112 AND 7-1-4116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4112, MCA, is amended to read:

"7-1-4112. Exceptions from classification system. Notwithstanding the provisions of 7-1-4111:

(1) every municipal corporation having a population of more than 9,000 and less than 10,000 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a first-class city or a second-class city;

~~(1)~~*(2)* every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and

~~(2)~~*(3)* every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council~~, as the case may be,~~ pursuant to 7-1-4114 through 7-1-4118, be either a city or town."

Section 2. Section 7-1-4116, MCA, is amended to read:

"7-1-4116. Officers of reclassified municipality. The first election of officers of the new municipal corporation organized under the provisions of 7-1-4114 through 7-1-4118 must be at the first ~~annual~~ municipal election after ~~such proceedings~~ *reclassification*, and the old officers remain in office until the new officers are elected and qualified."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 16

[HB 153]

AN ACT ALLOWING AN EMPLOYEE OF A STATE OR LOCAL EDUCATIONAL AGENCY THAT IS NOT PROVIDING EDUCATIONAL SERVICES TO A CHILD WITH A DISABILITY TO SERVE AS A SURROGATE PARENT FOR THAT CHILD; AMENDING SECTION 20-7-461, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-461, MCA, is amended to read:

"20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency*that is providing educational services to the child*. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

(a) a child's parents are identified;

(b) the location of the parents is discovered;

(c) the child is no longer a ward of the state; or

(d) the surrogate parent wishes to discontinue the appointment."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 11, 2003

CHAPTER NO. 17

[HB 39]

AN ACT ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2001~~ *2003*, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2001~~ *2003*, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution of this state and except as otherwise provided by this title or by rule adopted by the department, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 18

[HB 46]

AN ACT INCREASING TO $40 MILLION THE AUTHORITY TO ISSUE AND SELL GENERAL OBLIGATION BONDS FOR THE STATE'S SHARE OF THE WATER POLLUTION CONTROL STATE REVOLVING FUND PROGRAM; INCREASING TO $30 MILLION THE AUTHORITY TO ISSUE AND SELL GENERAL OBLIGATION BONDS FOR THE STATE'S SHARE OF THE DRINKING WATER STATE REVOLVING FUND PROGRAM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 75-5-1122 AND 75-6-227, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-1122, MCA, is amended to read:

"75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed ~~$30~~ *$40* million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the program."

Section 2. Section 75-6-227, MCA, is amended to read:

"75-6-227. Creation of debt. The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed ~~$20~~ *$30* million and authorizes the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the drinking water program."

Section 3. Two-thirds vote required. Because [sections 1 and 2] authorize the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 19

[HB 48]

AN ACT REVISING THE DUTIES OF AN ASSIGNED COUNSEL WHO DETERMINES THAT AN APPEAL IN A CRIMINAL CASE WOULD BE FRIVOLOUS OR WHOLLY WITHOUT MERIT; AND AMENDING SECTION 46-8-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-8-103, MCA, is amended to read:

"46-8-103. Duration of appointment. (1) When counsel has been assigned, the assignment is effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel or that has jurisdiction over the case.

(2) If counsel ~~finds the defendant's case on appeal to be wholly frivolous, counsel shall advise the court of that fact and request~~ *determines that an appeal would be frivolous or wholly without merit, counsel shall file a motion with the court requesting* permission to withdraw. *The motion must attest that counsel has concluded that an appeal would be frivolous or wholly without merit after reviewing the entire record and researching applicable statutes, case law, and rules and that the defendant has been advised of counsel's decision and of the defendant's right to file a response.* The ~~request~~ *motion* to withdraw must be accompanied by a memorandum ~~referring to anything in the record that might arguably support the appeal~~ *discussing any issues that arguably support an appeal. The memorandum must include a summary of the procedural history of the case and any jurisdictional problems with the appeal, together with appropriate citations to the record and to the pertinent statutes, case law, and procedural rules bearing upon each issue discussed in the memorandum. Upon filing the motion and memorandum with the court, counsel's certificate of mailing must certify that copies of each filing were mailed to the local county attorney, the attorney general's office, and the defendant.* The defendant is

entitled to ~~receive a copy of counsel's memorandum and to~~ file a ~~reply~~ *response* with the court."

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 20

[HB 68]

AN ACT REQUIRING OBEDIENCE TO THE TRAFFIC DIRECTION OF FLAG PERSONS AND CROSSING GUARDS; AND AMENDING SECTIONS 61-8-102 AND 61-8-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation. ~~This~~ *Interpretation of this* chapter ~~shall~~ *in this state must* be ~~so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it~~ *as consistent as possible with the interpretation of similar laws in other states*."

Section 2. Section 61-8-105, MCA, is amended to read:

"61-8-105. Obedience to peace officers, ~~highway patrol officers,~~ *flag persons, crossing guards,* and public safety workers. A person may not willfully fail or refuse to comply with a lawful order or direction of a peace officer, ~~highway patrol officer,~~ *flag person, crossing guard,* or public safety worker pertaining to the use of the highways by traffic. For purposes of this section~~,~~*:*

(1) "peace officer" has the meaning provided in 7-32-303; and

(2) "public safety worker" means a person who is authorized to provide assistance at the scene of an incident that requires traffic control and who is either a member of a paid or volunteer fire department, an emergency medical service provider, a member of a search and rescue team, or a civilian accident investigator appointed by a law enforcement agency."

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 21

[HB 78]

AN ACT TRANSFERRING AUTHORITY FOR APPROVING THE CONDUCT OF SCHOOL ON SATURDAY FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE SCHOOL DISTRICT TRUSTEES; AMENDING SECTIONS 20-1-303, 20-3-106, AND 20-3-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-303, MCA, is amended to read:

"20-1-303. Conduct of school on Saturday or Sunday prohibited — exception. Except as provided *in this section*, pupil instruction ~~shall~~ *may* not be conducted on Saturday or Sunday. In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the ~~superintendent of public~~

~~instruction~~ *trustees of the school district* in accordance with the policies adopted by the board of public education."

Section 2. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

~~(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;~~

~~(18)~~*(17)* recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

~~(19)~~*(18)* collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

~~(20)~~*(19)* establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

~~(21)~~*(20)* license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

~~(22)~~*(21)* as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

~~(23)~~*(22)* supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

~~(24)~~*(23)* administer the traffic education program in accordance with the provisions of 20-7-502;

~~(25)~~*(24)* administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

~~(26)~~*(25)* review school building plans and specifications in accordance with the provisions of 20-6-622;

~~(27)~~*(26)* prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

~~(28)~~*(27)* provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(29)~~*(28)* upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

~~(30)~~*(29)* administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(31)~~*(30)* perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 3. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or

rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(27) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303; and

~~(27)~~ *(28)* perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 22

[HB 84]

AN ACT REVISING AND CLARIFYING THE OFFENSE OF MITIGATED DELIBERATE HOMICIDE TO RESOLVE THE CONFUSION THAT ARISES

IN TRYING THE OFFENSE; AMENDING SECTION 45-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-103, MCA, is amended to read:

"45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

~~(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.~~

~~(3)~~*(2)* Mitigated deliberate homicide is ~~not an~~ *a lesser* included offense of deliberate homicide as defined in 45-5-102(1)~~(b)~~*(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).*

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222."

Section 2. Applicability. [This act] applies to offenses committed after [the effective date of this act].

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 23

[HB 23]

AN ACT ALLOWING THE USE OF THE PRIOR 3-YEAR AVERAGE ENROLLMENT TO CALCULATE REVERSIONS FOR FUNDED RESIDENT ENROLLMENT GROWTH IN COMMUNITY COLLEGES; AMENDING SECTION 17-7-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-142, MCA, is amended to read:

"17-7-142. Calculation of reversions for funded resident enrollment growth in Montana university system *and community colleges*. (1) The reversion calculation in this section is effective only in those years when the legislature funds resident enrollment growth based upon resident enrollment projections and requires a reversion by the Montana university system *or a community college* if the resident enrollment projections are not met.

(2) The reversion must be calculated based upon the marginal funding for each resident FTE identified in the general appropriations act.

(3) The total reversion is calculated based upon the difference between the FTE resident enrollment projection and the actual FTE resident enrollment or the FTE resident enrollment projection and the prior 3-year average FTE resident enrollment, whichever is lower."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 14, 2003

CHAPTER NO. 24

[HB 35]

AN ACT PROVIDING A PUBLIC EMPLOYMENT HIRING PREFERENCE FOR ELIGIBLE FORMER AND ACTIVE MEMBERS OF THE MONTANA ARMY AND AIR NATIONAL GUARD; AMENDING SECTION 39-29-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-29-101, MCA, is amended to read:

"39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

~~(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.~~

~~(2)~~*(1)* "Armed forces" means the ~~United States~~:

(a) *United States* army, navy, air force, marine corps, and coast guard; ~~and~~

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs*; and*

(c) Montana army and air national guard.

~~(3)~~*(2)* "Disabled veteran" means a person:

(a) whether or not the person is a veteran ~~as defined in this section,~~ who was separated under honorable conditions from ~~active~~ *military* duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or *a* pension because of a law administered by the department of veterans affairs, ~~or~~ a military department*, or the state of Montana*; or

(b) who has received a purple heart medal.

~~(4)~~*(3)* "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Military duty" means duty with military pay and allowances in the armed forces.

(5) *(a)* "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.

(b) The term does not include:

~~(a)~~*(i)* a state or local elected office;

~~(b)~~*(ii)* appointment by an elected official to a body, such as a board, commission, committee, or council;

~~(c)~~*(iii)* appointment by an elected official to a public office if the appointment is provided for by law;

~~(d)~~*(iv)* a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

~~(e)~~*(v)* engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) *(a)* "Under honorable conditions" means a discharge or separation from ~~active~~ *military* duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) ~~but~~ *The term* does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active *federal military* duty in the armed forces after having served more than 180 consecutive days, other than for training; ~~or~~

(b) as a member of a reserve component under an order of ~~active~~ *federal* duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304

served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions*; or*

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard."

Section 2. Applicability. [This act] applies to positions of public employment that are subject to the provisions of [this act] that are open for employment on or after [the effective date of this act].

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 25

[HB 43]

AN ACT ELIMINATING THE REQUIREMENT THAT ASBESTOS CONTROL PERMIT FEES FOR EACH ANNUAL PERMIT REFLECT ACTUAL COSTS FOR THAT PERMIT; PROVIDING THAT FEES MUST BE COMMENSURATE WITH COSTS OF PERMIT ISSUANCE AND ADMINISTRATION; AMENDING SECTIONS 75-2-503 AND 75-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-503, MCA, is amended to read:

"75-2-503. Rulemaking authority — issuance of permits. (1) The department shall, subject to the provisions of 75-2-207, adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(a) standards for training course review and approval;

(b) standards for accreditation of applicants for asbestos-related occupations;

(c) examination requirements for accreditation of applicants for asbestos-related occupations;

(d) requirements for renewal of accreditation, including periodic refresher courses;

(e) revocation of accreditation;

(f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

(i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(j) advance notification procedures and issuance of permits for asbestos projects; and

(k) fees, which must be commensurate with costs, for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance *and administration* of asbestos project permits, *including annual asbestos project permits for facilities*; and

(iv) requested inspections of asbestos projects.

(2) For asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee."

Section 2. Section 75-2-504, MCA, is amended to read:

"75-2-504. Facility permits ~~— fee.~~ ~~(1)~~ The department shall provide by rule a procedure for the issuance of an annual asbestos project permit to any facility that has an asbestos health and safety program meeting department criteria and that continuously employs accredited asbestos workers. This permit allows a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force. The provisions of this permit may not preclude state and federal requirements for asbestos project notification.

~~(2) The fee for a facility permit must reflect the actual cost of the department's application review, permit issuance, and facility inspections.~~"

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 26

[HB 44]

AN ACT PROVIDING THAT CERTAIN MEMBERS OF THE PUBLIC EMPLOYEES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', FIREFIGHTERS' UNIFIED, OR JUDGES' RETIREMENT SYSTEMS WITH AT LEAST 5 YEARS OF SERVICE CREDIT MAY PURCHASE MILITARY SERVICE FOR THE ACTUARIAL COST OF THE SERVICE; PROVIDING THAT MILITARY SERVICE PURCHASED IN THE SHERIFFS' AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS IS COUNTED AS MEMBERSHIP SERVICE; AMENDING SECTIONS 19-3-503, 19-6-801, 19-7-803, 19-7-804, 19-8-901, 19-9-403, AND 19-13-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-503, MCA, is amended to read:

"19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection (2) and subject to 19-3-514, a member with at least ~~10~~ *5*

years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 2. Section 19-6-801, MCA, is amended to read:

"19-6-801. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-6-805, ~~a~~ *an eligible* member ~~with at least 15 years of service credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service:

(a) a member *with at least 15 years of service credit and* who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.

(b) a member *with at least 5 years of membership service* who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 3. Section 19-7-803, MCA, is amended to read:

"19-7-803. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-7-805, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.~~"

Section 4. Section 19-7-804, MCA, is amended to read:

"19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

~~(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.~~

~~(4)~~*(3)* Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits."

Section 5. Section 19-8-901, MCA, is amended to read:

"19-8-901. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-8-906, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 6. Section 19-9-403, MCA, is amended to read:

"19-9-403. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-9-406, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

~~(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)~~*(3)* A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 7. Section 19-13-403, MCA, is amended to read:

"19-13-403. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-13-406, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

~~(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(3)~~*(2)* A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.~~"

Section 8. Application to purchase military service credit. (1) Except as otherwise provided in this section and subject to [section 9], a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

Section 9. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-5-409 and [section 8].

Section 10. Codification instruction. [Sections 8 and 9] are intended to be codified as an integral part of Title 19, chapter 5, part 4, and the provisions of Title 19, chapter 5, part 4, apply to [sections 8 and 9].

Section 11. Effective date. [This act] is effective July 1, 2003.

Ap proved Feb ru ary 14, 2003

CHAPTER NO. 27

[HB 53]

AN ACT SUBSTITUTING THE DETENTION CENTER FOR THE COURT AS THE ENTITY THAT MUST NOTIFY THE VICTIM WHEN A PERSON ACCUSED OF A VIOLATION OF SECTION 45-5-206, 45-5-220, OR 45-5-626, MCA, IS ADMITTED TO BAIL; AND AMENDING SECTION 46-9-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release — notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that

the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol~~,~~ or *use or possess* any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-206, 45-5-220, or 45-5-626 is admitted to bail, the ~~court~~ *detention center* shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Approved February 13, 2003

CHAPTER NO. 28

[HB 102]

AN ACT ELIMINATING THE REQUIREMENT THAT MONEY RECEIVED FROM THE FEDERAL GOVERNMENT BE DEPOSITED IN THE RADON CONTROL ACCOUNT; AMENDING SECTION 75-3-607, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-3-607, MCA, is amended to read:

"75-3-607. Radon control account. (1) There is a radon control account in the state special revenue fund. There must be deposited in the account all money received from any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of this part that are received from ~~the federal government and~~

~~from other sources,~~ public or private *sources, except for money received from the federal government.*

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the program established under this part."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 29

[HB 162]

AN ACT INCREASING THE VIDEO GAMBLING MACHINE ANNUAL PERMIT FEE; INCREASING THE AMOUNT OF THE FEE THAT IS USED BY THE DEPARTMENT OF JUSTICE TO ADMINISTER THE VIDEO GAMBLING MACHINE LAW; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-612, MCA, is amended to read:

"23-5-612. Machine permits — fee. (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of ~~$200~~ *$220* for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of $25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit ~~50%~~ *$120* of the ~~total~~ *annual* permit fee *or for a prorated fee shall deposit $90 for three quarters, $60 for two quarters, and $30 for one quarter* collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 30

[HB 167]

AN ACT GENERALLY REVISING PUBLIC RECORDS MANAGEMENT LAWS; REVISING THE DEFINITION OF "PUBLIC RECORDS" WITH RESPECT TO THE RETENTION AND STORAGE OF STATE AND LOCAL GOVERNMENT MATERIALS; AUTHORIZING THE STORAGE OF PERMANENT PUBLIC RECORDS AT LOCATIONS OTHER THAN THE STATE ARCHIVES OR STATE RECORDS CENTER; REQUIRING EACH STATE AGENCY TO DESIGNATE AN AGENCY RECORDS CUSTODIAN; AND AMENDING SECTIONS 2-6-202, 2-6-206, 2-6-211, 2-6-213, AND 2-6-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-202, MCA, is amended to read:

"2-6-202. Definitions. As used in this part, the following definitions apply:

(1) (a) "Public records" includes*:*

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including ~~all~~ copies of the record *required by law to be kept as part of the official record*, regardless of physical form or characteristics, that*:*

(A) has been made or received by a state agency ~~in connection with~~ *to document* the transaction of official business*;*

(B) is a public writing of a state agency pursuant to 2-6-101(2)(a); and ~~preserved for informational value or as evidence of a transaction~~

(C) is designated by the state records committee for retention pursuant to this part; and

(ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official business.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013."

Section 2. Section 2-6-206, MCA, is amended to read:

"2-6-206. Protection *and storage* of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after ~~any such~~ *the* emergency. A list of ~~such~~ *essential* records ~~shall~~ *must* be forwarded to the secretary of state. The list ~~shall~~ *must* be reviewed from time to time by the elected or appointed officers to ~~insure~~ *ensure* its accuracy. Any changes or revisions ~~shall~~ *must* be forwarded to the secretary of state.

(2) Each elected and appointed officer of state government shall ~~insure~~ *ensure* that the security of essential records is accomplished by the most economical means possible. Protection *and storage* of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives *or in an alternative location provided pursuant to 2-6-211(2)*, or any other method approved by the secretary of state.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the secretary of state."

Section 3. Section 2-6-211, MCA, is amended to read:

"2-6-211. Transfer *and storage* of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government ~~which~~ *that* may be abolished or discontinued ~~shall~~ *must* be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if ~~such~~ *the* records are considered to have permanent administrative or historical value.

(2) Subject to approval by the secretary of state pursuant to 2-6-206, the state records center and the state archives may store transferred permanent public records in locations other than in the buildings occupied by the state records center or the state archives when it is in the best interests of the state.

~~(2)~~*(3)* When records are transferred to the state records center, the *transferring* agency ~~so doing loses none of~~ *does not lose* its rights of control and access. The state records center is only a custodian of the agency records, and access ~~will~~ *is* only ~~be~~ by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

~~(3)~~*(4)* If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule."

Section 4. Section 2-6-213, MCA, is amended to read:

"2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the secretary of state and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the secretary of state and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests ~~which~~ *that* are submitted by the agency to the state records committee; ~~and~~

(5) review established records retention schedules to ~~insure~~ *ensure* that they are complete and current*; and*

(6) officially designate an agency records custodian to manage the functions provided for in this section."

Section 5. Section 2-6-401, MCA, is amended to read:

"2-6-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Local government" means:

(a) any city, town, county, consolidated city-county, or school district; and

(b) any subdivision of an entity named in subsection (1)(a).

(2) (a) "Public records" includes*:*

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including ~~all~~ copies of the record *required by law to be kept as part of the official record,* regardless of physical form or characteristics, that*:*

(A) has been made or received by any local government ~~in connection with the~~ *to document the* transaction of official business*;*

(B) is a public writing of the local government pursuant to 2-6-101(2)(a); and ~~preserved for informational value or as evidence of a transaction~~

(C) is designated for retention by the local government records committee established in 2-6-402; and

(ii) all other records or documents required by law to be filed with or kept by any local government in the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records."

Ap proved Feb ru ary 13, 2003

CHAPTER NO. 31

[HB 38]

AN ACT REMOVING MISDEMEANOR CRIMINAL PENALTIES AND INCREASING CIVIL PENALTIES FOR LOBBYISTS AND LOBBYIST PRINCIPALS IN NONCOMPLIANCE WITH TIMELY FILING OF REPORTS; PROVIDING FOR A HEARING WHEN A CIVIL PENALTY IS IMPOSED FOR LATE FILING OF REPORTS; EXPANDING THE DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES REGARDING VIOLATIONS OF LOBBYING LAWS; EXTENDING THE PERIOD TO BRING AN ACTION; AMENDING SECTIONS 5-7-108, 5-7-209, AND 5-7-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-108, MCA, is amended to read:

"5-7-108. Inspection of applications and reports~~— issuance of orders of noncompliance~~ — *order of noncompliance — notification*. (1) Each application and report filed with the commissioner must be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance.

(2) An order of noncompliance may be issued when:

(a) it is determined that an application or report filed with the commissioner does not conform to the requirements of this chapter; or

(b) a person has failed to file an application or report required by law.

~~(2)~~*(3)* The person *notified of noncompliance* shall submit the necessary information within 5 days after receiving the notice of noncompliance. ~~Upon failure~~ *If the person notified of noncompliance fails* to submit the required information within 5 days, the commissioner may initiate a civil ~~or criminal~~ action pursuant to the procedures contained in 5-7-305."

Section 2. Civil penalties for delays in filing — option for hearing — suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of $50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of $2,500 for each late report.

(2) The penalty imposed in subsection (1) is not subject to the procedural requirements of 5-7-305 and must be applied if a person fails to meet the requirements of 5-7-108(3).

(3) A person against whom a civil penalty is imposed pursuant to subsection (1) may request, within 10 days of receiving a notice of imposition of a civil penalty, a hearing before the commissioner. Upon receipt of a timely request, the commissioner shall hold an informal contested case hearing as provided in Title 2, chapter 4, part 6. Upon the filing of a timely request for a hearing, the imposition of the daily civil penalty provided for in this section must be suspended until the commissioner issues a decision. At the hearing, the commissioner shall consider any factors or circumstances in mitigation and may reduce or waive the civil penalty.

(4) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

Section 3. Section 5-7-209, MCA, is amended to read:

"5-7-209. Payments prohibited unless reported — penalty for *late filing,* failure to report, or ~~for~~ false statement. A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter. A principal who fails to file a required report *within the time required by this chapter* is subject to the ~~penalty~~ *penalties* provided in *[section 2(1)] and* 5-7-305 ~~as well as any civil action provided for in that section~~. A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities."

Section 4. Section 5-7-305, MCA, is amended to read:

"5-7-305. Penalties and enforcement. ~~(1) Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon~~

~~conviction thereof shall be punished by imprisonment in the county jail not more than 6 months or by a fine not exceeding $200, or both.~~

~~(2)~~*(1)* ~~Any~~ *A* person who violates any of the provisions of this chapter ~~shall be~~ *is* subject to civil penalties of not less than $250 and not more than $7,500 according to the discretion of the district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter ~~shall~~ *must* have ~~his~~ *the lobbyist's* license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this ~~act~~ *chapter* is additionally subject to recall under *the* Montana Recall Act, ~~2-16-601, et seq.~~ *Title 2, chapter 16, part 6*, and ~~such~~ *the* violation ~~shall constitute~~ *constitutes* an additional basis for recall to those mentioned in 2-16-603(3).

~~(3)~~*(2)* The attorney general, *the* commissioner, or the county attorney of the county in which the violation takes place may bring ~~criminal or~~ *a* civil ~~actions~~ *action* in the name of the state for any appropriate ~~criminal or~~ civil remedy.

~~(4)~~*(3)* If a ~~prosecution~~ *civil penalty action* is undertaken by *the attorney general or* the commissioner ~~or any county attorney~~, all costs associated with the prosecution ~~shall~~ *must* be paid by the state of Montana.

~~(5)~~*(4)* (a) Any individual who has notified ~~the commissioner,~~ the attorney general, *the commissioner*, and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may ~~himself~~ bring in the name of the state an action (~~hereinafter~~ referred to as a citizen's action) authorized under this chapter if:

(i) the attorney general, *the commissioner, or* ~~and~~ the appropriate county attorney ~~have~~ *has* failed to commence an action ~~hereunder~~ within ~~40~~ *90* days after ~~such~~ notice; and

(ii) ~~said attorneys then fail~~ *the attorney general, the commissioner, or the county attorney fails* to commence an action within 10 days after *receiving* a written notice ~~delivered to them advising them~~ that a citizen's action will be brought if ~~they do~~ *the attorney general, the commissioner, or the county attorney does* not bring an action.

(b) Each notification ~~shall toll~~ *tolls* the *applicable* statute of limitations ~~applicable~~ until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, ~~he shall be~~ *the individual is* entitled to be reimbursed by the state of Montana for costs and ~~attorney's~~ *attorney* fees incurred~~;~~. ~~provided that~~ *However,* in the case of a citizen's action ~~which~~ *that* is dismissed and ~~which~~ *that* the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable ~~attorney's~~ *attorney* fees incurred by the defendant.

~~(6)~~*(5)* ~~No~~ *A* civil action may *not* be brought under this section more than 3 years after the occurrence of the facts ~~which~~ *that* give rise to the action.

~~(7)~~*(6)* All civil penalties imposed pursuant to this section ~~shall~~ *must* be deposited in the state general fund.

~~(8)~~*(7)* A hearing under this chapter ~~shall~~ *must* be held by the court unless the defendant-licensee demands a jury trial. The trial ~~shall~~ *must* be held as soon as possible but at least 20 days after the filing of the charges and ~~shall~~ *must* take precedence over all other matters pending before the court.

~~(9)~~*(8)* If the court finds for the plaintiff, judgment ~~shall~~ *must* be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgment with the commissioner."

Section 5. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [section 2].

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 18, 2003

CHAPTER NO. 32

[HB 136]

AN ACT ELIMINATING THE ALLOCATION AND STATUTORY APPROPRIATION OF INTEREST INCOME FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE OFFICE OF ECONOMIC DEVELOPMENT FOR BUSINESS RECRUITMENT AND RETENTION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) For fiscal years beginning on or after July 1, 2003, the amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) For fiscal years beginning on or after July 1, 2003, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) ~~for the fiscal year beginning July 1, 2001, $1.25 million, for the fiscal year beginning July 1, 2002, $925,000, and~~ for fiscal years beginning on or after July 1, 2003, $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) ~~except for the fiscal year beginning July 1, 2002,~~ $425,000 for certified communities;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement;

~~(iv) $175,000 to the office of economic development for business recruitment and retention;~~ and

~~(v)~~*(iv)* $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) ~~For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002.~~ Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection (7)(b) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002.

(Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved Feb ru ary 18, 2003

CHAPTER NO. 33

[HB 175]

AN ACT CLARIFYING THE EXECUTIVE BRANCH OVERSIGHT DUTIES OF THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTION 75-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-324, MCA, is amended to read:

"75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the *following executive branch agencies and the entities attached to the agencies for administrative purposes*:

(a) department of environmental quality;

(b) department of fish, wildlife, and parks; and

(c) department of natural resources and conservation."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 18, 2003

CHAPTER NO. 34

[HB 207]

AN ACT CHANGING THE GENERAL ASSESSMENT DAY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE FOR SUPPLEMENTAL ASSESSMENTS FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL CERTIFY TOTAL TAXABLE VALUE TO EACH TAXING AUTHORITY FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE AN ESTIMATE OF TOTAL TAXABLE VALUE WITHIN THE JURISDICTION OF A TAXING AUTHORITY BY THE SECOND MONDAY IN JULY UPON RECEIPT OF A REQUEST FROM THE TAXING AUTHORITY; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER A CERTIFIED COPY OF THE PROPERTY TAX RECORD TO ALL CITIES OF THE THIRD CLASS AND TOWNS WITHIN EACH COUNTY THAT MAKE WRITTEN REQUEST FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DEPARTMENT OF REVENUE SHALL DELIVER TO THE COUNTY SUPERINTENDENT AND TO EACH CITY OR TOWN CLERK A STATEMENT SHOWING THE SEPARATE TOTAL ASSESSED VALUE AND THE TOTAL TAXABLE VALUE OF ALL PROPERTY IN THE DISTRICT, CITY, OR TOWN FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE BOARD OF COMMISSIONERS OF EACH IRRIGATION DISTRICT ORGANIZED UNDER TITLE 85, CHAPTER 7, PARTS 1 AND 15, MCA, SHALL ASCERTAIN AND LEVY THE AMOUNT TO BE RAISED THAT YEAR FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; CHANGING THE DATE BY WHICH THE DIRECTORS OF A CONSERVATION DISTRICT SHALL PROVIDE THE DEPARTMENT OF REVENUE AND COUNTY TREASURER OR TREASURERS A STATEMENT OF THE SPECIAL ASSESSMENTS TO BE COLLECTED FROM THE SECOND MONDAY IN JULY TO THE FIRST MONDAY IN AUGUST; AMENDING SECTIONS 7-6-4410, 15-8-201, 15-8-204, 15-10-202, 20-9-122, 85-7-2104, AND 85-9-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4410, MCA, is amended to read:

"7-6-4410. Property tax record to be furnished to certain municipalities. On or before the ~~second~~ *first* Monday in ~~July~~ *August* of each year, the department of revenue shall furnish a certified copy of the property tax record to all cities of the third class and towns within each county that make written request for the record on or before the first Monday in April of each year. The property tax record must pertain to property within the limits of the requesting cities and towns."

Section 2. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department shall, between January 1 and the ~~second~~ *first* Monday of ~~July~~ *August* in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county.

(2) The department shall assess property to:

(a) the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1; or

(b) except in the case of land splits, the new owner if the provisions of 15-7-304 have been met and the transfer certificate has been received and processed prior to determining the taxes that are due as provided in 15-10-305(2).

(3) The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1.

(4) A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(5) The procedure provided by this section does not apply to:

(a) motor vehicles;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as special mobile equipment that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes and manufactured homes held by a distributor or dealer as stock in trade; and

(g) property subject to the provisions of 15-16-203."

Section 3. Section 15-8-204, MCA, is amended to read:

"15-8-204. Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the ~~second~~ *first* Monday of ~~July~~ *August* and ~~such~~ *the* property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time."

Section 4. Section 15-10-202, MCA, is amended to read:

"15-10-202. Certification of taxable values. (1) Subject to subsection (2), by the ~~second~~ *first* Monday in ~~July~~ *August*, the department shall certify to each taxing authority the total taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total taxable value of newly taxable property, as described in 15-10-420(3). *Upon the request of a taxing authority, the department shall provide an estimate of the total taxable value within the jurisdiction of the taxing authority by the second Monday in July.*

(2) For tax years beginning after December 31, 2000, if the ownership of centrally assessed property has been transferred in whole or in part to a different owner and the transferred property has a market value of $1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of centrally assessed property that is transferred to a different owner. The department shall certify to each taxing authority, at the time specified in subsection (1), the taxable value of newly taxable property and

the total taxable value of centrally assessed property, exclusive of newly taxable property, that has been transferred to a different owner."

Section 5. Section 20-9-122, MCA, is amended to read:

"20-9-122. Statement of district, city, and town valuations. (1) By the ~~second~~ *first* Monday of ~~July~~ *August*, the department of revenue shall deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in the county the total assessed value and the total taxable value of all property in the districts, cities, or towns, as these valuations appear in the property tax record.

(2) In the case of a joint school district, the department of revenue shall, at the time of delivering the statement to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in the appropriate county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated."

Section 6. Section 85-7-2104, MCA, is amended to read:

"85-7-2104. Annual tax levy — apportionment when tracts divided. (1) (a) On or before the ~~second~~ *first* Monday in ~~July~~ *August* each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) Subject to 15-10-420, the board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the district, that portion of the respective total amounts to be raised ~~which~~ *that* the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the ~~second~~ *first* Monday in ~~July~~ *August* each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts

or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) In the event that the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than $5."

Section 7. Section 85-9-603, MCA, is amended to read:

"85-9-603. Directors to provide financial information. (1) Before the ~~second~~ *first* Monday in ~~July~~ *August* of each year, the directors shall provide the department of revenue and the county treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts; and

(c) a listing of all real property within the district.

(2) If the district is located in more than one county, the directors shall provide this information to the department of revenue and each of the affected county treasurers."

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. (1) [Section 2] applies retroactively, within the meaning of 1-2-109, to the general assessment day for calendar year 2003.

(2) [Section 6] applies retroactively, within the meaning of 1-2-109, to the annual levy of the board of commissioners of an irrigation district for calendar year 2003.

(3) [Section 7] applies retroactively, within the meaning of 1-2-109, to the annual assessment provided in 85-9-601 for calendar year 2003 of a conservation district for which the directors shall provide the information specified in 85-9-603.

(4) [This act] applies retroactively, within the meaning of 1-2-109, to any assessment or levy by any taxing jurisdiction for calendar year 2003 for which an assessment or levy date is not specified.

Ap proved Feb ru ary 18, 2003

CHAPTER NO. 35

[HB 232]

AN ACT REVISING LAWS GOVERNING COUNTY, MUNICIPAL, AND SPECIAL DISTRICT CAPITAL IMPROVEMENT FUNDS; INCREASING TO

$500,000 THE LIMITATION ON COUNTY ROAD AND BRIDGE IMPROVEMENT FUNDS; AMENDING SECTIONS 7-6-616, 7-7-2101, 7-14-2506, 7-21-3406, 7-21-3413, AND 7-33-2111, MCA; REPEALING SECTION 7-21-3414, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-616, MCA, is amended to read:

"7-6-616. Capital improvement ~~program~~ *funds*. *(1)* A county, ~~or~~ municipal*, or special district* governing body ~~may provide for~~ *may establish* a capital improvement ~~program~~ *fund* for the replacement, improvement, and acquisition of property, facilities, or equipment that costs in excess of $5,000 and that has a life expectancy of 5 years or more.

(2) ~~The~~ *A* capital improvement ~~program~~ *fund* must be formally adopted by the county, ~~or~~ municipal*, or special district* governing body.

(3) The capital improvement ~~program~~ *fund* may receive ~~funds~~ *money* from ~~up to 10% of one or more property tax levies and may receive funds from~~ any source*, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year*.

(4) Money in the capital improvement fund must be invested as provided by law, and interest and income from the investment of the capital improvement fund must be credited to the fund."

Section 2. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 1.4% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes.

(2) Except as provided in 7-7-2402~~,~~ *and* 7-21-3413, ~~and 7-21-3414,~~ a county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election as provided by law.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 3. Section 7-14-2506, MCA, is amended to read:

"7-14-2506. County road and bridge ~~depreciation reserve~~ *capital improvement* fund — limitation. ~~(1)~~ The governing body of a county may establish a road and bridge ~~depreciation reserve~~ *capital improvement* fund ~~to be used for acquisition and replacement of property, capital improvements, and equipment necessary to maintain and improve county road and bridge facilities and services~~ *in accordance with the provisions of Title 7, chapter 6, part 6*.

~~(2) Budgeted county road and bridge money that has not been expended or encumbered for a fiscal year may be deposited in the road and bridge depreciation reserve fund.~~ The fund may not exceed ~~$200,000~~ *$500,000*.

~~(3) Money in the road and bridge depreciation reserve fund must be invested as provided by law. Interest and income from the investment of the road and bridge depreciation reserve fund must be credited to the fund.~~"

Section 4. Section 7-21-3406, MCA, is amended to read:

"7-21-3406. Powers of county fair commission. In addition to the powers and duties established in the resolution of the board of county commissioners creating the county fair commission and by the provisions of 7-21-3407 through ~~7-21-3414~~ *7-21-3413*, the county fair commissioners have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds on a continuous basis throughout the fiscal year. ~~and~~ *The fair commission* shall return to the fair fund of the county all revenue obtained from the leasing or renting of the ~~the~~ buildings and fairgrounds."

Section 5. Section 7-21-3413, MCA, is amended to read:

"7-21-3413. ~~Capital~~ *Fair commission capital* improvement fund authorized. The fair commission of any county ~~in Montana~~ ~~is authorized to~~ *may* establish~~, by a vote of the majority of the commission,~~ a capital improvement fund ~~for the replacement and acquisition of property, buildings, or equipment costing more than $5,000 and having a useful life of 5 years or more~~ *in accordance with the provisions of Title 7, chapter 6, part 6*."

Section 6. Section 7-33-2111, MCA, is amended to read:

"7-33-2111. Fire district capital improvement fund *authorized*. The trustees of a fire district may establish a capital improvement fund~~. The fund may be used for the acquisition and replacement of equipment or facilities, including real property. The cost of the equipment must exceed $5,000, and the equipment must have a life expectancy of 5 years or more~~ *in accordance with the provisions of Title 7, chapter 6, part 6*."

Section 7. Repealer. Section 7-21-3414, MCA, is repealed.

Section 8. Effective date. [This act] is effective July 1, 2003.

Approved February 18, 2003

CHAPTER NO. 36

[HB 96]

AN ACT REPEALING THE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE TAX CREDIT; REPEALING SECTIONS 15-53-201, 15-53-202, AND 15-53-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 15-53-201, 15-53-202, and 15-53-203, MCA, are repealed.

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved February 19, 2003

CHAPTER NO. 37

[HB 115]

AN ACT INCREASING THE MEMBERSHIP OF THE STATE EMERGENCY RESPONSE COMMISSION FROM 19 MEMBERS TO 27 MEMBERS AND CHANGING THE MAKEUP OF THE COMMISSION'S MEMBERSHIP; PROVIDING THAT THE COMMISSION ACTS AS AN ALL-HAZARD ADVISORY BOARD TO THE DIVISION OF DISASTER AND EMERGENCY SERVICES; AND AMENDING SECTION 10-3-1204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-1204, MCA, is amended to read:

"10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of ~~19~~ *27* members appointed by the governor. The commission must include representatives of the national guard, *the* air force, ~~state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state, representatives from~~ the department of environmental quality, the division, the department of transportation, the department of justice, ~~the department of fish, wildlife, and parks,~~ *the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, a representative of Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns,* ~~and~~ *and* the office of the governor~~, and any other representatives that the governor appoints~~. Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as copresiding officers.

(2) The commission shall implement the provisions of this part, and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

~~(13)~~*(14)* All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Ap proved Feb ru ary 20, 2003

CHAPTER NO. 38

[HB 143]

AN ACT LIMITING THE LIABILITY OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD WITH RESPECT TO ACTS OR OMISSIONS OF AND INCORRECT REPORTING BY EMPLOYERS OR OTHER REPORTING AGENCIES; AMENDING SECTION 19-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-511, MCA, is amended to read:

"19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a *participant's or beneficiary's account under a* defined contribution plan or *an* optional retirement program *established pursuant to 19-21-101* ~~participant's or beneficiary's account~~ that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any *employer or reporting agency or of any* vendor providing services to the defined contribution plan or optional retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or optional retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or optional retirement program as a result of incorrect reporting by an employer or other reporting agency."

Section 2. Two-thirds vote required. Because amendments in [section 1] expand a limit on governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 19, 2003

CHAPTER NO. 39

[HB 233]

AN ACT CLARIFYING THE TAX CREDIT FOR THE INSTALLATION OF A GEOTHERMAL SYSTEM BY REMOVING AN ERRONEOUS INTERNAL REFERENCE; AMENDING SECTION 15-32-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-115, MCA, is amended to read:

"15-32-115. Credit for geothermal system — to whom available — eligible costs — limitations. (1) A resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit~~, as provided in subsection (3),~~ against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, not to exceed $1,500. The amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(2) For the purposes of this section, installation costs include the cost of:

(a) trenching, well drilling, casing, and downhole heat exchangers;

(b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;

(c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 20, 2003

CHAPTER NO. 40

[HB 47]

AN ACT PROVIDING AN ADDITIONAL METHOD FOR CREATION OF A HERD DISTRICT; AND AMENDING SECTION 81-4-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-301, MCA, is amended to read:

"81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana*:*

(a) upon petition of owners or possessors of 55% of the land in the district and providing that 25% or more of the land in the district is in actual cultivation or being used for residential purposes*; or*

(b) upon petition of owners or possessors of 75% of the land in the district.

(2) Herd districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when the territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and the territory to be created in a herd district has a suburban population of not less than 200 people.

~~(2)~~*(3)* In formation of a herd district the entire holding of any owner or lessee must be included unless the owner or lessee consents that less than the owner or lessee's entire contiguous holdings be included in the petition.

~~(3)~~*(4)* The petition must designate the months of the year when the herd district is effective, and upon presentation and filing of the petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the petition signers, with the clerk and recorder in the county in which the district is being created, the county commissioners of that county, upon receipt of the petition, shall set a date for hearing protests and verifying the petition signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to the notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but the district shall be established only in a manner that the district will be reasonably

regular and symmetrical in shape or practicable in relation to the geographical features of the district. It is not required that the boundaries of a district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.

~~(4)~~*(5)* Should it appear to the county commissioners after the hearing that the signatures attached to the petition were genuine, they shall immediately declare the herd district created and established. After making the declaration, the county commissioners shall give notice by four weekly publications in a newspaper nearest the district of the creation of the district, also stating the period that the district will be in effect. A district may not be in effect until 30 days have expired after the order.

~~(5)~~*(6)* If the signature of lessee appears on the petition creating or abolishing any herd district, the owner or owners of the land may appear either in person or *by* agent and enter their protest and the board of county commissioners shall remove the name of the lessee from the petition, and a person may not withdraw the person's name after the hour set for hearing the protest."

Ap proved Feb ru ary 26, 2003

CHAPTER NO. 41

[HB 88]

AN ACT GENERALLY REVISING THE LAWS GOVERNING DEDICATED REVENUE PROVISIONS; REVISING THE PROCEDURE FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; PROVIDING FOR THE DEPOSIT OF 50 PERCENT OF FEDERAL TAYLOR GRAZING FUNDS IN THE STATE GENERAL FUND TO BE USED FOR THE ELEMENTARY EDUCATION BASE FUNDING PROGRAMS OF A COUNTY; ELIMINATING THE SEPARATE STATUTORY PROCESS FOR REVIEWING DEDICATED REVENUE PROVISIONS FOR LOCAL GOVERNMENTS; AMENDING SECTIONS 17-1-501, 17-1-502, 17-1-505, 17-3-222, AND 20-9-331, MCA; REPEALING SECTIONS 17-1-601, 17-1-602, AND 17-1-603, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-501, MCA, is amended to read:

"17-1-501. Legislative intent. (1) It is the intent of the legislature, by establishing criteria for the review and evaluation of revenue dedication provisions, to ensure that provisions for revenue dedication:

(a) are based on sound principles of revenue dedication as described in 17-1-507;

(b) reflect present circumstances and legislative priorities for state spending;

(c) are terminated when they are no longer necessary or appropriate; and

(d) are subject to the same legislative scrutiny as programs or activities funded from the general fund.

(2) It is the intent of the legislature, by establishing criteria for the review and evaluation of statutory appropriation provisions, to ensure that provisions with statutory appropriations:

(a) reflect present circumstances and legislative priorities for state spending;

(b) are terminated when they are no longer necessary or appropriate; and

(c) are subject to the same legislative scrutiny as other appropriations.

(3) When revenue is dedicated to a local government, it is the intent of the legislature that the dedicated revenue provision be reviewed in the context of the policy and purpose expressed in 15-1-120."

Section 2. Section 17-1-502, MCA, is amended to read:

"17-1-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrative costs" includes:

(a) personal services;

(b) operating expenses, such as travel, supplies, and communication costs; and

(c) capital expenses, such as equipment, building costs, and real property costs.

(2) (a) "Continuing and reliable source of revenue" means a revenue source for which an agency forecasts an annual level of collections based upon historical data and prepares a budget for expenditures commensurate with the level of collections. Collections may not change significantly on an annual basis.

(b) The term does not include revenue:

(i) that an agency will receive only as a result of an occurrence that is not a routine part of agency operations;

(ii) that will vary significantly on an annual basis; or

(iii) that is unable to be included in the agency budget because of the erratic nature of receipt.

(3) "Dedicated revenue provision" means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to an account in the state special revenue fund, as described in 17-2-102*, or to a local government*.

(4) "General revenue source" means a source of revenue not governed by established or implied restrictions based on the source or limited use of the revenue. The term includes taxes, interest earnings, investment earnings, fines, and forfeitures.

(5) "Local government" means a municipality, a county, a consolidated government, or a special district.

~~(5)~~*(6)* "State special revenue fund" means a fund in the state treasury consisting of money from state sources that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government, as provided in 17-2-102."

Section 3. Section 17-1-505, MCA, is amended to read:

"17-1-505. Review of dedicated revenue provisions. (1) The legislature recognizes that dedicated revenue provisions are subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the legislative fiscal division in analyzing the executive budget;

(c) the legislative services division in drafting legislation;

(d) the legislative auditor in auditing agencies; ~~and~~

(e) the department of administration in performing the functions provided for in 17-2-106 and 17-2-111*; and*

(f) the department of revenue in reviewing revenue sources and determining distributions to local governments.

(2) To avoid unnecessary *and unjustified* use of dedicated revenue provisions, the entities listed in subsection (1) shall, in the course of current duties, consider the principles in 17-1-507 and the criteria listed in this subsection for each new or existing dedicated revenue provision. *If an entity referred to in subsection (1) determines that the use of a dedicated revenue provision is not justified, the use or proposed use must be reported to the legislative fiscal analyst. The legislative fiscal analyst shall maintain a list of unjustified dedicated revenue provisions and shall report on the unjustified dedicated revenue provisions to the legislative finance committee no later than October 31 of the year preceding a regular legislative session.* A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund.

(c) The dedicated revenue provision provides program funding at a level equivalent to the expenditures established by the legislature.

(d) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities in state government.

(e) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(f) The dedicated revenue provision results in an appropriate projected ending fund balance.

(g) The dedicated revenue provision fulfills a continuing, legislatively recognized need.

(h) The dedicated revenue provision does not result in accounting or auditing inefficiency.

(3) A local government dedicated revenue provision may be justified if it satisfies any of the following:

(a) The program or activity funded provides direct benefits or services for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The provision provides necessary information or other advantages that could not be obtained if the revenue were allocated to the state general fund.

(c) The provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities of state and local government.

(d) The provision does not impair the ability of the legislature to scrutinize budgets, control expenditures, and establish state spending priorities.

(e) The provision fulfills a legislatively recognized continuing need.

(f) The provision does not result in accounting or auditing inefficiency or unnecessary complexity and instability of local government funding structures."

Section 4. Section 17-3-222, MCA, is amended to read:

"17-3-222. Apportionment of money to counties. (1) It is the duty of the state treasurer to properly apportion and allocate the money received under 17-3-221 to the county treasurers, who shall allocate the money as follows:

(a) 50% to the county general fund; and

(b) 50% to *the state general fund to be used for* the elementary BASE funding programs of the school districts in the county.

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502."

Section 5. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, 61-3-537, 61-3-560 through 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as

prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds ~~distributed to a county and~~ designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703; and

(g) oil and natural gas production taxes."

Section 6. Repealer. Sections 17-1-601, 17-1-602, and 17-1-603, MCA, are repealed.

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved Feb ru ary 26, 2003

CHAPTER NO. 42

[HB 93]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES ALLOWING FOR THE EARLY REREGISTRATION OF A MOTOR VEHICLE; AND AMENDING SECTION 61-3-315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-315, MCA, is amended to read:

"61-3-315. Reregistration on anniversary date — department to make rules — *early reregistration*. (1) A vehicle that has been registered for any of the periods designated in 61-3-314 must be reregistered for the same period on or before the anniversary date of the initial registration unless that period is changed as provided in subsections (2) and (4). The anniversary date for reregistration is the last day of the month for the designated registration period.

(2) (a) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, may register the motor vehicle for a period not to exceed 24 months. The registration expires on the last day of the 24th month commencing from the date of the designated registration period under 61-3-314 for which the vehicle is registered.

(b) The owner of a motor vehicle 11 years old or older subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, may permanently register the motor vehicle as provided in 61-3-562. The registration remains in effect until ownership of the vehicle is transferred to another person by the registered owner.

(3) The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles. *The rules adopted by the department pursuant to this section must also allow early reregistration of motor vehicles that are subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee as provided in 61-3-560 and 61-3-561 when an owner of a motor vehicle presents extenuating circumstances.*

(4) The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register the vehicles."

Ap proved Feb ru ary 26, 2003

CHAPTER NO. 43

[HB 168]

AN ACT CREATING A PERFORMANCE ASSURANCE STATE SPECIAL REVENUE ACCOUNT FOR PAYMENTS MADE BY TELECOMMUNICATIONS CARRIERS SUBJECT TO A PERFORMANCE ASSURANCE PLAN; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Performance assurance state special revenue account — statutory appropriation. (1) There is a performance assurance state special revenue account in the state special revenue fund. The account must be used for the deposit of payments to the state made by a telecommunications carrier pursuant to the terms of a performance assurance plan.

(2) Money in the performance assurance state special revenue account is statutorily appropriated, as provided in 17-7-502, and may be expended by the commission in carrying out its responsibilities to administer, audit, and oversee the performance assurance plan, pursuant to the terms of the plan.

(3) For purposes of this section, a "performance assurance plan" means a commission-approved, self-executing remedy plan to ensure that a telecommunications carrier provides adequate wholesale service to competitors after the carrier gains entry into the interlocal access and transport area long-distance market in its region pursuant to 47 U.S.C. 271.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; *[section 1];* 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 26, 2003

CHAPTER NO. 44

[HB 208]

AN ACT CLARIFYING THAT PARENTAL RIGHTS MAY BE TERMINATED WITHOUT REQUIRING A TREATMENT PLAN IF TWO MEDICAL DOCTORS OR CLINICAL PSYCHOLOGISTS SUBMIT TESTIMONY THAT THE PARENT CANNOT ASSUME THE ROLE OF PARENT WITHIN A

REASONABLE TIME; AMENDING SECTION 41-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in In re C.R.O., 2002 MT 50, 309 Mont. 48, 43 P.3d 913 (2002), the concurring opinions urged the Legislature to revisit section 41-3-609(4)(b), MCA, concerning termination of parental rights without requiring a treatment plan.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent *within a reasonable time*;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 26, 2003

CHAPTER NO. 45

[HB 209]

AN ACT CONFORMING THE EFFECT OF A LIEN RESULTING FROM FILING A TRANSCRIPT OF A JUDGMENT IN ANOTHER COUNTY TO THE LIEN RESULTING FROM THE DOCKETING OF A JUDGMENT; AMENDING SECTION 25-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another county — lien — expiration.(1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in that county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in ~~subsection (2)~~ *61-6-123*, the lien continues for ~~6~~ *10* years *from the date of the entry of the judgment* unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 26, 2003

CHAPTER NO. 46

[HB 112]

AN ACT ALLOWING VEHICLES TO PASS SCHOOL BUSES THAT ARE STOPPED TO RECEIVE OR DISCHARGE SCHOOL CHILDREN IN

DESIGNATED SCHOOL BUS TURNOUTS; SPECIFYING THE REQUIREMENTS NECESSARY TO DESIGNATE A SCHOOL BUS TURNOUT; AND AMENDING SECTIONS 61-8-301, 61-8-351, AND 61-8-715, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-301, MCA, is amended to read:

"61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property;

(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or

(c) operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection (1)(c) does not apply to situations described in 61-8-351~~(5)~~*(6)*.

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving is subject to the penalties provided in 61-8-715."

Section 2. Section 61-8-351, MCA, is amended to read:

"61-8-351. Meeting or passing school bus — penalty. (1) The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus that has stopped on the highway or street to receive or discharge any school children:

(a) shall stop the vehicle not less than 10 feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop when meeting or overtaking from either direction any school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the vehicle is

stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:

(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.

(b) The separate roadway must be designed, constructed, and signed specifically for use by school buses, with sufficient space for safe ingress and egress from the main traveled way.

(c) The pullout must be approved by the local affected school district, by a resolution of the district trustees, and by the district superintendent as a mandatory school bus stop for receiving and discharging school children.

~~(4)~~*(5)* When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

~~(5)~~*(6)* The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

~~(6)~~*(7)* Whenever a vehicle is established to have been in violation of subsection (1), the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.

~~(7)~~*(8)* Violation of subsection (1) is punishable upon conviction by a fine of not more than $500."

Section 3. Section 61-8-715, MCA, is amended to read:

"61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(a) or (1)(c) or convicted of reckless endangerment of highway workers under 61-8-315 shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than $25 or more than $300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than $50 or more than $500, or both.

(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than $300 or more than

$500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than $500 or more than $1,000.

(3) A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding $10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351~~(6)~~*(7)* does not apply to a prosecution under 61-8-301(1)(c) that is punishable under this subsection."

Ap proved Feb ru ary 27, 2003

CHAPTER NO. 47

[HB 151]

AN ACT ALLOWING ELECTION JUDGES TO BE PAID MORE THAN MINIMUM WAGE; AND AMENDING SECTION 13-4-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-4-106, MCA, is amended to read:

"13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges must be paid at *least* the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than $1,000 in the calendar year.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received."

Ap proved Feb ru ary 27, 2003

CHAPTER NO. 48

[HB 217]

AN ACT ELIMINATING THE TRANSFER OF FUNDS FROM THE GENERAL FUND TO THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT IN FISCAL YEARS 2004 AND 2005; INCREASING THE AMOUNT TRANSFERRED IN FISCAL YEAR 2006 TO ACCOUNT FOR THE PERCENTAGE INCREASES LOST AS A RESULT OF NOT RECEIVING FUNDS IN FISCAL YEARS 2004 AND 2005; AMENDING SECTION 15-1-122, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $75,000 in fiscal year 2003;

(b) $0 in fiscal years 2004 and 2005;

~~(b)~~*(c)* ~~$2,960,715~~ *$3,050,205* in fiscal year ~~2004~~ *2006*; and

~~(c)~~*(d)* in each succeeding fiscal year, the amount in subsection (2)~~(b)~~*(c)*, increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 27, 2003

CHAPTER NO. 49

[HB 238]

AN ACT EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN REQUIREMENTS FOR SHORT-TERM LEASE OF A WATER APPROPRIATION RIGHT FOR CERTAIN DUST ABATEMENT ACTIVITIES; EXEMPTING LOCAL GOVERNMENT ENTITIES FROM CERTAIN PUBLIC NOTICE REQUIREMENTS; REQUIRING THAT A LOCAL GOVERNMENT ENTITY POST A COPY OF THE LEASE AGREEMENT AT THE POINT OF DIVERSION WHEN WATER IS DIVERTED UNDER A SHORT-TERM LEASE AGREEMENT; AMENDING SECTION 85-2-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-410, MCA, is amended to read:

"85-2-410. Short-term lease of appropriation right. (1) An appropriator may lease for a term not to exceed 90 days all or part of an appropriation right for road construction or dust abatement without the prior approval of the department, subject to the requirements of this section. The lease agreement must include the following information:

(a) the name and address of the lessee;

(b) the name of the owner of the appropriation right;

(c) the number of the appropriation right;

(d) the purpose of use of water for which the lease is being made;

(e) the source of water to be appropriated;

(f) the starting and ending date of the proposed use of water;

(g) the proposed point of diversion;

(h) the proposed place of use;

(i) the diversion flow rate and volume of water to be used during the period of use; and

(j) a description of how the existing use of water will be reduced to accommodate the temporary change of use of the appropriation right, including the number and location of acres to be removed from irrigation, if applicable.

(2) A short-term lease of an appropriation right under this section may not exceed 60,000 gallons a day or the amount of the appropriation right, whichever is less. Any combination of short-term leases cannot exceed 120,000 gallons a day for one project.

(3) ~~The~~ *Except as provided in subsection (9), the* following information must be submitted to the department at least 2 days prior to the use of water by a lessee under this section:

(a) a copy of the publication notice or copies of the individual notice required under subsection (4);

(b) a copy of the lease agreement; and

(c) for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential adverse effects to appropriators in the area of the proposed point of diversion.

(4) ~~The~~ *Except as provided in subsection (9), the* lessee of an appropriation right under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially affected appropriators in the area of the proposed point of diversion. The published notice or the individual notice must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c).

(5) (a) The owner of a water right, whether the right is prior or subsequent in priority to the short-term lease acquired by a person under this section, who cannot satisfy in full the owner's right during the time that the short-term lessee is diverting water may make a complaint to the department and cause the short-term lessee's diversion to be discontinued.

(b) The diversion is discontinued until the owner's right is satisfied or until the lessee establishes to the department that the discontinuance has had no effect on the owner's water right. Upon establishment that discontinuance has

not had an effect, the department shall enter an order allowing the diversion to continue.

(6) If a person purposely, with malicious intent, causes the discontinuance of a short-term diversion through the complaint process provided in subsection (5)(a) and the complaint is found to be invalid and frivolous, the person is, upon conviction, guilty of a misdemeanor and shall be fined in an amount not to exceed $500.

(7) This section does not limit the remedies available to an appropriator to enjoin or to seek damages from a person appropriating water under this section.

(8) A civil action instituted to enjoin or seek damages from a person appropriating water pursuant to this section must be commenced against the lessee. The lessor is not a necessary party to a civil action. The lessee has the burden of establishing that the lessee's use does not have an adverse effect on a prior appropriator of water.

(9) (a) A local government entity, as defined in 7-6-602, is not subject to the requirements of subsections (3)(a) and (4) when conducting dust abatement that was not scheduled or contracted for 30 days or more prior to the use of the water.

(b) A local government entity that does not publish notice as provided in subsection (4) shall post a copy of the lease agreement at the point of diversion at least 24 hours prior to and during the time that water is diverted."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 27, 2003

CHAPTER NO. 50

[HB 248]

AN ACT ENCOURAGING HUNTING AND FISHING BY MONTANA YOUTH BY PROVIDING THAT THE FIRST TIME A RESIDENT YOUTH WHO IS 12 YEARS OF AGE OR OLDER AND LESS THAN 18 YEARS OF AGE APPLIES FOR A HUNTING LICENSE, THE YOUTH IS ENTITLED TO RECEIVE A YOUTH COMBINATION SPORTS LICENSE FREE OF CHARGE; AMENDING SECTION 87-2-805, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under eighteen years of age — youth combination sports license. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age. *A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.*

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) A person who lawfully purchases ~~a~~ *or is granted a free* youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased *or granted free* after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license."

Section 2. Effective date. [This act] is effective May 1, 2003.

Ap proved Feb ru ary 27, 2003

CHAPTER NO. 51

[HB 406]

AN ACT PERMITTING THE DEPARTMENT OF REVENUE TO DEPOSIT MONEY IT HAS RECEIVED WITHIN A REASONABLE TIME AFTER RECEIPT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Deposit of money. Money received by the department from the collection of taxes, fees, and debts is not subject to the timely deposit requirements of 17-6-105(6). The department shall deposit all money within a reasonable time after receipt.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 27, 2003

CHAPTER NO. 52

[SB 7]

AN ACT CREATING AND REVISING DEFINITIONS OF CERTAIN LOCAL, STATE, TRIBAL, AND FEDERAL OFFICIALS TO PROVIDE EXEMPTIONS UNDER LOBBYING LAWS; REVISING DEFINITIONS OF "LOBBYING", "LOBBYING FOR HIRE", AND "PAYMENT TO INFLUENCE OFFICIAL ACTION"; EXTENDING THE TIME TO HEAR AN APPEAL FOR A DENIED LICENSE TO LOBBY; PROVIDING EXEMPTIONS TO PAYMENT OF THE LOBBYIST LICENSE FEE; AMENDING SECTIONS 5-7-102 AND 5-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Appointed state official" means an individual who is appointed:

(a) to public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the Montana senate;

(b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or

(c) by the board of trustees of a community college to serve as president.

~~(1)~~*(2)* "Business" means:

(a) a holding or interest whose fair market value is greater than $1,000~~,~~ in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

~~(2)~~*(3)* "Commissioner" means the commissioner of political practices.

~~(3)~~*(4)* "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(5) "Elected federal official" means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.

~~(4)~~*(6)* "Elected *local* official" means ~~a public official~~ *an elected officer of a county, a consolidated government, an incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.*

(7) "Elected state official" means an individual holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to ~~legislators,~~ public service commissioners~~,~~ and district court judges *but not including legislators for the purposes of this chapter. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a statewide office but who has not yet been sworn in*. ~~The term "official-elect" also applies to the offices.~~

(8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal official and an individual who has been elected to a tribal office but who has not yet been sworn in.

~~(5)~~*(9)* "Individual" means a human being.

(10) "Legislator" means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.

~~(6)~~*(11) (a)* "Lobbying" means:

~~(a)~~*(i)* the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature ~~by a person other than a member of the legislature or a public official~~; and

~~(b)~~*(ii)* the practice of promoting or opposing official action by any public official.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a legislator, a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

~~(7)~~*(12)* "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a principal who are paid, reimbursed, or retained by the principal ~~and whose duties include lobbying. If an individual is reimbursed only for his personal living and travel expenses, which together are less than $1,000 per calendar year, that individual is not considered to be lobbying for hire~~ *to lobby*.

~~(8)~~*(13)* (a) "Lobbyist" means a person who engages in the practice of lobbying for hire.

(b) Lobbyist does not include:

(i) an individual acting solely on ~~his~~ *the individual's* own behalf; or

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of ~~his~~ *the lobbyist's* principal.

(c) Nothing in this ~~section~~ *subsection (13)* deprives an individual not lobbying for hire of the constitutional right to communicate with public officials.

~~(9)~~*(14)* "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

~~(10)~~*(15)* "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for expenses~~, excluding personal living expenses~~; or

(b) payment in support of or *for* assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

~~(11)~~*(16)* "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

~~(12)~~*(17)* "Principal" means a person who employs a lobbyist.

~~(13)~~*(18)* "Public official" means an ~~individual, elected or appointed,~~ *elected state official or an appointed state official* acting in ~~his~~ *an* official capacity for the state government. The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

~~(14)~~*(19)* "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official for the purpose of obtaining employment;

(c) attempting to influence the action of a public official on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

Section 2. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses — fees — eligibility — waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is $150 for each lobbyist *except as provided in subsection (5) or unless the fee is waived for hardship reasons under this section*. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship

may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within ~~10~~ *20 business* days of the date of the filing of the application, *not including the date on which the application is filed.*

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) $50 in the general fund; and

(b) $100 in the state special revenue account provided for in 5-11-1112.

(5) A lobbyist who receives from one or more principals payments to lobby that total less than $1,000 in a calendar year does not have to pay the license fee established in subsection (1). The commissioner shall develop a form to be signed by the lobbyist and the principal or principals certifying that the payments total less than $1,000 for a calendar year. This subsection only exempts the lobbyist from paying the license fee. A lobbyist is required to file an application to lobby under this section and the principal or principals shall file all reports required under this chapter and rules adopted by the commissioner.

~~(5)~~*(6)* The commissioner may adopt rules to implement the waiver provisions of ~~subsection~~ *subsections* (1) *and (5)*."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 26, 2003

CHAPTER NO. 53

[HB 22]

AN ACT GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING TRAFFIC CONTROL DEVICES AND PEDESTRIAN CONTROL SIGNALS; ESTABLISHING VEHICLE OPERATOR REQUIREMENTS WHEN LANE USE CONTROL SIGNALS ARE IN PLACE; AMENDING SECTIONS 61-8-201, 61-8-202, 61-8-203, 61-8-207, 61-8-208, 61-8-209, AND 61-8-210, MCA; AND REPEALING SECTION 61-8-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-201, MCA, is amended to read:

"61-8-201. Obedience to traffic control devices — exception for ~~emergency~~ *certain* vehicles and funeral processions. (1) ~~The~~ *Unless otherwise directed by a peace officer, flag person, crossing guard, or public safety worker, the* driver of a vehicle shall obey the instructions of an official traffic

control device applicable to ~~his~~ *the driver's* vehicle and placed in accordance with the provisions of this chapter. ~~unless otherwise directed by a highway patrol officer or police officer, subject to the exceptions granted in this chapter to the~~ *The* driver of an authorized emergency vehicle, *a police vehicle, or a highway patrol vehicle* and ~~to~~ the driver of a motor vehicle in a funeral procession *are exempt from obedience to official traffic control devices as provided in this chapter*.

(2) A provision of this chapter for which ~~signs~~ *traffic control devices* are required may not be enforced against an alleged violator if at the time and place of the alleged violation an official ~~sign~~ *traffic control device* is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section *of this chapter* does not state ~~the signs~~ *that official traffic control devices* are required, the section is effective even though ~~no signs~~ *traffic control devices* are *not* erected or in place.

(3) Official traffic control devices that are placed or held in position substantially conforming to the requirements of this chapter and the requirements of the uniform system adopted by the department of transportation pursuant to 61-8-202 are presumed to have been placed by an official act or at the discretion of a lawful authority."

Section 2. Section 61-8-202, MCA, is amended to read:

"61-8-202. Department of transportation to adopt ~~sign~~ manual. The department of transportation shall adopt a manual for a uniform system of traffic control devices consistent with this chapter for use upon highways within the state. ~~This uniform system shall~~ *The manual adopted by the department of transportation must* correlate with and so far as possible conform to the ~~manual on uniform traffic control devices, as amended~~ *Manual on Uniform Traffic Control Devices, as amended, published by the United States federal highway administration*."

Section 3. Section 61-8-203, MCA, is amended to read:

"61-8-203. Department of transportation to ~~sign~~ place traffic control devices on ~~all state~~ highways it maintains and approve traffic control devices on highways under its jurisdiction. (1) The department of transportation shall place and maintain traffic control devices, conforming to its manual and specifications, upon all ~~state~~ highways *maintained by the department of transportation that the department* ~~it~~ considers necessary to ~~indicate and to~~ carry out *the provisions of* this chapter and chapter 9 or to regulate, warn, or guide traffic.

(2) A local authority *or other entity* may not place or maintain a traffic control device upon a highway under the jurisdiction of the department *of transportation* except ~~by~~ *with* the ~~latter's~~ *department's* permission.

(3) ~~Only the department may erect and maintain these traffic control devices conforming to its manual and specifications on a controlled-access highway or controlled-access facility.~~ The *unauthorized* erection of a sign, marker, ~~or~~ emblem, *or other traffic control device* on a ~~controlled-access facility or controlled-access~~ highway *under the jurisdiction of the department of transportation* by any other ~~public authority, or agent, or by a private individual, firm, or corporation~~ *entity* is ~~unlawful and~~ a misdemeanor and *is* punishable as provided in 61-8-712.

(4) The erection or maintenance of a sign, marker, emblem, or traffic control device on a ~~state~~ highway ~~except a controlled-access highway or~~

~~controlled-access facility,~~ *under the jurisdiction of the department of transportation* is subject to the rules and specifications *that* the department adopts and publishes in the interest of public safety and convenience."

Section 4. Section 61-8-207, MCA, is amended to read:

"61-8-207. Traffic control signal legend. ~~Whenever~~ *Except for lane use control signals and special pedestrian control signals carrying a legend, whenever* traffic is controlled by traffic control signals exhibiting ~~the words "Go", "Caution", or "Stop" or exhibiting~~ different colored lights *or colored lighted arrows* successively one at a time or ~~with arrows~~ *in combination*, ~~the following colors only must be used and the terms and~~ *only the colors green, red, and yellow may be used. The* lights ~~must~~ indicate and apply to drivers of vehicles and pedestrians as follows:

~~(1) green alone or "Go":~~

(1) (a) Vehicular traffic facing ~~the~~ *a circular green* signal may proceed straight through or turn left or right unless a ~~sign~~ *traffic control device* at the place prohibits either turn. ~~But~~ *However,* vehicular traffic, including vehicles turning right or left, must yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Vehicular traffic facing a green arrow signal shown alone or in combination with another indication may cautiously enter the intersection only to make either the movement indicated by the arrow or another movement that is permitted by another indication shown at the same time. Vehicular traffic making the movements permitted by this subsection (1)(b) must yield the right-of-way to pedestrians who are lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

~~(b)~~*(c)* ~~Pedestrians~~ *Unless otherwise directed by a pedestrian control signal as provided in 61-8-208, a pedestrian* facing ~~the~~ *a green* signal*, except when the only green signal is a turn arrow,* may proceed *in the direction of the green signal* across the roadway within any marked or unmarked crosswalk. *A driver of a vehicle shall yield the right-of-way to the pedestrian.*

~~(2) yellow alone or "Caution" when shown following the green or "Go" signal:~~

(2) (a) Vehicular traffic facing ~~the~~ *a steady circular yellow or yellow arrow* signal is warned that the *traffic movement permitted by the related green signal is being terminated or that a* red ~~or "Stop"~~ signal will be exhibited immediately thereafter. ~~and vehicular~~ *Vehicular* traffic may not enter the intersection when the red ~~or "Stop"~~ signal is exhibited *after the yellow signal.*

(b) ~~Pedestrians~~ *Unless otherwise directed by a pedestrian control signal as provided in 61-8-208, a pedestrian* facing ~~the signals are~~ *a steady circular yellow or yellow arrow signal is* advised that there is insufficient time to cross the roadway~~, and a pedestrian then starting to cross shall yield the right-of-way to all vehicles~~ *before a red indication is shown*.

~~(3) red alone or "Stop":~~

(3) (a) Vehicular traffic facing ~~the~~ *a steady circular red* signal must stop *at a marked stop line. If there is not a marked stop line, vehicular traffic must stop* before entering the crosswalk on the near side of the intersection. ~~or, if none, then~~ *If there is not a marked crosswalk, vehicular traffic must stop* before entering the intersection and*, except as provided in subsection (3)(c),* must remain standing until ~~green or "Go"~~ *an indication to proceed* is shown ~~alone,~~

~~until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making the turn, vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at the intersection, the movement cannot be made until green or "Go" is shown alone~~.

(b) ~~A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic~~ *Vehicular traffic facing a steady red arrow signal may not enter the intersection to make the movement indicated by the arrow and must stop at a marked stop line unless the traffic is entering the intersection to make a movement indicated by another signal. If there is not a marked stop line, vehicular traffic must stop before entering the crosswalk on the near side of the intersection. If there is not a marked crosswalk, vehicular traffic must stop before entering the intersection and must remain standing until an indication is shown that permits movement.*

(c) (i) Except when a traffic control device is in place that prohibits a turn, vehicular traffic facing a steady circular red signal may cautiously enter the intersection to turn right or to turn left from a one-way street onto another one-way street after stopping as required under subsection (3)(a). After stopping, the operator of a vehicle shall yield the right-of-way to any vehicle in the intersection or approaching the intersection close enough to constitute an immediate hazard during the time that the operator is moving within the intersection.

(ii) An operator of a vehicle entering an intersection as provided in subsection (3)(c)(i) shall yield the right-of-way to pedestrians within the intersection or within an adjacent crosswalk.

(d) Unless otherwise directed by a pedestrian control signal as provided in 61-8-208, a pedestrian facing a steady circular red or red arrow signal alone may not enter the roadway.

~~(4) red with a green arrow:~~

~~(a) Vehicular traffic facing a signal may cautiously enter the intersection only to make the movement indicated by the arrow but must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.~~

~~(b) A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with vehicular traffic.~~

~~(5) traffic control signal at a place other than an intersection:~~

(4) (a) ~~In the event~~ *If* an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable except as to those provisions that by their very nature can have no application.

(b) ~~Any~~ *A required* stop ~~required~~ must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any sign or marking, the stop must be made at the signal."

Section 5. Section 61-8-208, MCA, is amended to read:

"61-8-208. Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" ~~or "Wait"~~ or "Don't Walk" *or symbols*

of a walking person or an upraised palm are in place, ~~such~~ *the* signals ~~shall~~ indicate as follows:

(1) ~~Walk. Pedestrians~~ *A pedestrian* facing ~~such~~ *a "Walk"* signal *or a walking person symbol* may proceed across the roadway in the direction of the signal and ~~shall be given the right-of-way by~~ the ~~drivers~~ *operators* of all vehicles *shall yield the right-of-way to the pedestrian*.

(2) ~~Wait or Don't Walk. No~~ *A* pedestrian ~~shall~~ *may not* start to cross the roadway in the direction of ~~such~~ *a* signal *exhibiting a flashing or steady "Don't Walk" signal or upraised palm symbol*, but ~~any~~ *a* pedestrian who has partially completed ~~his~~ crossing on the ~~walk~~ *"Walk"* signal *or walking person symbol* shall proceed to a sidewalk or safety island while the ~~wait~~ *"Don't Walk"* signal *or upraised palm symbol* is showing. *An operator of a vehicle shall yield the right-of-way to a pedestrian who has partially completed crossing and is proceeding to the sidewalk or safety island.*

(3) A pedestrian may not start to cross a roadway in the direction of a steady "Don't Walk" signal or upraised palm symbol."

Section 6. Section 61-8-209, MCA, is amended to read:

"61-8-209. Flashing signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic ~~sign or signal~~ *control device*, it ~~shall require~~ *requires* obedience by vehicular traffic as follows:

(a) ~~Flashing red (stop signal).~~ When a red lens is illuminated with rapid intermittent flashes, ~~drivers of vehicles~~ *an operator of a vehicle* shall stop *at a marked stop line. If there is no marked stop line, an operator shall stop* before entering the nearest crosswalk at an intersection. ~~or at a limit line when marked or, if none, then before entering the intersection, and the~~ *If there is no crosswalk, an operator shall stop at the point nearest the intersecting roadway where the operator has a view of approaching traffic. The* right to proceed ~~shall be~~ *is* subject to the rules applicable after making a stop at a stop sign*, as provided in 61-8-344*.

(b) ~~Flashing yellow (caution signal).~~ When a yellow lens is illuminated with rapid intermittent flashes, ~~drivers of vehicles~~ *the operator of a vehicle* may proceed through the intersection or past ~~such~~ *the flashing yellow* signal only with caution.

(2) This section ~~shall not~~ *does not* apply at railroad grade crossings. Conduct of ~~drivers of vehicles~~ *an operator of a vehicle* approaching *a* railroad grade ~~crossings shall be~~ *crossing is* governed by the ~~rules as set forth in~~ *provisions of* 61-8-347."

Section 7. Lane use control signals. When lane use control signals are placed over individual lanes, the signals indicate and apply to operators of vehicles as follows:

(1) An operator of a vehicle may drive in the lane over which a steady downward green arrow signal is located.

(2) An operator of a vehicle must be prepared to vacate, in a safe manner, the lane over which a steady yellow X signal is located because a lane control change is being made to a steady red X signal.

(3) An operator of a vehicle may not use the lane over which the steady red X signal is located.

(4) An operator of a vehicle may use a lane over which a steady white two-way left-turn arrow signal is located for a left turn but not for through travel. The operator must be aware that common use of the lane by oncoming vehicular traffic is also permitted.

(5) An operator of a vehicle may use a lane over which a steady white one-way left-turn arrow signal is located for a left turn but not for through travel.

Section 8. Section 61-8-210, MCA, is amended to read:

"61-8-210. Display of unauthorized signs, signals, or markings. (1) ~~No~~ *A* person ~~shall~~ *may not* place, maintain, or display upon or in view of ~~any~~ *a* highway any unauthorized sign, signal, marking, or device ~~which~~ *that* purports to be or is an imitation of or resembles an official traffic control device, ~~or railroad sign, or signal, or which~~ *that* attempts to direct the movement of traffic, or ~~which~~ *that* hides from view or interferes with the effectiveness of any official traffic control device ~~or any railroad sign or signal~~.

(2) ~~No~~ *A* person ~~shall~~ *may not* place or maintain ~~nor shall any~~ *and a* public authority *may not* permit ~~upon any highway any traffic sign or signal bearing thereon any~~ commercial advertising *on an official traffic control device on a highway, except for business signs included as a part of official motorist service panels or roadside area information panels approved by the department of transportation*.

(3) This section ~~shall not be deemed to~~ *does not* prohibit the erection *of signs* upon private property adjacent to highways ~~of signs giving~~ *that give* useful directional information and *that are* of a type that cannot be mistaken for official signs.

~~(4) The prohibition of this section shall not apply to portable "Caution" signs placed in the vicinity of schools at those times during which school children are going to and coming from school.~~"

Section 9. Repealer. Section 61-8-205, MCA, is repealed.

Section 10. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 61, chapter 8, part 2, and the provisions of Title 61, chapter 8, part 2, apply to [section 7].

Approved February 28, 2003

CHAPTER NO. 54

[HB 51]

AN ACT GENERALLY REVISING THE LICENSURE OF PERSONAL-CARE FACILITIES; CHANGING THE NAME OF "PERSONAL-CARE FACILITY" TO "ASSISTED LIVING FACILITY" FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; REVISING THE REQUIREMENTS FOR THE TYPES OF RESIDENTS SERVED BY ASSISTED LIVING FACILITIES; PROVIDING FOR A NEW CATEGORY C THAT CLASSIFIES COGNITIVELY IMPAIRED RESIDENTS WHO ARE SERVED BY ASSISTED LIVING FACILITIES FOR LICENSURE PURPOSES; AND AMENDING SECTIONS 39-3-406, 50-5-101, 50-5-225, 50-5-226, 50-5-227, 50-5-1202, 50-8-101, 52-1-104, 52-3-811, 53-6-101, AND 87-2-802, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or ~~personal care~~ *assisted living* facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or

one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the

employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 2. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

~~(2)~~*(3)* "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

~~(3)~~*(4)* (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection ~~(3)~~ *(4)*, the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) *(A)* "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

~~(4)~~*(5)* "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(6) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

~~(5)~~*(7)* "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(6)~~*(8)* "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(7)~~*(9)* "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(8)~~*(10)* "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

~~(9)~~*(11)* "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(10)~~*(12)* "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

~~(11)~~*(13)* "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(14) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

~~(12)~~*(15)* "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(13)~~*(16)* "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

~~(14)~~*(17)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~*(18)* "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(16)~~*(19)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(17)~~*(20)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(18)~~*(21) (a)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care

facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.

~~(19)~~*(22)* "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(20)~~*(23)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~*(24)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~*(25)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~*(26)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~*(27)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

~~(25)~~*(28)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(26)~~*(29)* "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(27)~~*(30)* "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(28)~~*(31)* "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(32) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse, who is practicing within the scope of the license issued by the department of labor and industry.

~~(29)~~*(33)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(30)~~*(34)* "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

~~(31)~~*(35)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(32)~~*(36)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(33)~~*(37)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~*(38)* "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~*(39)* "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~*(40)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~*(41)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~*(42)* "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39) "Personal care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.~~

(43) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

~~(40)~~*(44)* "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~*(45)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~*(46)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~*(47)* "Residential care facility" means an adult day-care center, an adult foster care home, ~~a personal care~~ *an assisted living* facility, or a retirement home.

~~(44)~~*(48)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~*(49)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~*(50)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~*(51)* "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~*(52)* "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~*(53)* "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 3. Section 50-5-225, MCA, is amended to read:

"50-5-225. ~~Personal-care~~ *Assisted living* facilities — services to residents. ~~A personal-care facility must provide the following services to facility residents:~~ *(1) An assisted living facility shall, at a minimum, provide or make provisions for:*

~~(1)~~*(a)* ~~residential~~ *personal* services, such as laundry, housekeeping, food service, and ~~either providing or making available provision for~~ local transportation;

~~(2)~~*(b)* ~~personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks~~ *assistance with activities of daily living, as provided for in the facility admission agreement and that do not require the use of a licensed health care professional or a licensed practical nurse*;

~~(3)~~*(c)* recreational activities; ~~and~~

~~(4)~~*(d)* ~~supervision of~~ *assistance with* self-medication*;*

(e) 24-hour onsite supervision by staff; and

(f) assistance in arranging health-related services, such as medical appointments and appointments related to hearing aids, glasses, or dentures.

(2) An assisted living facility may provide, make provisions for, or allow a resident to obtain third-party provider services for:

(a) the administration of medications consistent with applicable laws and regulations; and

(b) skilled nursing care or other skilled services related to temporary, short-term, acute illnesses, which may not exceed 30 consecutive days for one episode or more than a total of 120 days in 1 year."

Section 4. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in ~~personal-care~~ *assisted living* facilities. (1) ~~A personal-care~~ *An assisted living* facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) ~~A resident of a personal-care~~ *An assisted living* facility licensed as a category A facility under 50-5-227 ~~may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.~~ *may not admit or retain a category A resident unless each of the following conditions is met:*

(a) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(b) The resident may not have a stage 3 or stage 4 pressure ulcer.

(c) The resident may not have a gastrostomy or jejunostomy tube.

(d) The resident may not require skilled nursing care or other skilled services on a continued basis except for the administration of medications consistent with applicable laws and regulations.

(e) The resident may not be a danger to self or others.

(f) The resident must be able to accomplish activities of daily living with supervision and assistance based on the following:

(i) the resident may not be consistently and totally dependent in four or more activities of daily living as a result of a cognitive or physical impairment; and

(ii) the resident may not have a severe cognitive impairment that renders the resident incapable of expressing needs or making basic care decisions.

(3) ~~A resident of a personal-care~~ *An assisted living* facility licensed as a category B facility under 50-5-227 ~~must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is~~ *may not admit or retain a category B resident unless each of the following conditions is met*:

(a) ~~in need of~~ *The resident may require* skilled nursing care *or other services for more than 30 days for an incident, for more than 120 days a year that may be provided or arranged for by either the facility or the resident, and as provided for in the facility agreement*~~;~~.

~~(b) in need of medical, physical, or chemical restraint;~~

~~(c) nonambulatory or bedridden;~~

~~(d) incontinent to the extent that bowel or bladder control is absent; or~~

~~(e) unable to self-administer medications.~~

(b) The resident may be consistently and totally dependent in more than four activities of daily living.

(c) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(d) The resident may not be a danger to self or others.

(e) The resident must have a practitioner's written order for admission as a category B resident and written orders for care.

~~(4)~~*(f)* ~~A~~ *The* resident ~~of a category B personal-care facility who needs skilled nursing care~~ must have a signed ~~statement~~ *health care assessment*, renewed on a quarterly basis by a ~~physician, a physician assistant certified, an advanced practice registered nurse, or a registered nurse, whose work is unrelated to the operation of the facility and~~ *licensed health care professional* who:

~~(a)~~*(i)* actually visited the facility within the calendar quarter covered by the ~~statement~~ *assessment*;

~~(b)~~*(ii)* has certified that the particular needs of the resident can be adequately met in the facility; and

~~(c)~~*(iii)* has certified that there has been no significant change in health care status that would require another level of care.

(4) An assisted living facility licensed as a category C facility under 50-5-227 may not admit or retain a category C resident unless each of the following conditions is met:

(a) The resident has a severe cognitive impairment that renders the resident incapable of expressing needs or of making basic care decisions.

(b) The resident may be at risk for leaving the facility without regard for personal safety.

(c) Except as provided in subsection (4)(b), the resident may not be a danger to self or others.

(d) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(5) For category B and C residents, the assisted living facility shall specify services that it will provide in the facility admission criteria.

~~(5)~~*(6)* The department shall develop standardized forms and education and training materials to provide to the ~~personal-care~~ *assisted living* facilities and to the ~~physicians, physician assistants-certified, advanced practice registered nurses, or registered nurses~~ *licensed health care professionals* who are responsible for the signed statements provided for in subsection ~~(4)~~ *(3)(f)*. The use of the standardized forms is voluntary.

~~(6)~~*(7)* The department shall provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's ~~physician~~ *practitioner* of:

(i) physical and mental standards for residents of ~~personal-care~~ *assisted living* facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while *the* resident ~~in~~ *lives at* the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in ~~subsection~~ *subsections* (3) *and (4)*;

(c) a method by which the results of any screening decision made pursuant to rules established under subsection ~~(6)(b)~~ *(7)(b)* may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A ~~personal-care~~ *assisted living* facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility *and the storage and administration of over-the-counter and prescription medications*; and

(e) standards for operating a category B ~~personal-care~~ *assisted living* facility, which must include the standards for a category A ~~personal-care~~ *assisted living* facility and additional standards for assessment of residents, care planning, qualifications and training of staff, ~~restraint use and reduction,~~

prevention and care of pressure sores, *and* incontinence care~~, and the storage and administration of drugs~~*; and*

(f) standards for operating a category C assisted living facility, which must include the standards for a category B assisted living facility and additional standards for resident assessment, the provision of specialty care to residents with cognitive impairments, and additional qualifications of and training for the administrator and direct-care staff."

Section 5. Section 50-5-227, MCA, is amended to read:

"50-5-227. Licensing ~~personal care~~ *assisted living* facilities. (1) The department shall by rule adopt standards for licensing and operation of ~~personal care~~ *assisted living* facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A ~~— a~~ facility ~~providing personal care to residents who may not be:~~

~~(i) in need of skilled nursing care;~~

~~(ii) in need of medical, chemical, or physical restraint;~~

~~(iii) nonambulatory or bedridden;~~

~~(iv) incontinent to the extent that bowel or bladder control is absent; or~~

~~(v) unable to self-administer medications; or~~ *serving residents requiring the level of care as provided for in 50-5-226(2);*

(b) category B ~~— a~~ facility providing ~~personal care~~ *skilled nursing care or other skilled services* to five or fewer residents who ~~may be:~~

~~(i) in need of skilled nursing care;~~

~~(ii) in need of medical, chemical, or physical restraint;~~

~~(iii) nonambulatory or bedridden;~~

~~(iv) incontinent to the extent that bowel or bladder control is absent; or~~

~~(v) unable to self-administer medications~~ *meet the requirements stated in 50-5-226(3); or*

(c) category C facility providing services to residents with cognitive impairments requiring the level of care stated in 50-5-226(4).

(3) A single facility meeting the applicable requirements for a category A facility may additionally be licensed to provide category B or category C services with the approval of the department.

~~(3)~~*(4)* The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees must be reasonably related to service costs."

Section 6. Section 50-5-1202, MCA, is amended to read:

"50-5-1202. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Long-term care facility" means a licensed facility that provides skilled nursing care or intermediate nursing care or that is ~~a personal-care~~ *an assisted living* facility, as defined in 50-5-101.

(3) "Medical symptom" means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient.

(4) "Physician" includes an advanced practice registered nurse to the extent permitted by federal law.

(5) "Resident" means a person who lives in a long-term care facility.

(6) (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.

(b) The term does not include protective restraints as defined in 21 CFR 880.6760."

Section 7. Section 50-8-101, MCA, is amended to read:

"50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Facility" means:

(a) nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol or drug treatment or emergency detoxification;

(b) community homes for persons with developmental disabilities, community homes for physically disabled persons, and adult foster family care homes;

(c) youth care facilities;

(d) public accommodations, including roominghouses, retirement homes, hotels, and motels;

(e) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(f) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(g) ~~personal care~~ *assisted living* facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 8. Section 52-1-104, MCA, is amended to read:

"52-1-104. Department authorized to provide and set standards for supplementary payments. (1) Except as provided in this section, the department ~~shall have the authority to~~ *may* provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments ~~thereto~~ *to that act*.

(2) The department ~~shall have the authority to~~ *may* establish standards of assistance and apply them uniformly throughout the state and ~~to~~ *may*

determine individuals eligible for and the amount of ~~such~~ supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B~~personal-care~~ *assisted living* facilities licensed pursuant to 50-5-227."

Section 9. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department or its local affiliate; or

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the person with a developmental disability resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a person with a developmental disability in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing home, group home, adult foster care home, adult day-care center, or ~~personal-care~~ *assisted living* facility or an agency or individual that provides home health services or personal care in the home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official;

(h) a person providing services to an older person or a person with a developmental disability pursuant to a contract with a state or federal agency; and

(i) an employee of the department while in the conduct of the employee's duties.

(4) Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1)."

Section 10. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for ~~personal-care~~ *assisted living* facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 11. Section 87-2-802, MCA, is amended to read:

"87-2-802. Veterans in VA hospitals and residents of state institutions and long-term care facilities, nursing care facilities, ~~personal-care~~ *assisted living* facilities, and community homes for persons with disabilities. (1) ~~Any~~ *A* veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all institutions under the jurisdiction of the department of public health and human services may fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

(2) Upon annual application by managers or directors of licensed long-term care facilities and ~~personal-care~~ *assisted living* facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes."

Section 12. Name change — directions to code commissioner. Wherever a reference to a personal-care facility appears in legislation enacted by the 2003 legislature, the code commissioner is directed to change it to a reference to an assisted living facility.

Ap proved Feb ru ary 28, 2003

CHAPTER NO. 55

[HB 80]

AN ACT ALLOWING THE REDUCED FARM RATE GVW FEE TO BE APPLICABLE TO VEHICLES HAULING TIMBER HARVESTED ON A RANCH, FARM, ORCHARD, OR DAIRY TO MARKET; AMENDING SECTION 61-10-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-206, MCA, is amended to read:

"61-10-206. Special fees — certain farm vehicles. (1) Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there must be paid and collected annually a fee equal to 35% of the fees provided in ~~Schedule I and Schedule II~~ *61-10-201* on:

(a) motortrucks owned and operated by ranchers or farmers in:

(i) the transportation of their own ranch, farm, orchard, or dairy products from point of production to market~~,~~*;* ~~or of~~

(ii) the transportation of timber harvested on their own ranch, farm, orchard, or dairy from point of harvest to market;

(iii) the transportation of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy~~,~~*;* ~~or in~~

(iv) the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy~~,~~*;* or

(v) the transportation of supplies or commodities to be used on the farm, orchard, or dairy; and

(b) one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture.

(2) The minimum fee is $6."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 28, 2003

CHAPTER NO. 56

[HB 114]

AN ACT GENERALLY REVISING LAWS RELATING TO THE CAPITOL COMPLEX ADVISORY COUNCIL; CLARIFYING THAT THE DEPARTMENTS OF ADMINISTRATION AND FISH, WILDLIFE, AND PARKS SHARE THE COSTS ASSOCIATED WITH COUNCIL OPERATIONS; REQUIRING THE COUNCIL TO ADOPT AN ART AND MEMORIAL PLAN; REVISING CRITERIA FOR NAMING A STATE BUILDING, SPACE, OR ROOM IN THE CAPITOL COMPLEX AFTER AN INDIVIDUAL OR DISPLAYING A BUST, STATUE, MEMORIAL, MONUMENT, OR ART DISPLAY COMMEMORATING AN INDIVIDUAL OR EVENT; PERMITTING THE DEPARTMENT OF ADMINISTRATION TO APPROVE TEMPORARY

DISPLAYS IN THE CAPITOL COMPLEX OR ON THE CAPITOL COMPLEX GROUNDS; CHANGING THE AGENCY RESPONSIBLE FOR MAINTAINING AN INVENTORY OF ART AND MEMORIALS IN THE CAPITOL COMPLEX; PROVIDING FOR THE LONG-TERM PLACEMENT OF CERTAIN ITEMS IN THE CAPITOL OR ON THE CAPITOL COMPLEX GROUNDS; ENTRUSTING CERTAIN ITEMS TO THE MONTANA HISTORICAL SOCIETY; AND AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-807, AND 2-17-812, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-803, MCA, is amended to read:

"2-17-803. Capitol complex advisory council established — membership — staff services — compensation. (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director's designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established in 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. The departments of administration and fish, wildlife, and parks shall provide staff services to the council *and share the costs associated with council operations*.

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the daily allowance provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsection (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302."

Section 2. Section 2-17-804, MCA, is amended to read:

"2-17-804. Council duties and responsibilities. (1) The council shall:

(a) adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;

~~(a)~~*(b)* review proposals for ~~permanent~~ *long-term* displays *of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds* ~~or~~ *and for* the naming of state buildings*, spaces, and rooms* in the capitol complex;

~~(b)~~*(c)* advise the legislature on the placement of busts, statues, memorials, monuments, or art displays of a ~~permanent~~ *long-term* nature ~~within~~ *in* public areas of the capitol complex *and on the capitol complex grounds*, including the executive residence and the original governor's mansion;

~~(c)~~*(d)* advise the department of administration on interior decoration of the capitol; and

~~(d)~~*(e)* advise the department of fish, wildlife, and parks on grounds maintenance and grounds displays.

(2) In advising the legislature on ~~permanent~~ *long-term* displays, the council shall consider whether the bust, statue, memorial, monument, or art display:

(a) reasonably fits the *long-range* master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the ~~capitol or other~~ capitol complex ~~buildings~~;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in its design and construction;

(g) will be safely and aesthetically suited to its installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that it has reviewed for naming buildings*, spaces, and rooms* and for ~~permanently~~ placing items in the capitol *complex* or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this ~~section~~ *part*. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized."

Section 3. Section 2-17-805, MCA, is amended to read:

"2-17-805. Function of department of administration — capitol area master plan — advice of capitol complex advisory council and legislative council. (1) With advice from the council, the departments of administration and fish, wildlife, and parks shall establish and maintain a long-range master plan for the orderly development ~~of state buildings in the immediate area~~ of the ~~capital city~~ *capitol complex*. The long-range master plan must be developed and maintained, with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County, based, without limitation, upon zoning regulations, population trends, and plans for rapid transit development; and

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and state property in the ~~immediate area of the capital city~~ *capitol complex*.

(2) The legislative council shall consult with and advise the department of administration concerning the assignment of space in the capitol.

(3) The Montana historical society shall protect and preserve ~~the~~ *all publicly held*, permanent artwork in the capitol *complex* and request funding for periodic inspection, maintenance, and repair of the artwork from the trust fund established in 15-35-108 for protection of works of art in the state capitol and other cultural and aesthetic projects.

(4) The legislative council shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol."

Section 4. Section 2-17-807, MCA, is amended to read:

"2-17-807. Approval for displays and naming buildings, *spaces, and rooms*. (1) A state building, *space, or room* in the capitol complex may not be named after an individual~~, and~~ *or* a bust, statue, memorial, monument, or art display may not be ~~permanently~~ displayed *on a long-term basis* in the capitol *complex* or on the capitol complex grounds unless the building, *space, or room* name or display is approved by the legislature and complies with this ~~section~~ *part*.

(2) A state building, *space, or room* in the capitol complex may not be named after an individual *or a bust, statue, memorial, monument, or art display commemorating an individual may not be displayed on a long-term basis in the capitol complex* unless the individual has been deceased for at least ~~5~~ *10* years.

(3) A bust, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

~~(3)~~*(4)* All busts, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds."

Section 5. Section 2-17-812, MCA, is amended to read:

"2-17-812. Inventory of improvements. (1) The department of fish, wildlife, and parks shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements upon the grounds of the capitol complex, including the executive residence and original governor's mansion.

(2) The ~~department of administration~~ *Montana historical society* shall maintain an inventory of *all publicly held* commemorative displays, statues, artwork, *and* plaques~~, and other improvements~~ in the capitol~~building~~ *complex*.

(3) Both ~~departments~~ *agencies* shall make their inventories available to the council."

Section 6. Placement of certain busts, statues, memorials, monuments, and art displays. (1) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, and the 1972 Montana constitutional convention;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;

(e) the statues of Wilbur Fiske Sanders, Jeanette Rankin, and Mike and Maureen Mansfield;

(f) the Montana statehood centennial bell;

(g) the gallery of outstanding Montanans;

(h) the Montana constitutional exhibit; and

(i) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statue of Thomas Francis Meagher;

(b) the plaque commemorating Donald Nutter; and

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project.

(3) The statue by Robert Scriver entitled "symbol of the pros" is to be placed for up to 50 years, subject to renewal, on the capitol complex grounds.

(4) The council shall determine the specific placement of the items identified in subsections (1) through (3).

Section 7. Certain items entrusted to Montana historical society. A bust, statue, memorial, monument, or art display in possession of the state that may have been associated with the capitol complex but is not listed under [section 6] is entrusted to the Montana historical society for storage or temporary display until a suitable location is identified, recommended for placement by the council, and approved by the legislature for long-term placement.

Section 8. Codification instruction. [Sections 6 and 7] are intended to be codified as an integral part of Title 2, chapter 17, part 8, and the provisions of Title 2, chapter 17, part 8, apply to [sections 6 and 7].

Ap proved Feb ru ary 28, 2003

CHAPTER NO. 57

[HB 121]

AN ACT PROVIDING THAT CERTAIN INCOME FROM THE MONTANA STATE HOSPITAL AND MONTANA MENTAL HEALTH NURSING CARE CENTER BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 53-1-413, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-413, MCA, is amended to read:

"53-1-413. Deposit of payments and collections. (1) Except as provided in 90-7-220, 90-7-221, and this section, the department shall deposit payments and collections of charges for a resident's cost of care in the state treasury to the credit of the general fund.

(2) Payments and collections for services provided to residents of the Montana veterans' home must be deposited in the special revenue account for the benefit of the home. Payments and collections for services provided to residents of the Montana chemical dependency treatment center must be deposited in the state special revenue account for the facility.

~~(3) Subject to 90-7-221, payments from a managed care organization that is contracting with the department to administer a mental health managed care program for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the state special revenue account, subject to appropriation by the legislature for the benefit of those institutions.~~

~~(4) Medicaid payments for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the federal special revenue fund and are subject to appropriation for the benefit of the mental health managed care program.~~"

Section 2. Effective date. [This act] is effective July 1, 2003.

Approved February 28, 2003

CHAPTER NO. 58

[SB 136]

AN ACT CLARIFYING THAT A PUBLIC OFFICER MAY PARTICIPATE IN THE PROCEEDINGS OF OR ENGAGE IN ACTIVITIES ON BEHALF OF ORGANIZATIONS OR ASSOCIATIONS OF LOCAL GOVERNMENT OFFICIALS; AMENDING SECTION 2-2-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A public officer or public employee may not participate in a proceeding when an organization, *other than an organization or association of local government officials*, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(5) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, *other than an organization or association of local government officials,* of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Feb ru ary 28, 2003

CHAPTER NO. 59

[HB 108]

AN ACT ELIMINATING THE PROHIBITION ON CORPORATE CONTRIBUTIONS AND EXPENDITURES ON BALLOT ISSUES; AMENDING SECTION 13-35-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in Montana Chamber of Commerce v. Argenbright, 226 F3d 1049 (9th Cir. 2000), the Ninth Circuit Court of Appeals held that corporate wealth has not distorted the ballot issue process in Montana and that therefore the first amendment to the United States Constitution does not permit the section 13-35-227, MCA, provision that prohibits a corporation from making a contribution or expenditure in connection with a ballot issue.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-227, MCA, is amended to read:

"13-35-227. Prohibited contributions from corporations. (1) ~~(a) Except as provided in subsection (4), a~~ *A* corporation may not make a contribution or an expenditure in connection with a candidate~~, a ballot issue,~~ or a political committee that supports or opposes a candidate~~, a ballot issue,~~ or a political party.

~~(b) For purposes of this section, "corporation" refers to for-profit and nonprofit corporations.~~

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation.

~~(4) The provisions of subsection (1) prohibiting corporate contributions to or expenditures in connection with a ballot issue do not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas and that:~~

~~(a) does not engage in business activities;~~

~~(b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;~~

~~(c) does not accept foreign or domestic for-profit corporations as members; and~~

~~(d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for-profit corporations.~~

~~(5)~~*(4)* A person who violates this section is subject to the civil penalty provisions of 13-37-128."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 5, 2003

CHAPTER NO. 60

[HB 181]

AN ACT PROVIDING FOR THE REGULATION AND CERTIFICATION OF PERSONS AND ENTITIES THAT EUTHANIZE ANIMALS; ALLOWING A CERTIFIED AGENCY TO APPLY FOR REGISTRATION TO POSSESS CONTROLLED SUBSTANCES FOR THE PURPOSE OF EUTHANIZING ANIMALS; ALLOWING A CERTIFIED EUTHANASIA TECHNICIAN TO ADMINISTER CONTROLLED SUBSTANCES UNDER THE AGENCY'S LAWFUL POSSESSION WHEN THE AGENCY AND TECHNICIAN ARE CERTIFIED BY THE BOARD OF VETERINARY MEDICINE; PROVIDING AN EXEMPTION FOR CERTIFIED AGENCIES, CERTIFIED EUTHANASIA TECHNICIANS, AND SUPPORT PERSONNEL FROM OVERSIGHT BY THE BOARD OF PHARMACY WHEN POSSESSING OR ADMINISTERING APPROVED CONTROLLED SUBSTANCES FOR EUTHANASIA; PROVIDING AN EXEMPTION TO THE PRACTICE OF VETERINARY MEDICINE FOR CERTIFIED AGENCIES AND CERTIFIED EUTHANASIA TECHNICIANS WHO ARE CONDUCTING ANIMAL EUTHANASIA; AMENDING SECTIONS 37-7-103 AND 37-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 6] is to provide the most humane disposition possible of unwanted, stray, abandoned, discarded, or dangerous animals by providing for the certification of agencies and euthanasia technicians.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Certified agency" means a law enforcement agency, a public or private animal control agency, or a humane society organized for the prevention of cruelty to animals that has certification from the board to possess controlled substances approved for the purpose of euthanasia.

(2) "Certified euthanasia technician" means an employee of a certified agency or a person who is working under the supervision of a licensed veterinarian and who has been certified by the board to administer a controlled substance approved by the board for the purpose of euthanasia.

(3) "Controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

(4) "Euthanasia" means the act or practice of ending the life of an animal in order to end suffering or for some other humane purpose.

(5) "Person" means an individual, corporation, partnership, government or governmental subdivision or agency, trust, or any other legal entity.

Section 3. Powers of board — euthanasia certification. The board may:

(1) establish qualifications and prescribe the application format for certification as a certified agency or as a certified euthanasia technician and review each application for compliance with certification requirements;

(2) examine and determine the qualifications and fitness of applicants to operate as a certified agency or as a certified euthanasia technician;

(3) issue, renew, reinstate, deny, suspend, require voluntary surrender of, or revoke any certifications or temporary permits or impose other forms of discipline and enter into consent agreements and negotiated settlements with certified agencies or certified euthanasia technicians consistent with the provisions of this chapter and rules adopted pursuant to Title 37, chapter 1, and this chapter;

(4) establish a schedule of fees for certifying agencies and euthanasia technicians, ensuring that the fees are commensurate with the costs of the certification program;

(5) establish a list of controlled substances approved for the purpose of euthanasia;

(6) adopt other rules that the board or department considers necessary for the implementation of [sections 1 through 6]; and

(7) inspect any certified agency's controlled substance storage, inventory, administration procedures, and recordkeeping.

Section 4. Certified agency — duties. (1) A person may not possess controlled substances for the purpose of euthanasia without first becoming a licensed veterinarian or a certified agency under rules adopted by the board.

(2) Certified agencies shall apply for registration with the applicable state or federal agency to possess controlled substances approved by the board for purposes of euthanasia.

(3) Certified agencies shall comply with all state and federal laws regarding the storage, care, and administration of controlled substances. Failure to comply with these laws may result in the immediate revocation of the certification in addition to any other civil or criminal penalties provided under any other statute.

Section 5. Certified euthanasia technician. (1) A person may not administer controlled substances for euthanasia purposes unless the person is a licensed veterinarian, a certified euthanasia technician, or support personnel as defined by rules adopted by the board.

(2) A certified euthanasia technician may use controlled substances only for euthanasia purposes unless the certified euthanasia technician is under the direct supervision of a licensed veterinarian.

Section 6. Disposition of fees. Any fees collected under [sections 1 through 6] must be deposited in a state special revenue account to offset costs incurred by the board or department in carrying out [sections 1 through 6].

Section 7. Section 37-7-103, MCA, is amended to read:

"37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons ~~either~~ at *either* wholesale or retail for use for commercial purposes or in the arts*;* ~~or~~

(4) ~~changes~~ *change* any of the provisions of this code relating to the sale of insecticides and fungicides~~,~~*;*

(5) ~~and does not~~ prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

~~(4)~~*(6)* apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

~~(5)~~*(7)* prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the ~~board of pharmacy's~~ *board's* requirements for labeling, storage, and recordkeeping of drugs*; or*

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to [sections 1 through 6]."

Section 8. Section 37-18-104, MCA, is amended to read:

"37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws of that state to practice veterinary medicine, who is actually called to attend cases in this state but who does not open an office or appoint a

place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the students are employed by and work under the immediate supervision of a veterinarian licensed and registered under this chapter; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

(a) minimum education requirements;

(b) minimum requirements of practical experience;

(c) continuing education requirements;

(d) limitations on practices and procedures that may be performed by certified individuals;

(e) the use of specific drugs necessary for safe and proper practice of certified procedures;

(f) content and administration of the certification test, including written and practical testing;

(g) application and reexamination procedures; and

(h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance

authorized by the board for the purpose of euthanasia pursuant to [sections 1 through 6]."

Section 9. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 18, and the provisions of Title 37, chapter 18, apply to [sections 1 through 6].

Section 10. Effective date. [This act] is effective January 1, 2004.

Section 11. Termination. [This act] terminates January 1, 2008.

Ap proved March 5, 2003

CHAPTER NO. 61

[SB 164]

AN ACT REMOVING A CONFLICT BETWEEN STATUTES TO CLARIFY THAT A SHELTER CARE FACILITY MAY NOT HOLD A YOUTH IN A PHYSICALLY RESTRICTING MANNER; AMENDING SECTION 41-5-1801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-1801, MCA, is amended to read:

"41-5-1801. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

~~(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated to be a delinquent youth or a youth in need of intervention.~~

~~(3)~~*(2)* A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

~~(4)~~*(3)* State appropriations and federal funds may be received by counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

~~(5)~~*(4)* A shelter care facility must be furnished in a comfortable manner.

~~(6)~~*(5)* A shelter care facility may be operated in conjunction with a youth detention facility.

~~(7)~~*(6)* A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 5, 2003

CHAPTER NO. 62

[SB 195]

AN ACT REQUIRING THE MONTANA HISTORICAL SOCIETY TO COMMISSION A SCULPTURE FOR LONG-TERM PLACEMENT IN THE SENATE CHAMBERS; REQUIRING THE LEWIS AND CLARK BICENTENNIAL COMMISSION TO SECURE OUTSIDE FUNDING FOR THE SCULPTURE; AND CREATING A SENATE ADVISORY GROUP TO ADVISE THE MONTANA HISTORICAL SOCIETY ON COMMISSIONING OF THE SCULPTURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Senate sculpture. (1) The Montana historical society, in consultation with the senate advisory group, provided for in subsection (4), and the Lewis and Clark bicentennial commission, provided for in 2-15-150, shall commission a qualified artist to create a bronze relief sculpture.

(2) The sculpture must reflect a theme consistent with the Lewis and Clark expedition and be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(3) The Lewis and Clark bicentennial commission shall secure outside funding for the commissioning of the sculpture.

(4) (a) The president of the senate, in consultation with the senate minority floor leader, shall appoint six former members of the senate, no more than three of whom represented the same political party when they served in the senate, to an advisory group to consult with the Montana historical society on the commissioning of the sculpture.

(b) Members of the advisory group shall serve without compensation or reimbursement for expenses.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, part 8, and the provisions of Title 2, chapter 17, part 8, apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 114 and [this act] are both passed and approved, then [section 6] of House Bill No. 114 is amended to read:

"**Section 6. Placement of certain busts, statues, memorials, monuments, and art displays.** (1) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, and the 1972 Montana constitutional convention;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;

(e) the statues of Wilbur Fiske Sanders, Jeanette Rankin, and Mike and Maureen Mansfield;

(f) the Montana statehood centennial bell;

(g) the gallery of outstanding Montanans;

(h) the Montana constitutional exhibit; and

(i) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statue of Thomas Francis Meagher;

(b) the plaque commemorating Donald Nutter; and

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project.

(3) The statue by Robert Scriver entitled "symbol of the pros" is to be placed for up to 50 years, subject to renewal, on the capitol complex grounds.

(4) The senate sculpture provided for in [section 1 of Senate Bill No. 195] is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

~~(4)~~*(5)* The council shall determine the specific placement of the items identified in subsections (1) through (3)."

Ap proved March 5, 2003

CHAPTER NO. 63

[HB 128]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION TO CREATE A NOXIOUS WEED MANAGEMENT TRUST FUND; PROVIDING FOR THE PROTECTION OF THE TRUST IN THE AMOUNT OF $10 MILLION UNLESS APPROPRIATED BY A VOTE OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE; AND PROVIDING FOR THE APPROPRIATION OF INTEREST, INCOME, AND A PORTION OF THE PRINCIPAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IX of The Constitution of the State of Montana is amended by adding a new section 6 that reads:

Section 6. Noxious weed management trust fund. (1) The legislature shall provide for a fund, to be known as the noxious weed management trust of the state of Montana, to be funded as provided by law.

(2) The principal of the noxious weed management trust fund shall forever remain inviolate in an amount of ten million dollars ($10,000,000) unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature.

(3) The interest and income generated from the noxious weed management trust fund may be appropriated by a majority vote of each house of the legislature. Appropriations of the interest and income shall be used only to fund the noxious weed management program, as provided by law.

(4) The principal of the noxious weed management trust fund in excess of ten million dollars ($10,000,000) may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of ten million dollars ($10,000,000) shall be used only to fund the noxious weed management program, as provided by law.

Section 2. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

☐ FOR cre at ing a nox ious weed man age ment trust fund and re strict ing its use.

☐ AGAINST cre at ing a nox ious weed man age ment trust fund and re strict ing its use.

CHAPTER NO. 64

[HB 36]

AN ACT REVISING THE LAWS GOVERNING CREDIT UNIONS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DETERMINE THE SCHEDULE FOR CREDIT UNION EXAMINATIONS; ELIMINATING THE MAKEUP REQUIREMENTS FOR REGULAR RESERVE ACCOUNTS AND GRANTING THE DEPARTMENT DISCRETION TO REQUIRE CREDIT UNIONS TO ESTABLISH A REGULAR RESERVE ACCOUNT; REPEALING THE DEFINITION OF RISK ASSETS; AMENDING SECTIONS 32-3-203 AND 32-3-702, MCA; AND REPEALING SECTION 32-3-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-203, MCA, is amended to read:

"32-3-203. Examinations. (1) The department of administration shall ~~annually~~ examine or cause to be examined each credit union *on a schedule determined by the department*. Each credit union and all of its officers and agents must be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control. For the purpose of the examination, the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination must be forwarded to the executive officer of each credit union promptly after completion. The report must contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committee members shall meet to consider matters contained in the report.

(3) In lieu of making an ~~annual~~ examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit must be borne by the credit union."

Section 2. Section 32-3-702, MCA, is amended to read:

"32-3-702. ~~Makeup~~ *Maintenance* of regular reserve *account.* ~~(1)~~ *The department of administration may require a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to address potential losses. The department may rely on standards adopted by the national credit union administration (NCUA) in making any determination to require a credit union to establish a regular reserve account.* ~~Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:~~

~~(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then~~

~~(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then~~

~~(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.~~

~~(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.~~

~~(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve.~~"

Section 3. Repealer. Section 32-3-704, MCA, is repealed.

Ap proved March 17, 2003

CHAPTER NO. 65

[HB 45]

AN ACT REVISING LAWS CONCERNING ESCROW BUSINESSES; REQUIRING APPLICANTS FOR AN ESCROW BUSINESS LICENSE TO POST A BOND IN AN AMOUNT TO BE SET BY THE DEPARTMENT OF ADMINISTRATION BY RULE; ESTABLISHING THE AMOUNT OF THE INITIAL LICENSE FEE AS $350 AND THE AMOUNT OF THE ANNUAL LICENSE RENEWAL FEE AS $100; PROVIDING THAT FUNDS AVAILABLE FOR WITHDRAWAL FROM AN ESCROW ACCOUNT AS A MATTER OF RIGHT MUST BE DISBURSED WITHIN 5 BUSINESS DAYS; AND AMENDING SECTIONS 32-7-109, 32-7-110, AND 32-7-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-7-109, MCA, is amended to read:

"32-7-109. Application for license — *bond* — issuance. (1) A person must be licensed pursuant to this part before engaging in an escrow business.

(2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant's principal office and all branch offices in this state;

(b) the name and form under which the applicant plans to conduct business;

(c) the general plan and character of the business;

(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each ~~his~~ *the respective* capacity and title;

(e) the experience and qualifications of the persons proposed to act as officers and managers;

(f) the length of time the applicant has been engaged in the escrow business; and

(g) any other relevant information the director requires.

(3) An applicant shall file with the license application a bond in an amount to be set by the department by rule. The bond must be conditioned on the applicant conducting the escrow business in accordance with the requirements of law. All bonds must be filed with the department, approved by the department, and renewed annually.

~~(3)~~*(4)* The director shall grant and issue an escrow business license if:

(a) the director has received *the bond and application* ~~and filed the application~~ specified in this section; and

(b) the applicant has complied with all the requirements of this part and any rules promulgated under it.

~~(4)~~*(5)* An escrow business shall immediately notify the department of any material change in the information contained in the application."

Section 2. Section 32-7-110, MCA, is amended to read:

"32-7-110. Fees. (1) (a) An applicant for licensure shall pay ~~a~~ *an initial* license fee ~~set by the director, commensurate with the costs of licensing the applicant~~ *of $350*.

(b) Licenses expire annually on June 30. A licensee shall, on or before June 1, pay an annual license renewal fee of $100. A licensee's failure to pay the annual license renewal fee within the time prescribed results in an automatic revocation of the license.

~~(b)~~*(c)* A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow businesses must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under this part."

Section 3. Section 32-7-117, MCA, is amended to read:

"32-7-117. Deposit of funds required — disbursement. (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a financial institution, as defined in 32-6-103, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow business. The funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow business.

(2) A person may not knowingly keep or cause to be kept any funds or money with a financial institution, as defined in 32-6-103, under the heading of "escrow accounts" or any other name designating the funds or money as belonging to the

clients of any escrow business, except actual escrow funds deposited with the escrow business.

(3) Escrow funds are not subject to execution or attachment on any claim against the escrow business.

(4) Any interest received on funds deposited with an escrow business in connection with any escrow that is deposited in an authorized depository must be paid over to the depositing party to the escrow account and may not be transferred to an account of the escrow business. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent agreement.

(5) An escrow business may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. *If sufficient funds are available for withdrawal from the account as a matter of right, required disbursements must be made within 5 business days of the receipt of sufficient funds.* For the purposes of this subsection *(5)*, the following definitions apply:

(a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order."

Ap proved March 17, 2003

CHAPTER NO. 66

[HB 59]

AN ACT PERMITTING REVISIONS OF INCOME TAX RETURNS FOR THE ELDERLY RESIDENTIAL PROPERTY TAX CREDIT TO BE MADE WITHIN 5 YEARS FOLLOWING THE DUE DATE FOR A CLAIM FOR THE CREDIT; DELETING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE MAINTAIN RECORDS OF REQUESTS FOR EXTENSIONS; AMENDING SECTION 15-30-174, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-174, MCA, is amended to read:

"15-30-174. Residential property tax credit for elderly — filing date. (1) Except as provided in subsection (2), a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. ~~The department shall keep a record of each extension and the reason for granting the extension.~~

(3) In the event that an individual who would have a claim under 15-30-171 through 15-30-179 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(4) The department or an individual may revise a return and make a claim under 15-30-171 through 15-30-179 within 5 years from the last day prescribed for filing a claim for relief."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 14, 2003

CHAPTER NO. 67

[HB 65]

AN ACT GENERALLY REVISING DENTISTRY AND DENTAL HYGIENE LAWS; EXCLUDING STUDENTS OF AN ACCREDITED DENTAL HYGIENE PROGRAM FROM LICENSING REQUIREMENTS WHILE PERFORMING SUPERVISED FREE DENTAL HYGIENE SERVICES; EXCLUDING STUDENTS OF AN ACCREDITED PROGRAM WHO ARE SEEKING A D.D.S. OR D.M.D. DEGREE FROM LICENSING REQUIREMENTS IF THEY ARE PRACTICING DENTISTRY WHILE SUPERVISED AND WITHOUT CHARGE; EXCLUDING DENTAL RESIDENTS IN ADVANCED EDUCATION PROGRAMS FROM LICENSING REQUIREMENTS WHILE PERFORMING FREE CLINICAL SERVICES WITHIN THE ADVANCED EDUCATION PROGRAM; ALLOWING CERTAIN NONPRACTICING AND RETIRED DENTISTS AND DENTAL HYGIENISTS TO PROVIDE SERVICES FOR INDIGENT AND UNINSURED PERSONS IN UNDERSERVED OR CRITICAL NEED AREAS AND WAIVING THEIR RENEWAL AND LATE FEES; PROVIDING RULEMAKING AUTHORITY PERTAINING TO VOLUNTEER DENTISTS AND DENTAL HYGIENISTS; AMENDING SECTION 37-4-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-103, MCA, is amended to read:

"37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member's teaching functions. This chapter does not prevent students from performing dental

procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the

advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who is not licensed in Montana may not engage in private practice or assess fees for clinical services rendered."

Section 2. Volunteer work — licensure — fee waiver — rules. (1) A retired or nonpracticing dentist or dental hygienist may apply for a license to practice dentistry or dental hygiene for the purpose of providing services to indigent or uninsured patients in underserved or critical need areas. An applicant for licensure under this subsection (1) may be required by the board to establish that the applicant is competent to practice before the board grants the applicant a license.

(2) It is not within the scope of a license issued to a dentist or dental hygienist under this section to provide services for remuneration.

(3) If a person is eligible for licensure under the provisions of subsection (1) and the person applies for a license prior to July 1, 2004, the person's renewal fees and late fees accrued since the person's license lapsed are waived. The board may adopt rules providing that renewal fees and late fees or a portion of those fees may be waived for eligible persons applying for licensure under this section after July 1, 2004.

(4) The board may adopt rules setting forth licensing requirements, fees, and other rules necessary to implement any other provisions of this section.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to [section 2].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective July 1, 2003.

Ap proved March 17, 2003

CHAPTER NO. 68

[HB 106]

AN ACT GENERALLY REVISING LAWS DEALING WITH THE DEPARTMENT OF REVENUE'S RELATIONSHIP TO PROBATE ADMINISTRATION; AMENDING SECTIONS 72-3-607, 72-3-609, 72-3-1006, 72-4-303, 72-4-305, AND 72-16-906, MCA; REPEALING SECTION 72-16-920, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-3-607, MCA, is amended to read:

"72-3-607. Inventory — appraisal ~~— copy to department of revenue~~. (1) ~~If the estate must file a United States estate tax return, within the time~~

~~required for the filing of the United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory. The inventory must include a listing of all property that:~~

~~(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of the decedent's death;~~

~~(b) the decedent had possessory or dispository rights over at the time of death or had disposed of for less than its fair market value within 3 years of the decedent's death; or~~

~~(c) was affected by the decedent's death for the purpose of estate taxes.~~ *Within 9 months after appointment, a personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.*

(2) The inventory must include a statement of the full and true value of the decedent's interest in every item listed in the inventory. ~~In this connection, the~~ *The* personal representative ~~shall~~ *may* appoint one or more qualified and disinterested persons to assist the personal representative in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any ~~appraiser~~ *appraisers* must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall*:*

(a) send a copy of the inventory to interested persons*; or*

(b) file the original of the inventory with the court and send a copy of the inventory to interested persons who request it.~~, or the personal representative may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value must be mailed to the department of revenue.~~"

Section 2. Section 72-3-609, MCA, is amended to read:

"72-3-609. ~~Supplementary~~ *Supplemental* inventory ~~— copy to department of revenue.~~ If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, ~~he~~ *the personal representative* shall make a ~~supplementary~~ *supplemental* inventory or ~~appraisement~~ *appraisal* showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any~~.~~ ~~and~~ *The personal representative shall* file ~~it~~ *the supplemental inventory* with the court if the original inventory was filed or *shall* furnish copies ~~thereof~~ *of the supplemental inventory* or information ~~thereof~~ to persons interested in the new information ~~and in any case shall mail a copy of it to the department of revenue~~."

Section 3. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate ~~or receipt showing taxes paid required to close estate.~~ (1) In ~~all~~ probate proceedings under this code *requiring the filing*

of a United States estate tax return, ~~before~~ *a* final distribution to successors ~~is~~ *may not be* made and ~~before any petition is~~ *petitions may not be* granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, *unless* there ~~must have been~~ *has been* filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid *or that no tax is payable*; *or*

(b) an agreement with the department of revenue for extension of time for payment of estate taxes~~; or~~

~~(c) a receipt from the county treasurer stating that any estate tax due on the assets of the estate has been paid~~.

(2) This section does not prohibit a partial distribution that may become necessary in the course of administration."

Section 4. Section 72-4-303, MCA, is amended to read:

"72-4-303. Filing of letters, bond, inventory, and affidavit ~~— copy to department of revenue~~. (1) The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located*:*

(a) authenticated copies of ~~his~~ *the personal representative's* appointment and of any official bond ~~he has~~ given~~,~~*;*

(b) an inventory ~~and appraisal~~ of the property of the nonresident decedent located in this state, which ~~inventory shall~~ *must* contain the information prescribed in 72-3-607~~,~~*;* and

(c) an affidavit stating:

~~(a)~~*(i)* the date of death of the nonresident decedent; ~~and~~ *and*

~~(b)~~*(ii)* that no local administration or application or petition ~~therefor~~ *for local administration* is pending in this state.

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying ~~him~~ *the representative* as having registered with the district court and stating the name and date of death of the decedent.

~~(3) The clerk shall also immediately forward a copy of the appointment, affidavit, and inventory and appraisal required by subsection (1) to the department of revenue.~~"

Section 5. Section 72-4-305, MCA, is amended to read:

"72-4-305. Right to inspect estate assets for inventory. ~~Any~~ *A* person holding ~~any~~ property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock, or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect ~~and appraise~~ *and appraise* the property for purposes of completing the inventory ~~and appraisal~~ called for in 72-4-303(1) upon being presented with proof of ~~his~~ *the representative's* appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of death of the nonresident decedent;

(2) that no local administration or application or petition ~~therefor~~ *for local administration* is pending in this state; and

(3) that the domiciliary foreign personal representative is entitled to make ~~such~~ *the* inspection and appraisal."

Section 6. Section 72-16-906, MCA, is amended to read:

"72-16-906. Required ~~filings~~ *filing of United States estate tax return*. The personal representative *or domiciliary foreign personal representative* of the estate of any decedent whose estate is ~~subject to the payment of~~ *required to file* a United States estate tax *return* shall file a duplicate of the United States estate tax return with the department of revenue. ~~He shall also file with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by the internal revenue service.~~"

Section 7. Repealer. Section 72-16-920, MCA, is repealed.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to deaths occurring after December 31, 2000, for which the probate of the decedents' estates closes after [the effective date of this act].

Ap proved March 14, 2003

CHAPTER NO. 69

[HB 149]

AN ACT REVISING THE CRIMINAL SENTENCE REVIEW PROCESS; ALLOWING THE REVIEW DIVISION OF THE SUPREME COURT TO MEET IN VARIOUS LOCATIONS; ALLOWING THE CHIEF JUSTICE OF THE SUPREME COURT TO DESIGNATE A REPLACEMENT FOR A MEMBER OF THE REVIEW DIVISION THAT IS UNABLE TO SERVE; ALLOWING A PERSON SENTENCED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO APPLY FOR SENTENCE REVIEW; REQUIRING CERTAIN NOTICES TO BE GIVEN TO A DEFENDANT'S COUNSEL; CLARIFYING LANGUAGE; REQUIRING THE DECISION OF THE REVIEW DIVISION TO BE SENT TO THE COUNTY ATTORNEY AND DEFENSE COUNSEL; AMENDING SECTIONS 46-18-901, 46-18-902, 46-18-903, 46-18-904, AND 46-18-905, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-901, MCA, is amended to read:

"46-18-901. Review division of ~~the~~ supreme court ~~for~~ — review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of ~~such~~ *the* judges to act as ~~chairman thereof~~ *presiding officer of the review division*. The clerk of the Montana supreme court shall record ~~such~~ *the* appointment and shall give notice ~~thereof~~ *of the appointment* to the clerk of every district court.

(2) ~~This~~ *The* review division shall meet at least four times a year ~~or more~~ as its business requires, as determined by the ~~chairman~~ *presiding officer*. The review division shall hold its meetings at ~~Deer Lodge~~ *locations as determined by the review division*.

(3) The decision of ~~any~~ two of ~~such~~ *the* judges ~~shall be~~ *is* sufficient to determine any matter before the review division.

(4) The review division may adopt any rules ~~which~~ *that* will expedite its review of sentences. The division is also authorized to appoint a secretary ~~and such clerical help as it deems adequate and fix their compensation~~."

Section 2. Section 46-18-902, MCA, is amended to read:

"46-18-902. Interested judge not to act. ~~No~~ *A* judge ~~shall~~ *may not* sit or act on a review of *a* sentence *that was* imposed by ~~him~~ *the judge*. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by ~~said~~ *the* division *or if any member is unavailable to serve*, the chief justice of the supreme court of Montana may designate another judge to act in place of ~~such~~ *the* judge."

Section 3. Section 46-18-903, MCA, is amended to read:

"46-18-903. Application for review. (1) ~~Any~~ *A* person sentenced to a term of 1 year or more in the state prison *or to the custody of the department of corrections* by ~~any~~ *a* court of competent jurisdiction may within 60 days from the date ~~such~~ *the* sentence was imposed, except in ~~any~~ *a* case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced *and to the person's counsel* of ~~his~~ *the* right to make ~~such~~ a request. ~~Such~~ *The* notice ~~shall~~ *must* include a statement that review of the sentence may result in *a* decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit ~~such~~ *the* application to the review division and shall notify the judge who imposed the sentence ~~and~~, the county attorney of the county in which the sentence was imposed, *and the person's counsel of record*. ~~Such~~ *The* judge may transmit to the review division a statement of ~~his~~ *the judge's* reasons for imposing the sentence and shall transmit ~~such a~~ *the* statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant ~~such~~ *or deny the* request.

(4) The filing of an application for review ~~shall~~ *may* not stay the execution of the sentence."

Section 4. Section 46-18-904, MCA, is amended to read:

"46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division*:*

(a) (i) shall review the judgment ~~so far~~ as it relates to the sentence imposed~~, either increasing or decreasing the penalty,~~ and any other sentence imposed on the person at the same time*;* and

(ii) may order ~~such~~ *a* different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review, *including a decrease or increase in the penalty;* or

(b) may decide that the sentence under review should stand.

(2) In reviewing ~~any~~ *a* judgment, ~~said~~ *the* division may require the production of presentence reports and any other records, documents, or exhibits relevant to ~~such~~ *the* review proceedings. The ~~appellant~~ *person requesting the review* may appear and *has the right to* be represented by counsel, and the state

may be represented by the county attorney of the county in which the sentence was imposed. Any other interested person, including the sentencing judge, may attend and participate in the review proceedings.

(3) The sentence imposed by the district court is presumed correct. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the ~~defendant~~ *person* as ordered by the review division. Time served on the sentence reviewed ~~shall be deemed~~ *is considered* to have been served on the sentence substituted."

Section 5. Section 46-18-905, MCA, is amended to read:

"46-18-905. Decision — finality, report of. (1) The decision of the review division in each case ~~shall be~~ *is* final, and the reasons for ~~such~~ *the* decision ~~shall~~ *must* be stated ~~therein~~ *in the decision*. The original of each decision ~~shall~~ *must* be sent to the clerk of the court for the county in which the judgment was rendered, and a copy ~~shall~~ *must* be sent to the judge who imposed the sentence reviewed, the person sentenced, *the defense counsel, the county attorney,* and the principal officer of the institution in which ~~he~~ *the person* is confined.

(2) The decision ~~shall~~ *must* be reported in the Montana Reports."

Section 6. Effective date. [This act] is effective July 1, 2003.

Ap proved March 17, 2003

CHAPTER NO. 70

[HB 353]

AN ACT NAMING THE CITY OF LAUREL, MONTANA, AS THE OFFICIAL SITE OF THE MONTANA STATE FIREFIGHTERS' MEMORIAL.

WHEREAS, firefighters in the State of Montana have put themselves in dangerous situations to protect lives and property; and

WHEREAS, some firefighters have paid the ultimate sacrifice in the line of duty; and

WHEREAS, the Legislature wants to honor those who have died in the line of duty and recognize those deceased firefighters in the State of Montana who dedicated 20 or more years of their lives in service as firefighters; and

WHEREAS, the Laurel Volunteer Fire Company initiated the planning and logistics for construction of a Montana State Firefighters' Memorial; and

WHEREAS, the City of Laurel has adopted City Resolution R01-24 that dedicates the property at the corner of West First Street and Second Avenue East of the Fire, Ambulance, and Police Building in the City of Laurel and has renamed the property "Firefighters' Memorial Park"; and

WHEREAS, the Laurel Volunteer Fire Company has received unanimous backing from the Montana State Volunteer Firefighters Association and the Montana Fire Alliance for the construction of the firefighters' memorial in the City of Laurel; and

WHEREAS, Governor Judy Martz has presented a Governor's Citation to the Laurel Volunteer Fire Company, dedicating the park as the future home of the Montana State Firefighters' Memorial.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana state firefighters' memorial. (1) The site chosen by the city of Laurel, Montana, as "firefighters' memorial park" is officially designated as the location of the Montana state firefighters' memorial.

(2) The department of commerce and the department of transportation shall identify the memorial in Laurel on official state maps and, where appropriate, on state highway signs as the official state firefighters' memorial.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Ap proved March 17, 2003

CHAPTER NO. 71

[HB 364]

AN ACT CLARIFYING THAT THE CONSTITUTIONAL PROVISION RESTRICTING THE EXPENDITURE OF REVENUE FROM SPECIAL LEVIES ON AGRICULTURAL COMMODITIES APPLIES TO ALL FEES ASSESSED BY THE DEPARTMENT OF AGRICULTURE FOR LICENSES, REGISTRATIONS, INSPECTIONS, AND OTHER PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Restriction on use of revenue to include department fees. The restriction in Article XII, section 1(2), of the Montana constitution, which provides that revenue derived from special levies made on agricultural commodities must be used solely for the purposes of the levies, applies to all fees assessed by the department for licenses, registrations, inspections, and other purposes pursuant to this title. Levy purposes may include department administrative expenses.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 1, part 1, and the provisions of Title 80, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 17, 2003

CHAPTER NO. 72

[SB 41]

AN ACT CHANGING THE DESIGNATION OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM AN INDEPENDENT INSTITUTION TO A STATE-SUPPORTED SPECIAL SCHOOL; AMENDING SECTION 20-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-101, MCA, is amended to read:

"20-8-101. Montana school for deaf and blind — ~~independent institution~~ *state-supported special school.* The school for the deaf and blind, ~~formerly~~ located ~~at Boulder~~ in ~~connection with the Montana state~~

~~training school but transferred before July 1, 1943, to~~ the city of Great Falls, ~~shall be~~ *is* known and designated as the Montana school for the deaf and blind and ~~shall~~ *must* be conducted as a separate and independent unit and ~~institution~~ *special school* of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name ~~thereof~~ *of the school* or in the objects or purposes ~~thereof~~ *of the school* may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school ~~prior to July 1, 1943~~."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 17, 2003

CHAPTER NO. 73

[SB 42]

AN ACT REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A SYSTEM FOR TRACKING HEARING IMPAIRED OR VISUALLY IMPAIRED CHILDREN; AND AMENDING SECTION 20-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-102, MCA, is amended to read:

"20-8-102. Objects and purposes — assistance to programs — *tracking sensory impaired children* — fee. (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school shall collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance. The fee must be in an amount sufficient to cover the cost of services provided.

(3) The school shall establish a system for tracking a child identified as hearing impaired or visually impaired from the time of impairment identification through the child's exit from intervention or educational services.

~~(3)~~*(4)* The object and purpose of the school ~~is~~ *are* to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens."

Ap proved March 17, 2003

CHAPTER NO. 74

[SB 43]

AN ACT CHANGING THE FEE FOR SERVICES COLLECTED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND FROM A MANDATORY FEE TO AN OPTIONAL FEE; AND AMENDING SECTION 20-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-102, MCA, is amended to read:

"20-8-102. Objects and purposes — assistance to programs — fee. (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school ~~shall~~ *may* collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance. ~~The fee must be in an amount sufficient to cover the cost of services provided.~~

(3) The object and purpose of the school ~~is~~ *are* to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens."

Ap proved March 17, 2003

CHAPTER NO. 75

[HB 194]

AN ACT GENERALLY REVISING PROVISIONS RELATED TO THE FORMS AND INFORMATION THAT MUST BE FILED WITH THE SECRETARY OF STATE BY A BUSINESS, CORPORATION, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY; PROVIDING RULEMAKING AUTHORITY TO REQUIRE USE OF STANDARDIZED FORMS; SPECIFYING THE REINSTATEMENT APPLICATION PROCESS FOR LIMITED PARTNERSHIPS; ELIMINATING THE REQUIREMENT FOR A COPY TO BE FILED WITH THE ORIGINAL FOR CERTAIN FILINGS; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PROVIDE A SECOND RENEWAL NOTIFICATION TO LIMITED LIABILITY PARTNERSHIPS; CLARIFYING THAT THE COMPLETE STREET ADDRESS MUST BE PROVIDED WITH CERTAIN FILINGS; ELIMINATING THE REQUIREMENT TO PROVIDE THE NAME OF THE CURRENT REGISTERED AGENT WHEN FILING A CHANGE OF OFFICE OR AGENT; REVISING WHO SHALL SIGN A RESOLUTION

CERTIFYING A CORPORATE NAME; PROVIDING THAT THE SECRETARY OF STATE DELIVER A CONFIRMATION LETTER RATHER THAN THE DOCUMENT COPY WHEN A DOCUMENT HAS BEEN RECEIVED; REQUIRING THAT A FILING FOR REINSTATEMENT INCLUDE COPIES OF ALL ANNUAL REPORTS NOT PREVIOUSLY FILED; AND AMENDING SECTIONS 30-13-206, 30-13-207, 35-1-216, 35-1-217, 35-1-314, 35-1-1031, 35-1-1308, 35-1-1309, 35-2-310, 35-6-201, 35-8-105, 35-8-202, 35-8-210, 35-8-912, 35-12-601, 35-12-606, 35-12-611, 35-12-612, 35-12-1302, AND 35-12-1303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rulemaking authority and use of forms prescribed by secretary of state. The secretary of state may prescribe by rule a standard form for materials required to be filed with the secretary of state pursuant to Title 35. If the secretary of state prescribes a standard form pursuant to this section, the entity filing the form shall use the prescribed form.

Section 2. Reinstatement following cancellation for failure to renew. (1) If a certificate of limited partnership was canceled under 35-12-610 for failure to renew, an application for reinstatement of the original certificate may be made to the secretary of state within 5 years after the effective date of the cancellation.

(2) The application must:

(a) state the name of the limited partnership and the date its certificate of limited partnership was canceled;

(b) state that the limited partnership's name satisfies the requirements of 35-12-505; and

(c) include the information required in 35-12-601.

(3) If the secretary of state determines that the information provided is sufficient and correct, the secretary of state shall reinstate the certificate of limited partnership and send confirmation to the limited partnership.

(4) When reinstated under this section, the certificate of limited partnership becomes effective as if it had not been canceled.

Section 3. Section 30-13-206, MCA, is amended to read:

"30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state or by electronic means established by rule by the board of review established in 30-16-302, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) (a) Subject to subsection (3)(b), if the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration.

(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of

the registration~~, the secretary of state shall again notify the limited liability partnership of the pending expiration and give the limited liability partnership an additional 90 days within which to renew its registration. If the limited liability partnership fails to renew its registration within the second 90-day period~~, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership."

Section 4. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. ~~One original and one copy of an~~ *An* application for renewal of registration of an assumed business name must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of the applicant; and

(3) a description of business transacted."

Section 5. Section 35-1-216, MCA, is amended to read:

"35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

(b) the number of shares the corporation is authorized to issue;

(c) (i) the *complete business* street address of the corporation's initial registered office and, if different, the mailing address; and

(ii) the name of its initial registered agent at that office; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and *complete street* addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of 35-1-713; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter."

Section 6. Section 35-1-217, MCA, is amended to read:

"35-1-217. Filing requirements. All of the following requirements must be met before a document is entitled to be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the ~~chairman~~ *presiding officer* of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, and an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under ~~35-1-1308~~ *rules adopted pursuant to [section 1]*.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) ~~one copy, except as provided in 35-1-315 and 35-1-1036;~~

~~(b)~~ the correct filing fee; and

~~(c)~~*(b)* any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law."

Section 7. Section 35-1-314, MCA, is amended to read:

"35-1-314. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office and, if different, the mailing address;

(d) ~~the name of its current registered agent;~~

~~(e)~~ if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

~~(f)~~*(e)* that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, that agent may change the street address of the registered office of any corporation for which it is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and recites that the corporation has been notified of the change."

Section 8. Section 35-1-1031, MCA, is amended to read:

"35-1-1031. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state, the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, ~~certified by its secretary~~ *signed by an officer of the board or the corporate presiding officer*, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the

secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-1-308, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-1-308 and obtains an amended certificate of authority under 35-1-1029."

Section 9. Section 35-1-1308, MCA, is amended to read:

"35-1-1308. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats*, including standard forms,* for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state ~~so~~ requires, use of any of the forms or formats listed in subsection (1) is mandatory."

Section 10. Section 35-1-1309, MCA, is amended to read:

"35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing "Filed", together with the secretary of state's name, official title, and the date and time of receipt, on the original, the document copy, and the receipt for the filing fee. Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver ~~the document copy~~ *a confirmation letter* to the domestic or foreign corporation or its representative, along with the filing fee receipt or acknowledgment of receipt if no fee is required.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within

10 days after the document was delivered, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Section 11. Section 35-2-310, MCA, is amended to read:

"35-2-310. Change of registered office or registered agent. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state, for filing, a statement of change that sets forth:

(a) the name of the corporation;

(b) the street address of its current registered office and, if different, the mailing address;

(c) if the current registered office is to be changed, the street address of the new registered office, and, if different, the mailing address;

(d) ~~the name of its current registered agent;~~

~~(e)~~ if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment, either on the statement or attached to it; and

~~(f)~~*(e)* that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(2) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement that complies with the requirements of subsection (1) and that states that the corporation has been notified of the change."

Section 12. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation — fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state ~~one original and one copy of~~ the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through 35-1-943 or 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; ~~and~~

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405*; and*

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 13. Section 35-8-105, MCA, is amended to read:

"35-8-105. Registered office and registered agent. (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process ~~(~~, at the registered office~~)~~, on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) ~~the address of its current registered office;~~ *the address of its current registered office;*

~~(c)~~*(c)* if the address of its registered office is to be changed, the new address of the registered office; *and*

~~(d) the name and address of its current registered agent; and~~

~~(e)~~*(d)* if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the secretary of state. The appointment of a new registered agent is effective on delivery of the statement to the

secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and ~~2~~ *two* copies to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the secretary of state or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company."

Section 14. Section 35-8-202, MCA, is amended to read:

"35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the *complete street* address of its principal place of business in this state and, if different, its registered office and the name and *complete street* address of its registered agent at the registered office in this state;

(d) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

(e) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 15. Section 35-8-210, MCA, is amended to read:

"35-8-210. Reinstatement of dissolved limited liability company. (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of 35-8-209;

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state ~~one original and one copy of~~ the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its application for reinstatement*:*

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid*; and*

(b) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization."

Section 16. Section 35-8-912, MCA, is amended to read:

"35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application ~~and one copy of the application~~. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103; ~~and~~

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid*; and*

(e) include all annual reports not yet filed with the secretary of state.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred."

Section 17. Section 35-12-601, MCA, is amended to read:

"35-12-601. Certificate of limited partnership. (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) the *complete street* address of the office and the name and *complete street* address of the agent for service of process required to be maintained by 35-12-507;

(c) the name and the *complete* business *street* address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

Section 18. Section 35-12-606, MCA, is amended to read:

"35-12-606. Filing in the office of the secretary of state. (1) ~~One original and one copy of the~~ *The* certificate of limited partnership and of any certificates of amendment, restatement, or cancellation or of any judicial decree of amendment, restatement, or cancellation must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the ~~original and the copy~~ *document* the word "filed" and the day, month, and year of the filing;

(b) file the original in the secretary of state's office; and

(c) return the copy to the person who filed it or the person's representative.

(2) Upon the filing of a certificate of amendment, restatement, or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership is amended or restated as set forth in the certificate. Upon the effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership is canceled."

Section 19. Section 35-12-611, MCA, is amended to read:

"35-12-611. Application for renewal of certification. ~~One original and one copy of an~~ *The* application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the information required by 35-12-601."

Section 20. Section 35-12-612, MCA, is amended to read:

"35-12-612. Filing of application for renewal of certification — issuance of certificate. (1) If the secretary of state finds that the application for renewal of certification of a limited partnership complies with the provisions of this part, ~~he~~ *the secretary of state* shall, when all fees have been paid as provided by rule:

(a) endorse on the ~~original and on the copy~~ *application* the word "filed" and the month, day, and year of filing;

(b) file the original ~~in his office~~; and

(c) issue a ~~certificate of renewal, to which he shall affix the copy~~ *certification letter*.

(2) The secretary of state shall return to the general partner or partners submitting the application the ~~certificate of renewal, together with an attached copy of the application for renewal of certification of a limited partnership~~ *certification letter*."

Section 21. Section 35-12-1302, MCA, is amended to read:

"35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state ~~one original and one copy of~~ the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and the date of its formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn."

Section 22. Section 35-12-1303, MCA, is amended to read:

"35-12-1303. Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, ~~he~~ *the secretary of state* shall:

(a) endorse on the application the word "filed" and the month, day, and year ~~of~~ the ~~filing thereof~~ *application was filed*;

(b) file ~~in his office~~ the original of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration~~, together with a copy of the application,~~ must be returned to the person who filed the application or ~~his~~ *the person's* representative."

Section 23. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 35, chapter 12, part 6, and the provisions of Title 35, chapter 12, part 6, apply to [section 2].

Ap proved March 19, 2003

CHAPTER NO. 76

[HB 392]

AN ACT ELIMINATING THE INTERIM UNIVERSAL ACCESS PROGRAM FOR ADVANCED TELECOMMUNICATIONS SERVICES; REPEALING SECTIONS 69-3-856, 69-3-857, 69-3-858, 69-3-859, 69-3-861, AND 69-3-862, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 69-3-856, 69-3-857, 69-3-858, 69-3-859, 69-3-861, and 69-3-862, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 19, 2003

CHAPTER NO. 77

[HB 601]

AN ACT REQUIRING TOWER ROCK TO REMAIN STATE-OWNED PROPERTY AS A GIFT TO FUTURE GENERATIONS OF MONTANANS IN HONOR OF THE LEWIS AND CLARK EXPEDITION

Be it enacted by the Legislature of the State of Montana:

Section 1. Tower Rock — historic site. (1) A 136-acre site that encompasses Tower Rock, a geologic structure listed in the national register of historic places on March 18, 2002, may not be sold or transferred to a nonstate entity and must remain intact as the property of the state of Montana to recognize the national and local historic significance of the Lewis and Clark expedition, whose members named the rock formation, according to notations in the July 16 and 17, 1805, journals of Meriwether Lewis.

(2) The department of transportation may transfer the land to another state agency, and the provisions of 60-4-201 through 60-4-203 do not apply. In any transfer of the site, the department of transportation may retain access rights where the site abuts interstate 15.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 3, and the provisions of Title 22, chapter 3, apply to [section 1].

Ap proved March 19, 2003

CHAPTER NO. 78

[HB 29]

AN ACT CLARIFYING THAT PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM MAY REDUCE THE PERIOD OF INCARCERATION BUT NOT THE LENGTH OF A SENTENCE; REQUIRING ADVICE FROM THE PROSECUTING ATTORNEY FOR PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM BY CERTAIN INMATES; AND AMENDING SECTIONS 53-30-402 AND 53-30-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-402, MCA, is amended to read:

"53-30-402. Sentence reduction for offenders. A sentencing court retains jurisdiction for purposes of this section. A sentencing court may order a reduction of *the incarceration period to actually be served under a* sentence *but may not reduce the length of a sentence* for a convicted offender who:

(1) is certified by the department as having successfully completed the boot camp incarceration program; and

(2) applies to the court within 1 year after beginning to serve a sentence at a correctional institution."

Section 2. Section 53-30-403, MCA, is amended to read:

"53-30-403. Boot camp incarceration program — eligibility — rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate:

(a) must be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201(4)(o);

(b) shall obtain the concurrence of the sentencing court; and

(c) shall pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department, *which shall request and consider the written recommendation of the prosecuting attorney's office*. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

Ap proved March 19, 2003

CHAPTER NO. 79

[HB 77]

AN ACT PROVIDING A PROCEDURE FOR DNA TESTING OF A PERSON CONVICTED OF A FELONY WHO IS SERVING A TERM OF INCARCERATION; AND REQUIRING THE STATE TO PRESERVE SCIENTIFIC IDENTIFICATION EVIDENCE THAT THE STATE HAS REASON TO BELIEVE CONTAINS DNA MATERIAL AND THAT IS OBTAINED IN CONNECTION WITH A FELONY FOR WHICH A CONVICTION IS OBTAINED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Petition for DNA testing. (1) A person convicted of a felony who is serving a term of incarceration may file a written petition for performance of DNA testing, as defined in 44-6-101, in the court that entered the judgment of conviction. The petition must include the petitioner's statement that the petitioner was not the perpetrator of the felony that resulted in the conviction and that DNA testing is relevant to the assertion of innocence. The petition must be verified by the petitioner under penalty of perjury and must:

(a) explain why the identity of the perpetrator of the felony was or should have been a significant issue in the case;

(b) present a prima facie case that the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been substituted, tampered with, degraded, contaminated, altered, or replaced in any material aspect;

(c) explain, in light of all the evidence, how the requested testing would establish the petitioner's innocence of the felony;

(d) make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought;

(e) reveal the results of any DNA or other known biological testing that was previously conducted by the prosecution or defense; and

(f) state whether a petition was previously filed under this section and the results of the proceeding.

(2) If the petition does not contain the information required in subsection (1), the court shall return the petition to the petitioner and advise the petitioner that the matter cannot be considered without the missing information.

(3) If subsection (1) is complied with, the court shall order a copy of the petition to be served on the attorney general, the county attorney in the county of conviction, and, if known, the laboratory or government agency holding the evidence sought to be tested. The court shall order that any responses to the petition must be filed within a reasonable time after the date of service under this subsection.

(4) The court may order a hearing on the petition. The hearing must be before the judge who conducted the trial, unless the court determines that that judge is unavailable. Upon request of any party, the court may in the interest of justice order the petitioner to be present at the hearing. The court may consider evidence whether or not it was introduced at the trial.

(5) The court shall grant the petition if it determines that the petition is not made for the purpose of delay and that:

(a) the evidence to be tested:

(i) was secured in relation to the trial that resulted in the conviction;

(ii) is available; and

(iii) is in a condition that would permit the requested testing;

(b) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, degraded, contaminated, altered, or replaced in any material aspect;

(c) the identity of the perpetrator of the felony was or should have been a significant issue in the case;

(d) the petitioner has made a prima facie showing that the evidence sought to be tested is material to the question of whether the petitioner was the perpetrator of the felony that resulted in the conviction;

(e) the requested testing results would establish, in light of all the evidence, whether the petitioner was the perpetrator of the felony that resulted in the conviction; and

(f) the evidence sought to be tested was not previously tested or was tested previously but another test would provide results that are reasonably more discriminating and probative on the question of whether the petitioner was the

perpetrator of the felony that resulted in the conviction or would have a reasonable probability of contradicting the prior test results.

(6) If the court grants the petition, the court shall identify the evidence to be tested. The testing must be conducted by a laboratory mutually agreed upon by the petitioner, the attorney general, and the county attorney in the county of conviction. If the parties cannot agree on a laboratory, the court shall direct a laboratory of the court's choice to conduct the testing. At the request of the attorney general or the county attorney of the county of conviction, the court shall order the evidence submitted to an additional laboratory designated by the requester for additional testing. The court shall impose reasonable conditions on the testing designed to protect the parties' interests in the integrity of the evidence and the testing process.

(7) Testing ordered by the court must be conducted as soon as practicable, and if the court finds that a gross miscarriage of justice would otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, the court shall order a laboratory, if located in this state, to give the testing priority over any other pending casework of the laboratory.

(8) The test results must be fully disclosed to the parties.

(9) If the test results are inconclusive, the court may order further appropriate testing or terminate the proceeding. If the test results are not favorable to the petitioner, the court shall:

(a) notify the board of pardons and parole;

(b) order the petitioner's test sample to be included in the DNA identification index established under 44-6-102 and the federal combined DNA index system (CODIS) offender database;

(c) notify any victim and the family of the victim that the test results were not favorable to the petitioner; and

(d) terminate the proceeding.

(10) If the test results are favorable to the petitioner, the court shall order a hearing and after the hearing shall make appropriate orders pursuant to applicable statutes regarding postconviction proceedings.

(11) The court shall order a petitioner who is able to do so to pay the costs of testing. If the petitioner is unable to pay, the court shall order the state to pay the costs of testing. The court shall order additional testing requested by the attorney general or the county attorney of the county of conviction to be paid for by the state.

(12) The remedy provided by this section is in addition to any remedy available under part 1 of this chapter.

Section 2. Preservation and disposal of scientific identification evidence obtained in criminal proceeding. (1) The state shall preserve scientific identification evidence that the state has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The state shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(2) The state may propose to dispose of scientific identification evidence before the expiration of the time period described in subsection (1) if the state

notifies the convicted person and any attorney of record for the convicted person. The notification must include a description of the scientific identification evidence, a statement that the state will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within that 120-day period, the state may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(3) If a party objects to the disposition of the scientific identification evidence, the state has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 46, chapter 21, and the provisions of Title 46 apply to [sections 1 and 2].

Ap proved March 19, 2003

CHAPTER NO. 80

[HB 101]

AN ACT CLARIFYING THAT A NONRESIDENT MAY NOT APPLY FOR OR PURCHASE FOR A NONRESIDENT'S USE A RESIDENT WILDLIFE CONSERVATION LICENSE OR HUNTING OR FISHING LICENSE OR PERMIT AND PROVIDING A PENALTY FOR VIOLATION OF THIS PROVISION; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES BY TELEPHONE, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; PROVIDING THAT LICENSES NEED NOT BE SUBSCRIBED TO OR COUNTERSIGNED BY THE PERSON ISSUING THE LICENSE; REVISING THE LAWS GOVERNING MISDEMEANOR AND FELONY POSSESSION OF HUNTING LICENSES; ESTABLISHING THE OFFENSE OF MISDEMEANOR AND FELONY POSSESSION OF FISHING LICENSES AND PERMITS; AUTHORIZING THE DEPARTMENT TO ADOPT RULES THAT PRESCRIBE ELIGIBILITY STANDARDS FOR LICENSES OR PERMITS OBTAINED BY TELEPHONE, BY MAIL, ON THE INTERNET, OR BY OTHER ELECTRONIC MEANS; CLARIFYING THAT A PERSON MAY NOT CARRY A LICENSE OR PERMIT OBTAINED IN VIOLATION OF APPLICABLE LAW OR RULE; ALLOWING A PERSON WHO WISHES TO RECEIVE A BOWHUNTING LICENSE TO COMPLETE A NATIONAL BOWHUNTER EDUCATION FOUNDATION PROGRAM OR ANOTHER BOWHUNTER EDUCATION PROGRAM APPROVED BY THE DEPARTMENT; AMENDING SECTIONS 87-2-103, 87-2-105, 87-2-106, 87-2-107, AND 87-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-103, MCA, is amended to read:

"87-2-103. License required. (1) Except as provided in subsection (2), it is unlawful for a person to:

(a) hunt or trap or attempt to hunt or trap any game animal, any game bird, or any fur-bearing animal or to fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds, except as provided by law or as provided by the department; or

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or to fish for any fish, except at the places and during the periods and in the manner defined by law or as defined by the department; or

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper *and valid* license or permit from the department to do so; or

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence."

Section 2. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) A hunting license may not be issued to a resident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5).

(2) A hunting license may not be issued to a nonresident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5) or a certificate verifying that the nonresident has successfully completed a hunter safety course in any state or province.

(3) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license receives proof of completion of a hunter safety course approved by the department or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.

(4) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or receives proof of completion of a bowhunter education course from the national bowhunter education foundation *or any other bowhunter education program approved by the department.* Neither the

department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(5) The department shall provide for a youth hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions to youth in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's youth hunter safety and education course to a person successfully completing the course.

(6) The department shall provide for a course of instruction from the national bowhunter education foundation *or any other bowhunter education program approved by the department* and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give ~~the national~~ bowhunter education ~~foundation~~ instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion ~~from the national bowhunter education foundation~~ to any person successfully completing the course.

(7) The department may develop an adult hunter education course.

(8) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion or achievement."

Section 3. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is ~~unlawful and~~ a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by *telephone, by* mail*, on the internet, or by other electronic means*. Statements on an application for a license to be issued by *telephone, by* mail*, on the internet, or by other electronic means* need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee ~~and by an employee or officer of the department or by a license agent or an authorized representative of the license agent~~.

(6) It is unlawful to subscribe to *or make* any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:

(a) wildlife conservation license;

(b) hunting license or permit; or

(c) fishing license or permit.

~~(7)~~*(8)* (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to *or making* a false statement to obtain a resident license *or who is convicted of applying for or purchasing a resident license in violation of subsection (7)* shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection ~~(7)(a)~~ *(8)(a)*, upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

~~(8)~~*(9)* It is ~~unlawful and~~ a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

[~~(9)~~*(10)* The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

~~(10)~~*(11)* The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 4. Section 87-2-107, MCA, is amended to read:

"87-2-107. License form. The form of the license ~~shall~~ *must* be determined and the license blanks prepared by the department and furnished by it to the officers and persons authorized to issue the ~~same~~ *license*. ~~Said licenses shall~~ *Licenses must* be issued in the name of the department ~~and be countersigned by~~

~~the officer or person issuing the same~~. Each license issued ~~shall~~ *must* be signed by the licensee in ink or indelible pencil on the face ~~thereof~~ *of the license*."

Section 5. Section 87-2-114, MCA, is amended to read:

"87-2-114. ~~Unlawful~~ *Misdemeanor and felony* possession of hunting *or fishing* license or permit~~of another~~ — penalties. (1) Except as provided in subsection (2), ~~it is unlawful for a~~ *a* person ~~to~~ *commits the offense of unlawful possession of a hunting or fishing license or permit if the person* ~~carry~~ *knowingly, as defined in 45-2-101, carries* or ~~have~~ *has* physical control over a valid and unused*:*

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit*;*

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly *obtained and* validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor *and is* punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued~~,~~ *or by knowingly, as defined in 45-2-101, carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule,* is guilty of a felony and upon conviction shall be fined not more than $50,000, imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permit and license privileges for not less than 3 years or up to a lifetime revocation from the date of conviction."

Section 6. Eligibility standards for licenses or permits obtained by telephone, mail, or electronic means — rulemaking. The department may adopt rules that prescribe requirements necessary to determine that an applicant meets the eligibility requirements provided in this part when the applicant obtains a license or permit by telephone, by mail, on the internet, or by other electronic means.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 6].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective July 1, 2003.

Ap proved March 20, 2003

CHAPTER NO. 81

[HB 116]

AN ACT ESTABLISHING A DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Domestic violence fatality review commission — confidentiality of meetings and records — criminal liability for unauthorized disclosure — report to legislature. (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

(a) examine the trends and patterns of domestic violence-related fatalities in Montana;

(b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

(a) representatives from state departments that are involved in issues of domestic abuse;

(b) representatives of private organizations that are involved in issues of domestic abuse;

(c) medical and mental health care providers who are involved in issues of domestic abuse;

(d) representatives from law enforcement, the judiciary, and the state bar of Montana;

(e) representatives of Montana Indian tribes;

(f) other concerned citizens; and

(g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than $500.

(11) The commission shall report its findings and recommendations in writing to the legislature, the attorney general, the governor, and the chief justice of the Montana supreme court no later than the third Tuesday in January of each year in which the legislature meets in regular session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Termination. [This act] terminates December 31, 2006.

Ap proved March 20, 2003

CHAPTER NO. 82

[HB 137]

AN ACT REPEALING THE TERMINATION DATE FOR THE REQUIREMENT THAT AT LEAST 50 PERCENT OF FISHING LICENSE

FUNDS ALLOCATED FOR FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES BE USED FOR OPERATION AND MAINTENANCE AND BE PRIORITIZED AND EXPENDED FOR WEED MANAGEMENT, STREAMBANK RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REPEALING SECTION 4, CHAPTER 428, LAWS OF 1995, AND SECTION 1, CHAPTER 109, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 4, Chapter 428, Laws of 1995, and section 1, Chapter 109, Laws of 1999, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 20, 2003

CHAPTER NO. 83

[HB 150]

AN ACT EXEMPTING PROVIDERS OF COMPANIONSHIP SERVICES OR RESPITE CARE FOR THE AGED OR INFIRM FROM WAGE AND HOUR REQUIREMENTS TO CONFORM TO FEDERAL LAW; EXEMPTING THE PROVISION OF COMPANIONSHIP SERVICES OR RESPITE CARE TO THE AGED OR INFIRM FROM MINIMUM WAGE AND OVERTIME, UNEMPLOYMENT INSURANCE, AND WORKERS' COMPENSATION INSURANCE IF THE PERSON PROVIDING THE SERVICE IS EMPLOYED DIRECTLY BY THE FAMILY OR A LEGAL GUARDIAN; AND AMENDING SECTIONS 39-3-406, 39-51-204, AND 39-71-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal-care facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide ~~live-in~~ companionship services, as defined in 29 CFR 552.6, *or respite care* for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213*, when the person providing the service is employed directly by a family member or an individual who is a legal guardian*.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day,

40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; ~~or~~

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873; *or*

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 3. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order*;*

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a $25 fee for the initial application. Any subsequent application renewal must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and the $25 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Ap proved March 19, 2003

CHAPTER NO. 84

[HB 187]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING REGULATION OF FISH; DESIGNATING YELLOW PERCH AND CRAPPIE AS GAME FISH; AUTHORIZING A PURCHASER OF A RESIDENT TEMPORARY FISHING LICENSE TO PURCHASE A PADDLEFISH TAG; PROVIDING THAT A SCIENTIFIC COLLECTION PERMITTEE MAY NOT COLLECT FISH USING ANY EXPLOSIVE; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE TAKING OF WHITEFISH WITH SPEARS OR GIGS; REVISING THE LAWS GOVERNING REGULATION OF FISHING TO CHANGE THE TERM "DEPARTMENT" TO "COMMISSION" TO MAKE THE LAW CONSISTENT WITH THE DUTY OF THE COMMISSION TO ESTABLISH FISHING RULES; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AUTHORIZE TAKING BLACK BASS IN FLATHEAD LAKE; ELIMINATING THE AUTHORITY TO AUTHORIZE SNAGGING OF COHO (SILVER SALMON)

AND AUTHORIZING THE SNAGGING OF CHINOOK SALMON; EXPANDING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT AND THE COMMISSION TO REGULATE COMMERCIAL FISH OPERATIONS; AMENDING SECTIONS 87-2-101, 87-2-306, 87-2-806, 87-3-204, 87-3-205, 87-4-601, 87-4-609, AND 87-4-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in ~~this chapter, chapter 3, and~~ 87-1-102, *chapter 3, and this chapter,* unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) *(a)* "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include*:*

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); *the species perca flavescens (yellow perch); all species of the genus pomoxis (crappie);* and the species ictalurus punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails,

including coots; wilson's snipes or jacksnipes; and mourning doves; however, the open season on mourning doves is restricted to the open season on upland game birds ~~as defined in subsection (15)~~.

(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(12) "Person" means individuals, associations, partnerships, and corporations.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 2. Section 87-2-306, MCA, is amended to read:

"87-2-306. Paddlefish tags. (1) The department may issue paddlefish tags to persons listed in subsection (2) for a fee of $5 for residents and $15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

(2) The following persons may obtain paddlefish tags pursuant to this section:

(a) holders of valid Class A, *Class A-8*, Class B, and Class B-4 fishing licenses;

(b) residents under 15 years of age with a valid wildlife conservation license; and

(c) residents 62 years of age or older with a valid wildlife conservation license."

Section 3. Section 87-2-806, MCA, is amended to read:

"87-2-806. Taking fish or game for scientific purposes. (1) ~~It is lawful for the~~ *An* ~~duly~~ accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency or ~~for~~ an individual~~,~~ who ~~may be~~ *is* investigating a scientific subject for which collection ~~may be~~ *is* necessary, ~~to~~ *may* take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or ~~state fish and game~~ *department or commission* rule~~, provided that~~ *if* a permit to collect is authorized by the department. Under the provisions of this section, a permittee may take, kill, and capture protected or unprotected birds, fish, or animals in any way that is approved by the department, except by the ~~explosion of dynamite~~ *use of explosives*. A permittee may not take, kill, or capture more birds, fish, or animals than are necessary for the investigation. A collection permit may not be given for a species for which a taking is prohibited by statute or rule.

(2) A person who desires to engage in the scientific investigation shall apply to the department for a permit. The department may require the applicant to submit a plan of operations that includes the purpose for the collection, collection methodology to be employed, and the qualifications of the person who will be doing the collecting. The department may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the department is satisfied of the good faith and qualifications of the applicant and that the collecting is necessary for a valid purpose, the department:

(a) may issue a permit that must place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken; and

(b) shall require a report of the numbers and species of animals taken by collection areas.

(3) The department may deny a permit if:

(a) the applicant is not qualified to make the scientific investigation;

(b) the proposed collecting is not necessary for the proposed scientific investigation;

(c) the method of collecting is not appropriate;

(d) the proposed collecting may threaten the viability of the species; or

(e) there is no valid reason or need for the proposed scientific investigation.

(4) By December 31 of each year, a permittee ~~is required to~~ *shall* submit a report to the department that lists the species and numbers of individuals of the species taken and locations from which collections were taken. A permittee who fails to file a required report may not be issued another permit.

(5) The permittee shall pay $50 for the permit, except that a permittee who is a representative of an accredited school, college, university, or other institution of learning or of any governmental agency is exempt from payment of the fee.

(6) The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are allowed in the permit.

(7) A representative of an accredited school, college, university, or other institution of learning or an individual permittee who may have various students or associates assisting throughout the year may apply to have a permit issued that includes the individual and the students or associates. The department shall approve the qualifications of a student or an associate and the level of supervision required by the primary permittee. The students or associates, when carrying a copy of the permit, have the same authorizations and restrictions as the primary applicant. The primary applicant shall keep a record of all students or associates listed on the permit and of the dates when each student or associate conducts a collection under the permit. The primary applicant is responsible for the students' or associates' use of the permit or copies of the permit."

Section 4. Section 87-3-204, MCA, is amended to read:

"87-3-204. Restrictions on fishing methods — *allowed fishing methods.* (1) ~~No~~ *A* game fish may *not* be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any ~~such set~~ gun, trap, or other device to entrap game fish be used, made, or set.

(2) ~~It~~ *Except when specifically authorized by law or commission rule, it* is unlawful for a person to*:*

(a) take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand *or within immediate control*; ~~to~~

(b) take or catch fish with hook baited with any poisonous substance or ~~by means of the use of~~ *using* any poisonous substance, including fish berries; or ~~to~~

(c) take or catch fish ~~by means of the use of~~ *using* fishtraps, grabhooks, seines, nets, *spears, gigs,* or other similar means for catching fish.

~~(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.~~

~~(4) The taking of black bass in Flathead Lake may be permitted by the department.~~

(3) (a) The commission may designate waters within the state in which rubber or spring-propelled spears employed by persons swimming or submerged in the water or traps, seines, nets, spears, or gigs may be used for taking:

(i) nongame fish; or

(ii) walleyed pike, sauger, northern pike, burbot (ling), and whitefish.

(b) The commission may adopt rules for the taking of fish under this subsection (3), and the rules may be specific to the water designated. The designated waters may be closed at the discretion of the commission.

(c) Except when the taking of game fish is authorized pursuant to subsection (3)(a)(ii), all game fish captured while fishing as authorized under this subsection (3) must be returned uninjured to the waters from which they were taken.

~~(5)~~*(4)* The ~~department shall have the power to~~ *commission may* designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the ~~department~~ *commission* may designate the number of hooks and lines and the length of line or lines ~~which~~ *that* may be used as setlines.

~~(6)~~*(5)* Game fish ~~shall~~ *must* be taken only ~~by angling; that is,~~ by hook and single line ~~in hand~~ or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish~~, coho (silver salmon),~~*, chinook salmon,* and kokanee (sockeye salmon) when the ~~department~~ *commission* declares an open season when paddlefish~~, coho (silver salmon),~~*, chinook salmon,* and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under ~~such~~ rules and regulations ~~as~~ *that* the ~~fish, wildlife, and parks~~ commission ~~may prescribe~~ *prescribes*;

(c) the taking of ~~walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig~~ *game fish pursuant to subsection (3)*;

(d) the use of landing net or gaff to land a game fish after the ~~same~~ *game fish* has been hooked ~~by angling~~ as ~~above~~ specified *in this subsection (5)*;

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in ~~such~~ waters ~~as may be~~ designated by the ~~department~~ *commission*;

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such~~ *the* rules and regulations ~~as~~ *that* the ~~fish, wildlife, and parks~~ commission ~~may prescribe~~ *prescribes*; or

(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod.

(6) The commission may designate waters where authorized commercial fishing operators may use approved nets, seines, and traps to fish for designated species of nongame fish."

Section 5. Section 87-3-205, MCA, is amended to read:

"87-3-205. Unlawful to possess net or seine — exceptions. (1) It is unlawful for ~~any~~ *a* person ~~or persons~~ to have in ~~their~~ *the person's* possession or under ~~their~~ *the person's* control ~~any~~ *a* seine, net, or other similar device for capturing fish. A seine or net found in ~~any~~ *a* vehicle, at the camp, or on the premises of ~~any~~ *a* person ~~shall be~~ *is* prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying ~~said~~ *the* camp or premises.

(2) ~~Nothing contained herein shall~~ *The provisions of this section do not* apply to:

(a) ~~the owners of~~ *a license holder for a* private fish ~~ponds~~ *pond who is licensed to sell fish and eggs*~~, as defined under the statute~~ *under 87-4-603*;

(b) a person ~~or persons having unexpired~~ *with an unexpired* seine or net license~~, as provided for in the statutes of Montana~~;

(c) the use, by any person, of a landing net in connection or in addition to pole, line, and hooks in fishing for game fish; or

(d) the possession of traps, seines, or nets ~~where~~ *when* found in the vicinity of any waters ~~which~~ *that* the ~~department~~ *commission* has designated ~~within the state where~~ *in which* traps, seines, or nets may be used for the taking of nongame fish ~~and Dolly Varden trout, as provided for in the statutes of Montana~~ *or game fish*."

Section 6. Section 87-4-601, MCA, is amended to read:

"87-4-601. (Temporary) Sale of fish or spawn unlawful — exceptions. (1) Except as provided in subsections (2) ~~and (3)~~ *through (4)*, a person may not, for speculative purposes, for market, or for sale, in any way, catch ~~any of the fish which in this title are classified as~~ game fish or remove or cause to be removed

the eggs or spawn of any ~~such~~ *game* fish. ~~No~~ *A* person may *not* sell or offer for sale ~~any of the~~ game fish ~~of this state as defined in this title~~ or the eggs or spawn from ~~any~~ game fish.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish *or the collecting of eggs or spawn* in *a* private ~~ponds~~ *fish pond licensed under 87-4-603* by the ~~owners of private ponds~~ *owner of the pond*;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for ~~propagation purposes~~ *use in a private fish pond licensed under 87-4-603*;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules ~~and regulations~~ of the ~~department~~ *commission*;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules ~~and regulations as~~ *that* the ~~fish, wildlife, and parks~~ commission ~~may prescribe~~ *prescribes*; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the burlington northern railroad bridge at Glendive to the confluence of Cottonwood Creek and the Yellowstone River during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(d) (i) Forty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(ii) Sixty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area ~~sportsmen~~ *sports-interested persons*. The advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.

(4) A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)

87-4-601. (Effective July 1, 2003) Sale of fish or spawn unlawful — exceptions. (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, ~~no~~ *a* person may *not*, for speculative purposes, for market, or for sale, in any way, catch ~~any of the fish which in this title are classified as~~ game fish or remove or cause to be removed the eggs or spawn of any ~~such~~ *game* fish. ~~No~~ *A* person may *not* sell or offer for sale ~~any of the~~ game fish ~~of this state as defined in this title~~ or the eggs or spawn ~~therefrom~~ *from game fish*.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish *or the collecting of eggs or spawn* in *a* private ~~ponds~~ *fish pond licensed under 87-4-603* by the ~~owners thereof~~ *owner of the pond*;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for ~~such purposes~~ *use in a private fish pond licensed under 87-4-603*;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules ~~and regulations~~ of the ~~department~~ *commission*;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such~~ rules ~~and regulations as~~ *that* the ~~fish, wildlife, and parks~~ commission ~~may prescribe~~ *prescribes*; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609."

Section 7. Section 87-4-609, MCA, is amended to read:

"87-4-609. Regulation of commercial taking of *fish or* aquatic ~~fish food~~ organisms — permit — rulemaking authority. (1) The department shall regulate the taking, for sale or commercial distribution, of*:*

(a) crayfish for fishing bait~~,~~*;*

(b) crayfish from private fish ponds regulated under 87-4-603~~,~~*;*

(c) mysis shrimp~~,~~*;*

(d) designated species of nongame fish in waters designated by the commission pursuant to 87-3-204;

(e) whitefish as authorized by statute; and

(f) other aquatic organisms ~~that provide a food source for fish~~.

(2) It is unlawful for a person to take *fish or* aquatic ~~fish food~~ organisms for commercial purposes without obtaining a permit from the department. A permit applicant shall provide the department with sufficient details of the proposed operation to take any *fish or* aquatic ~~fish food~~ organism for sale or commercial distribution to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest~~,~~ to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of *fish or* aquatic ~~fish food~~ organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements, ~~for a particular aquatic fish food organism, in order~~ to prevent overharvest or conflict with fishing and recreational uses of the waters."

Section 8. Section 87-4-610, MCA, is amended to read:

"87-4-610. Fees for commercial taking of *fish or* aquatic ~~fish food~~ organisms — use of fees. (1) To finance the administration and enforcement of the provisions of 87-4-609, the department may by rule set reasonable fees for:

(a) issuance of the permit required in 87-4-609; and

(b) use of traps, nets, or seines in Montana waters for the *commercial* taking of *nongame fish, whitefish, as authorized by statute, or* aquatic ~~fish food~~ organisms.

(2) The department shall deposit any fees collected under the provisions of subsection (1) in the state special revenue fund for use by the department."

Section 9. Effective date. [This act] is effective on passage and approval.

Ap proved March 20, 2003

CHAPTER NO. 85

[HB 321]

AN ACT PROVIDING FOR MEDICAL ASSISTANTS; PROVIDING A DEFINITION OF "MEDICAL ASSISTANT"; PROVIDING FOR EXEMPTION FROM LICENSING REQUIREMENTS; PROVIDING FOR PHYSICIAN OR PODIATRIST SUPERVISION OF AND RESPONSIBILITY FOR A MEDICAL ASSISTANT; REQUIRING THE BOARD OF MEDICAL EXAMINERS TO ADOPT GUIDELINES BY ADMINISTRATIVE RULE REGARDING THE PERFORMANCE OF ADMINISTRATIVE AND CLINICAL TASKS;

AMENDING SECTIONS 37-3-102, 37-3-103, 37-3-303, AND 37-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-102, MCA, is amended to read:

"37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Approved internship" means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

(2) "Approved medical school" means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) "Approved residency" means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board may upon investigation approve any other residency.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Medical assistant" means an unlicensed allied health care worker who functions under the supervision of a physician or podiatrist in a physician's or podiatrist's office and who performs administrative and clinical tasks.

~~(6)~~*(7)* "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter."

Section 2. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided

with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, *medical assistant, as provided in [section 5],* or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103;

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title

"M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 3. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102~~(6)~~*(7)* in a manner reasonably consistent with ~~his~~ *the holder's* training, skill, and experience."

Section 4. Section 37-3-304, MCA, is amended to read:

"37-3-304. Practice authorized by temporary certificate. The temporary certificate~~, which~~ may be issued to any citizen or to an alien otherwise qualified for a physician's certificate ~~and which may be issued~~ for a period not to exceed 1 year~~,~~ *and is* subject to renewal for additional periods of 1 year, ~~but~~ not to exceed five ~~such~~ renewals, at the discretion of the board~~,~~. *The temporary certificate* authorizes the holder to perform one or more of the acts embraced in 37-3-102~~(6)~~*(7)* in a manner reasonably consistent with ~~his~~ *the holder's* training, skill, and experience, subject~~, nevertheless,~~ to all specifications, conditions, and limitations imposed by the board."

Section 5. Medical assistants — guidelines. (1) The board shall adopt guidelines by administrative rule for:

(a) the performance of administrative and clinical tasks by a medical assistant that are allowed to be delegated by a physician or podiatrist, including the administration of medications; and

(b) the level of physician or podiatrist supervision required for a medical assistant when performing specified administrative and clinical tasks delegated by a physician or podiatrist. However, the board shall adopt a rule requiring onsite supervision of a medical assistant by a physician or podiatrist for invasive procedures, administration of medication, or allergy testing.

(2) The physician or podiatrist who is supervising the medical assistant is responsible for:

(a) ensuring that the medical assistant is competent to perform clinical tasks and meets the requirements of the guidelines;

(b) ensuring that the performance of the clinical tasks by the medical assistant is in accordance with the board's guidelines and good medical practice; and

(c) ensuring minimum educational requirements for the medical assistant.

(3) The board may hold the supervising physician or podiatrist responsible in accordance with 37-1-410 or 37-3-323 for any acts of or omissions by the medical assistant acting in the ordinary course and scope of the assigned duties.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 37, chapter 3, part 1, and the provisions of Title 37, chapter 3, part 1, apply to [section 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Ap proved March 20, 2003

CHAPTER NO. 86

[HB 366]

AN ACT ALLOWING THE TRUSTEES OF CERTAIN SCHOOL DISTRICTS TO HOLD QUARTERLY MEETINGS INSTEAD OF FOUR MEETINGS IN SPECIFIC MONTHS; AMENDING SECTION 20-3-322, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-322, MCA, is amended to read:

"20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a final budget meeting, as prescribed by 20-9-131; and

(c) in first-class elementary districts, not less than one regular meeting each month; or

(d) in any other district, regular meetings ~~during the months of April, August, October, and January~~ *at least quarterly*.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or in a publicly owned building located within the district.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved March 20, 2003

CHAPTER NO. 87

[HB 511]

AN ACT AUTHORIZING A GOVERNING BODY TO ADOPT OR REVISE CERTAIN ZONING REGULATIONS THAT ARE CONSISTENT WITH A MASTER PLAN THAT WAS ADOPTED BEFORE OCTOBER 1, 1999, AND THAT DOES NOT MEET THE REQUIREMENTS OF A GROWTH POLICY

AND SPECIFYING THAT THE ADOPTION OR REVISION MUST BE MADE BEFORE OCTOBER 1, 2006; AUTHORIZING THE REPEAL AND REVISION OF A MASTER PLAN FOLLOWING THE PROCEDURES IN LAW FOR REPEAL AND REVISION OF A GROWTH POLICY; AMENDING SECTIONS 76-1-604, 76-2-201, 76-2-203, 76-2-206, 76-2-303, AND 76-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-604, MCA, is amended to read:

"76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject the proposed growth policy or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed growth policy or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area covered by the proposed growth policy at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election. Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.

(3) The governing bodies may adopt, revise, or repeal a growth policy under this section.

(4) The qualified electors of the jurisdictional area included within the growth policy may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a growth policy under this section.

(5) A master plan adopted pursuant to this chapter before October 1, 1999, may be repealed following the procedures in this section for repeal of a growth policy.

(6) Until October 1, 2006, a master plan that was adopted pursuant to this chapter before October 1, 1999, may be revised following the procedures in this chapter for revision of a growth policy."

Section 2. Section 76-2-201, MCA, is amended to read:

"76-2-201. County zoning authorized. *(1)* For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy for the entire jurisdictional area pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan."

Section 3. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be*:*

(a) made in accordance with the growth policy *or a master plan, as provided for in 76-2-201(2),* and ~~must be~~

(b) designed to*:*

(i) lessen congestion in the streets; ~~to~~

(ii) secure safety from fire, panic, and other dangers; ~~to~~

(iii) promote public health and general welfare; ~~to~~

(iv) provide adequate light and air; ~~to~~

(v) prevent the overcrowding of land; ~~to~~

(vi) avoid undue concentration of population; and ~~to~~

(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area."

Section 4. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map or regulation. (1) The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) ~~an amendment, extension, or addition~~ *a revision* to a growth policy*, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2)*, or to zoning regulations pursuant to this part.

(2) An interim resolution must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made."

Section 5. Section 76-2-303, MCA, is amended to read:

"76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be

published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, provided that the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to part 1 or 2 of this chapter; or

(iii) are consistent with zoning requirements recommended in ~~the~~ *a* growth policy adopted pursuant to chapter 1 of this title *or in a master plan, as provided for in 76-2-304(3),* for the annexed property.

(b) A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."

Section 6. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning. (1) Zoning regulations must be*:*

(a) except as provided in subsection (3), made in accordance with a growth policy*;* and

(b) designed to*:*

(i) lessen congestion in the streets; ~~to~~

(ii) secure safety from fire, panic, and other dangers; ~~to~~

(iii) promote health and the general welfare; ~~to~~

(iv) provide adequate light and air; ~~to~~

(v) prevent the overcrowding of land; ~~to~~

(vi) avoid undue concentration of population; and ~~to~~

(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."

Section 7. Effective date. [This act] is effective on passage and approval.

Ap proved March 20, 2003

CHAPTER NO. 88

[HB 636]

AN ACT REVISING LAWS GOVERNING TOW TRUCKS AND THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; ESTABLISHING CERTIFICATION REQUIREMENTS FOR TOW TRUCK OPERATORS TO QUALIFY FOR PARTICIPATION IN THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING DEFINITIONS; IDENTIFYING MANUFACTURER'S BOOM RATINGS FOR TOW TRUCK CLASSIFICATION; REQUIRING THE ESTABLISHMENT OF THE TOW TRUCK COMPLAINT RESOLUTION COMMITTEE AND ASSIGNING RESPONSIBILITIES TO THE COMMITTEE; SPECIFYING THE AMOUNT OF INSURANCE A COMMERCIAL TOW TRUCK OPERATOR MUST CARRY; REQUIRING THAT PROOF OF INSURANCE BE SENT TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING REQUIREMENTS FOR A TOW TRUCK OPERATOR'S FENCED LOT; ALLOWING THE HIGHWAY PATROL TO CHARGE A FEE FOR THE INSPECTION DECAL; SPECIFYING THE KIND OF INFORMATION THAT QUALIFIED TOW TRUCK OPERATORS MUST PROVIDE; ESTABLISHING THE PROCEDURE FOR MULTIPLE TOW TRUCK OPERATORS TO BE ON A ROTATION LIST FROM A SINGLE STORAGE OR IMPOUNDMENT FACILITY; ALLOWING ONLY ONE TOW TRUCK OPERATION FOR EACH OWNER TO BE PLACED ON A ROTATION LIST; ESTABLISHING REQUIREMENTS FOR SATELLITE TOW TRUCK OPERATIONS; REQUIRING LOCAL LAW ENFORCEMENT AGENCIES TO COMPLY WITH THE ROTATION SYSTEM PROVISIONS; REQUIRING THAT LISTS OF ROTATION SYSTEM CALLS BE MADE AVAILABLE; AND AMENDING SECTIONS 61-8-903, 61-8-904, 61-8-905, 61-8-906, 61-8-907, 61-8-908, 61-8-910, AND 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-903, MCA, is amended to read:

"61-8-903. Definitions. As used in this part, the following definitions apply:

(1) "Boom" means an engineered structure that is either mechanically or hydraulically operated and that is capable of lifting and supporting an overhead, vertical load.

~~(1)~~*(2)* "Commercial tow truck operator" or "operator" means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

~~(2)~~*(3)* "Department" means the department of justice provided for in 2-15-2001.

~~(3)~~*(4)* "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

~~(4)~~*(5) (a)* "Qualified tow truck operator" means a commercial tow truck operator:

~~(a)~~*(i)* that has equipment that:

~~(i)~~*(A)* meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

~~(ii)~~*(B)* has been classified in accordance with 61-8-905; ~~and~~

~~(b)~~*(ii)* that participates in the law enforcement rotation system provided for in 61-8-908~~.~~*; and*

(iii) that meets the requirements of subsection (5)(b).

(b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(ii) If the operator is an individual, the individual must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(6) "Rotation area" means the base area where a qualified tow truck operator is dispatched and operates. For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties.

(7) "Satellite operation" means a second or subsequent operation in another rotation area."

Section 2. Section 61-8-904, MCA, is amended to read:

"61-8-904. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of ~~61-8-905 through 61-8-907~~ *this part*.

(3) Sections 61-8-901 through 61-8-908 and 61-8-910 do not apply to a commercial tow truck operator that does not operate for compensation."

Section 3. Section 61-8-905, MCA, is amended to read:

"61-8-905. Classification standards. (1) Commercial tow trucks are divided into the following five classes based on the manufacturer's rating:

(a) Class A tow truck equipment must have a minimum manufacturer's *boom or combined boom* rating of 4 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 10,000 pounds gross vehicle weight.

(b) Class B tow truck equipment must have a minimum manufacturer's *boom or combined boom* rating of 8 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 18,000 pounds gross vehicle weight.

(c) Class C tow truck equipment must have a minimum manufacturer's *boom or combined boom* rating of 16 tons and must be mounted on a chassis that has a minimum manufacturer's rating of 32,000 pounds gross vehicle weight.

(d) Class D ~~is class A, B, or C~~ tow truck equipment ~~that~~ includes manufactured rollbacks and car carriers with manufacturer's gross vehicle ratings ~~ranging from~~ *of* 10,000 pounds ~~to 30,000 pounds~~ *and over*. The rollbacks and car carriers must be mounted on a truck-trailer chassis that, at a minimum, is equal to the minimum gross weight of the rollback or car carrier. *Class D also includes any piece of towing equipment without a boom.*

(e) Class E includes two or more tow trucks working together with a combined manufacturer's rating of a minimum of 80,000 pounds with access to supportive equipment, such as forklifts, banders, and air bags, for the recovery

of rollovers and wrecked, disabled, and abandoned vehicles whose cargo requires special handling. Class E refers to tow truck companies and not to tow truck equipment.

(2) ~~(a)~~ An operator of noncommercially manufactured or modified tow truck equipment in use on October 1, 1995, that wishes to participate in the law enforcement rotation system must have its equipment classified by the department within a time period set by the department. Once the equipment is classified, further modifications may not be made.

~~(b) (i) The department shall establish a committee composed of members selected from the:~~

~~(A) tow truck industry;~~

~~(B) the motor carrier services division of the department of transportation; and~~

~~(C) the highway patrol.~~

~~(ii) The committee is responsible for hearing disputes that may arise regarding the classification of noncommercially manufactured or modified tow truck equipment.~~

~~(iii) The department shall establish by rule a procedure for hearing a dispute.~~

~~(c) After October 1, 1995, an~~

(3) An operator of new noncommercially manufactured or modified tow truck equipment must have its equipment independently certified before participating in the law enforcement rotation system. *Once the equipment is classified, further modifications to the equipment must be recertified.*"

Section 4. Tow truck complaint resolution committee — membership — responsibilities. (1) The department shall establish a tow truck complaint resolution committee, and the attorney general shall appoint the members. Committee members serve 3-year terms, may serve more than one term, and must include:

(a) two representatives of the tow truck industry, one from the eastern half of the state and one from the western half of the state;

(b) a representative of the commercial motor carrier industry;

(c) a member of the public;

(d) a representative of the insurance industry; and

(e) a representative of the highway patrol.

(2) The committee shall meet as often as necessary, either in person or by teleconference, to review and resolve complaints about tow truck issues, including towing charges, that are submitted in writing to a committee member and to review information submitted to it as provided in this part.

(3) The department shall establish rules to govern the committee's procedure for reviewing and resolving complaints.

Section 5. Section 61-8-906, MCA, is amended to read:

"61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

(i) $300,000 for class A tow trucks;

(ii) $500,000 for class B tow trucks; and

(iii) $750,000 for class C tow trucks;

(b) insurance *in an amount not less than $20,000* to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage keepers *or on-hook* legal liability insurance *in an amount not less than $50,000*.

(2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to the public service commission.

~~(2)~~*(3)* A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

(a) adequate for the secure storage and safekeeping of stored vehicles;

(b) located in a place that is reasonably convenient for public access;

(c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays; ~~and~~

(d) large enough to store all the vehicles towed for law enforcement agencies*; and*

(e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism."

Section 6. Section 61-8-907, MCA, is amended to read:

"61-8-907. Inspection — fees — decal. (1) The tow truck equipment of a commercial tow truck operator must have an annual safety inspection. A highway patrol officer, an employee of the department of transportation appointed as a peace officer in accordance with 61-12-201, or an inspector certified by the department shall conduct the inspection and require the commercial tow truck operator to provide proof of compliance with the provisions of 61-8-906.

(2) (a) Upon satisfactory completion of the inspection and verification of the insurance requirements, a decal showing the last inspection date and the expiration date of the insurance coverage must be affixed in a prominent place on the tow truck.

(b) If the commercial tow truck operator is participating in the law enforcement rotation system, the decal must also show the classification of the operator's tow truck equipment.

(3) The department may establish ~~an~~ inspection *and decal* ~~fee~~ *fees* that may not exceed the actual costs of the inspection *and the decal*. The fees *for the inspection and decal* must be deposited in the state highway account in the state special revenue fund."

Section 7. Section 61-8-908, MCA, is amended to read:

"61-8-908. State law enforcement rotation system — local government rotation system. (1) The department shall establish *and*

maintain an equitable rotation system among qualified tow truck operators that apply to the department in writing to be placed on the system. The rotation system:

(a) must be administered by the highway patrol in a manner that will give priority to public safety;

(b) must be based on the classification of equipment as provided in 61-8-905; and

(c) may include only qualified tow truck operators.

(2) Each qualified tow truck operator participating in the rotation system shall have available and show upon the request of a law enforcement officer:

(a) all Montana motor vehicle identification numbers or department of transportation numbers for the operator's tow trucks operating in the rotation system;

(b) the operator's federal tax identification number; and

(c) the operator's company phone number and street address.

(3) (a) If more than one qualified tow truck operator using a single storage or impoundment facility applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee established in [section 4] information regarding each operator's individual accounting system, the information required in subsection (2), and proof that each operator has the insurance required in 61-8-906.

(b) Based on the information provided to it pursuant to subsection (3)(a), the complaint resolution committee shall, upon written request, verify that operators using a single storage or impoundment facility applying to be placed on the rotation system have individual accounting systems, adequate identification information, and individual insurance policies.

(4) Only one qualified tow truck operation for each owner may be included on a rotation area list.

(5) (a) An owner of a qualified tow truck operation who has an existing tow truck operation in a rotation area separate from the rotation area where the owner is participating in the rotation system may establish a satellite operation to be included on a rotation area list if:

(i) the owner has a business office in the second rotation area;

(ii) the business office is open and accessible from 8 a.m. to 5 p.m. Monday through Friday;

(iii) the facilities have a secure yard as provided in 61-8-906(3)(e); and

(iv) the tow truck operation has a local 24-hour phone number.

(b) Any charges for towing service from the satellite operation must be calculated from the satellite operation area and not the area of the owner's base operation.

~~(2)~~*(6)* The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in 61-8-907.

~~(3)~~*(7)* (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck operator that is next on the rotation list if:

(A) a request for a tow truck is not made by the owner or driver;

(B) the requested tow truck cannot respond in a timely manner; or

(C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.

(ii) If the qualified tow truck operator is not classified to handle the wrecked or disabled vehicle, the officer shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or disabled vehicle.

(b) If a qualified tow truck operator classified to handle the wrecked or disabled vehicle is not reasonably available, the law enforcement officer may request other equipment to remove the hazard.

~~(4)~~*(8)* The department shall administer the state law enforcement rotation system. A qualified tow truck operator may examine the rotation system schedule established by the department in order to determine if the system is being administered in an equitable manner.

~~(5)~~*(9)* A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or a local government to ensure compliance with ~~61-8-905 through 61-8-907~~ *this part*.

~~(6)~~*(10)* A local law enforcement agency may adopt and administer a local law enforcement rotation system *that complies with the provisions of this part*. A tow truck operator desiring to be placed on the local law enforcement rotation system must be a qualified tow truck operator as provided in this part.

(11) The highway patrol or local law enforcement shall provide upon request a record of rotation system calls for all classes of tow trucks.

(12) Complaints about the rotation system must be referred in writing to the complaint resolution committee established in [section 4]."

Section 8. Section 61-8-910, MCA, is amended to read:

"61-8-910. Violation — penalty. A commercial tow truck operator that violates a provision of ~~61-8-906 or 61-8-907~~ *this part* is guilty of a misdemeanor and is subject to the penalty provided in 61-8-711."

Section 9. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of disabled or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) "disabled" means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) ~~This~~ *Except for the identification of ownership requirements provided in 69-12-408, this* chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 10. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 4].

Ap proved March 20, 2003

CHAPTER NO. 89

[SB 51]

AN ACT AUTHORIZING THE BOARD OF HOUSING TO INCREASE THE TOTAL AMOUNT OF ITS OUTSTANDING NOTES AND BONDS FROM $975 MILLION TO $1.5 BILLION; PROVIDING FOR SEMIANNUAL INSTALLMENT PAYMENTS ON SERIAL BONDS; AND AMENDING SECTION 90-6-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-111, MCA, is amended to read:

"90-6-111. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount ~~as~~ *that* the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and, whenever it ~~deems~~ *considers* refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds ~~shall~~ *must* be obligations of the board payable out of any ~~revenues~~ *revenue*, assets, or ~~moneys~~ *money* of the board, subject only to agreements with the holders of particular notes or bonds pledging particular ~~revenues~~ *revenue*, assets, or ~~moneys~~ *money*.

(4) The notes and bonds ~~shall~~ *must* be authorized by resolutions of the board, ~~shall~~ *must* bear a date, and ~~shall~~ *must* mature at times ~~as~~ *that* the resolutions provide. A note ~~shall~~ *may* not mature more than 10 years and a bond ~~shall~~ *may* not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual*or semiannual* installments or as term bonds or as a combination ~~thereof~~ *of both*. The notes and bonds ~~shall~~ *must* bear interest at a rate or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The board shall designate whether interest payments on the bonds are taxable or tax exempt. The notes and bonds of the board may be sold at public or private sale at ~~such~~ prices, which may be above or below par, ~~as are~~ determined by the board.

(5) The total amount of notes and bonds outstanding at any time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed ~~$975 million~~ *$1.5 billion*. The issue price of bonds sold at a discount, not the face amount of the bonds, counts against this statutory ceiling."

Ap proved March 20, 2003

CHAPTER NO. 90

[SB 69]

AN ACT AMENDING THE LEGISLATIVE MEMBERSHIP REQUIREMENT FOR THE DRINKING WATER STATE REVOLVING FUND ADVISORY COMMITTEE; AND AMENDING SECTION 75-6-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-231, MCA, is amended to read:

"75-6-231. Intended use plan — advisory committee. (1) The department shall prepare an annual intended use plan for the state that meets the requirements of section 300j-12(b) of the federal act (42 U.S.C. 300j-12(b)).

(2) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated to activities under 75-6-212 and 75-6-221(2) and funds to be transferred to or received by the water pollution control state revolving fund, as allowed in 75-6-211(5), for the annual fiscal period following publication of the intended use plan.

(3) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (2) and shall provide public notice and opportunity to comment on the draft document.

(4) (a) Following the public comment period provided for in subsection (3) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;

(ii) one member from the Montana association of counties;

(iii) one member from the department of natural resources and conservation;

(iv) one member from the department of environmental quality; and

(v) two members from the ~~joint legislative subcommittee on natural resources~~ *legislature*. One member must be from the house of representatives and one from the senate, and they may not represent the same political party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4) before finalizing an intended use plan and prior to awarding any contracts under 75-6-212(1)(g)."

Ap proved March 20, 2003

CHAPTER NO. 91

[HB 411]

AN ACT PROVIDING FOR THE TRANSFER OF RIVER-USE DAYS TO THE NEW OWNER OF A FISHING OUTFITTER BUSINESS; AMENDING SECTION 37-47-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-310, MCA, is amended to read:

"37-47-310. Transfer or amendment of outfitter's license — *transfer of river-use days to new owner of fishing outfitter business.* (1) An outfitter's license may not be transferred during any license year.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, an immediate member of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business.

(4) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that no property right attaches to the transferred river-use days."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 92

[HB 471]

AN ACT EXPANDING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION AND THE CHIEF INFORMATION OFFICER REGARDING OVERSIGHT OF INFORMATION TECHNOLOGY PURCHASES; SETTING RESTRICTIONS ON STATE FINANCING OF INFORMATION TECHNOLOGY PURCHASES; ALLOWING BONDS TO BE USED ON A LIMITED BASIS FOR INFORMATION TECHNOLOGY PURCHASES; AMENDING SECTION 2-17-512, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-512, MCA, is amended to read:

"2-17-512. Powers and duties of department. (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government. The department:

(a) shall encourage and foster the development of new and innovative information technology within state government;

(b) shall promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) shall cooperate with the department of commerce to promote economic development initiatives based on information technology;

(d) shall establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) shall establish and enforce statewide information technology policies and standards;

(f) shall review and approve state agency information technology plans provided for in 2-17-523;

(g) shall coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program planning for the approval or disapproval of information technology budget requests, *including an estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based on state accounting policy established by the department*. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

(h) shall staff the information technology board provided for in 2-15-1021;

(i) shall fund the administrative costs of the information technology board provided for in 2-15-1021;

(j) shall review the use of information technology resources for all state agencies;

(k) shall review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) shall review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) shall operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) shall operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) shall ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.

(p) shall coordinate public safety communications on behalf of all state agencies as provided for in 2-17-541 through 2-17-543;

(q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) shall provide electronic access to information and services of the state as provided for in 2-17-532;

(s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) shall establish rates and other charges for services provided by the department;

(u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) shall dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) shall implement this part and all other laws for the use of information technology in state government;

(x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) shall represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties."

Section 2. Limitations on general obligation bonds and bond anticipation notes. (1) Bonds and bond anticipation notes may not be issued for information technology acquisitions, including hardware or software, for a period longer than the estimated useful life of the asset.

(2) The chief information officer, as defined in 2-17-506, shall estimate the useful life of the asset for the proposed information technology purchase and provide this information for inclusion prior to the department determining the appropriate financing method, as described in 2-17-512(1)(g).

(3) Whenever the department determines that the purchase of information technology hardware or software must be expensed in accordance with state accounting policy, general obligation bonds may not be issued for the purchase.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 17, chapter 5, part 8, and the provisions of Title 17, chapter 5, part 8, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved March 24, 2003

CHAPTER NO. 93

[HB 49]

AN ACT REVISING LAWS RELATING TO PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; DEFINING "SPA" AND "TOURIST HOME" AND CLARIFYING THE DEFINITION OF "PUBLIC SWIMMING POOL"; EXEMPTING TOURIST HOMES THAT HAVE SPA FACILITIES FROM THE REQUIREMENT OF HAVING PERSONS TRAINED IN CARDIOPULMONARY RESUSCITATION ON THE PREMISES; ELIMINATING THE EXEMPTION FOR THE STATE AND ITS POLITICAL SUBDIVISIONS TO OBTAIN LICENSES TO OPERATE PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; PROVIDING FOR COOPERATIVE AGREEMENTS BETWEEN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND OTHER AGENCIES THAT OPERATE SWIMMING POOLS OR PUBLIC BATHING PLACES; AND

AMENDING SECTIONS 50-53-102, 50-53-107, 50-53-201, AND 50-53-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools *and spas*. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of the owner's family, or their invited guests; or

(b) medicinal hot water baths for individual use.

(7) "Spa" means an artificial pool designed for recreational bathing or therapeutic use and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a therapeutic pool, hydrotherapy pool, whirlpool, hot tub, or jacuzzi-type whirlpool bath.

(8) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis."

Section 2. Section 50-53-107, MCA, is amended to read:

"50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required. (1) Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, ~~shall~~ *must* be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

(a) a sign is prominently displayed on the swimming pool premises with the words "No lifeguard is on duty" or words of substantially the same meaning; and

(b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in cardiopulmonary resuscitation by either the American red cross or the American heart association.

(3) Tourist homes providing spa facilities to their guests shall prominently display a sign on the spa premises with the words "No lifeguard is on duty" or

words of substantially the same meaning. Tourist homes providing spa facilities to their guests are exempt from the requirements of subsection (2)(b)."

Section 3. Section 50-53-201, MCA, is amended to read:

"50-53-201. License required ~~— exemption~~ — validation. (1) ~~Except as provided in subsection (3), a~~ *A* person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A separate license is required for each public swimming pool or public bathing place unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises.

~~(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but is required to comply with the health and safety requirements in part 1, this part, and department rules.~~

~~(4)~~*(3)* A license issued by the department is not valid unless signed in accordance with 50-53-206 or in accordance with 50-53-207, in the case of an appeal."

Section 4. Section 50-53-209, MCA, is amended to read:

"50-53-209. Cooperative agreements — inspections. (1) The department may enter into cooperative agreements with local boards of health to authorize those boards to act as agents of the department and to conduct inspections of and enforce applicable statutes and department rules relating to public swimming pools and public bathing places within the jurisdictions of the respective boards.

(2) The department or a local board of health, pursuant to a cooperative agreement, shall annually conduct:

(a) at least one full facility inspection and one critical point inspection of each public swimming pool or public bathing place operated throughout the year; and

(b) at least one full facility inspection of each seasonal public swimming pool or public bathing place.

(3) The department shall enter into cooperative agreements with the department of fish, wildlife, and parks and other state agencies that operate public swimming pools or public bathing places to address the enforcement of this chapter and rules adopted under this chapter."

Ap proved March 24, 2003

CHAPTER NO. 94

[HB 72]

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE FEDERAL EXEMPTION FROM THE TERM "EMPLOYMENT"; REMOVING THE TIME LIMITATIONS FOR EXPENDITURES OF FUNDS RECEIVED PURSUANT TO SECTIONS 903 AND 904 OF THE SOCIAL SECURITY ACT FOR ADMINISTRATIVE EXPENSES; PROVIDING THAT CERTAIN INDIVIDUALS CALLED TO ACTIVE MILITARY DUTY MAY NOT BE DISQUALIFIED FOR

UNEMPLOYMENT BENEFITS; PROVIDING THAT THE EDUCATION REQUIREMENT TO REQUALIFY FOR UNEMPLOYMENT BENEFITS RUNS FROM THE DATE OF THE ACT THAT CAUSED DISQUALIFICATION RATHER THAN THE DATE OF ENROLLMENT; AMENDING SECTIONS 39-51-204, 39-51-404, AND 39-51-2302, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) *(A)* "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles.

(B) The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in *5 U.S.C. 8501(1)(I) and* section 3306~~(c)(7)~~*(c)(6)* of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; or

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 2. Section 39-51-404, MCA, is amended to read:

"39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(a) specifies the purposes for which the money is appropriated and the amounts appropriated; *and*

~~(b) limits the period within which the money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and~~

~~(c)~~*(b)* limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration

during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) An assessment equal to 0.13% of all taxable wages provided for in 39-51-1108 and 0.05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be deposited in the employment security account provided for in 39-51-409."

Section 3. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing ~~physician~~ *physician* and, after recovering from the illness or injury when recovery is certified by a licensed and practicing ~~physician~~ *physician*, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible; ~~or~~

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons*; or*

(c) employment because of being called to active military duty to serve in the United States armed forces for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the active military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the ~~individual's enrollment~~ *act that caused the disqualification*. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Applicability. [This act] applies to claims for benefits filed on or after July 1, 2003.

Ap proved March 24, 2003

CHAPTER NO. 95

[HB 117]

AN ACT GENERALLY CLARIFYING THE UNEMPLOYMENT INSURANCE TAX LAWS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY ISSUE SUMMONS PENALTIES FOR FAILURE OF AN EMPLOYER TO SUBMIT WAGE INFORMATION OR PAY WITHHOLDING TAXES ON TIME; CLARIFYING THE DETERMINATION OF PENALTIES AND INTEREST FOR FAILURE OF AN EMPLOYER TO FILE UNEMPLOYMENT INSURANCE REPORTS OR MAKE PAYMENTS; AMENDING SECTIONS 15-30-209, 39-51-1206, AND 39-51-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer — penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.

(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

(5) (a) A ~~subpoena~~ *summons* penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a ~~subpoena~~ *summons* pursuant to ~~15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703~~ *15-1-301*.

(b) If an employer fails to honor the ~~subpoena~~ *summons* provided in subsection (5)(a), an additional $100 penalty must be added to the liability.

(6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of $5 for each failure with a minimum of $50.

(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.

(11) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

Section 2. Section 39-51-1206, MCA, is amended to read:

"39-51-1206. Department to provide for notification of employers of their classification and contribution rate. *(1)* The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. ~~Such~~ *Except as provided in subsection (2), the* notification ~~shall be~~ *is* final for all purposes unless and until ~~such~~ *the* employer files a written request with the department for a redetermination or hearing ~~thereon~~ *on the classification and rate of contribution* within 30 days after receipt of ~~such~~ *the* notice.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error."

Section 3. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by ~~15-1-216~~ *15-30-209*.

(2) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations are distributed as provided in 15-30-250 and must be deposited in that account. Money deposited in that account and appropriated to the department or transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that

federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(3) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 96

[HB 166]

AN ACT CLARIFYING THAT A PLEA OF GUILTY OR NOLO CONTENDERE MUST BE ACCEPTED UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in State v. Peplow, 2001 MT 253, 307 Mont. 172, 36 P.3d 922 (2001), the Montana Supreme Court held that in section 46-16-105, MCA, when the term "may" is used to confer power on an officer, court, or tribunal and the public or a third person has an interest in the exercise of the power, then the exercise of the power becomes imperative.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-16-105, MCA, is amended to read:

"46-16-105. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere ~~may~~ *must* be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before or after judgment, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 97

[HB 325]

AN ACT INCREASING THE MAXIMUM INSURANCE COVERAGE FOR STATE BOARD OF HAIL INSURANCE POLICIES; AMENDING SECTIONS 80-2-208 AND 80-2-244, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2-208, MCA, is amended to read:

"80-2-208. Maximum insurance. When the reserve fund is determined actuarially sound, as provided in 80-2-228, the board may write not more than ~~$24~~ *$40* insurance on each acre of grain ~~which~~ *that* is on nonirrigated land and not more than ~~$48~~ *$56* ~~per~~ *on each* acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided ~~per~~ *on each* acre as represented by ~~his~~ *that person's* interest in the crop. Either party may insure ~~his~~ *the party's* share in the crop for any amount up to and including the maximum ~~per~~ *on each* acre if the others waive their right to insure."

Section 2. Section 80-2-244, MCA, is amended to read:

"80-2-244. Payment of losses. (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount that the claimant then owes as a delinquent hail insurance fee and the maximum amount assessed as a hail insurance fee for the current year.

(2) The board shall on or before November 1 order payment for the amount deducted. The payment must be remitted to the county treasurer of the county in which the fee was imposed. The board shall then order payment for the balance of the adjustment to be sent to the claimant, provided that the payment for loss may not exceed ~~$24 per acre for grain crops on nonirrigated lands or $48 per acre on irrigated lands~~ *the maximum amounts established in 80-2-208*. A claimant may not receive payment for any loss incurred if the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current fees plus the reserve, then the payment of all losses must be prorated among all grain growers having loss claims adjusted and approved, and the unpaid balance of the losses must be paid out of the reserve without interest in the order that the board directs, when in the judgment of the board there is sufficient money to provide for the payment of the claims and other items payable out of the reserve. In any year the board may by resolution authorize its presiding officer and secretary to borrow money that the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any money borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants must bear interest at a rate not to exceed 6% a year, and the warrants and the interest on the warrants must be paid out of funds from the state hail insurance program as they are collected from the various counties in the state. The board may not at any time borrow a total sum greater than the amount of the fees imposed for the current year together with delinquent fees that remain unpaid on the books of the county treasurer."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 98

[HB 378]

AN ACT AMENDING THE DEFINITION OF "NATIVE PLANT"; AND AMENDING SECTIONS 7-22-2101 AND 80-7-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2101, MCA, is amended to read:

"7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Coordinator" means the person employed by the board to conduct the district noxious weed management program and supervise other district employees.

(4) "Department" means the department of agriculture provided for in 2-15-3001.

(5) "District" means a weed management district organized under 7-22-2102.

(6) "Native plant" means a plant ~~endemic to the state of Montana~~ *indigenous to the state of Montana*.

(7) "Native plant community" means an assemblage of native plants occurring in a natural habitat.

(8) (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

(9) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.

(10) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds."

Section 2. Section 80-7-701, MCA, is amended to read:

"80-7-701. Regulation of importation or sale of noxious weeds. (1) As used in this section:

(a) "native plant" means a plant ~~endemic to the state of Montana~~ *indigenous to the state of Montana*; and

(b) "native plant community" means an assemblage of native plants occurring in a natural habitat.

(2) The department may regulate or prohibit the importation or sale of grain, plants, seed, tubers, nursery stock, fruit, or other materials containing noxious weed seed or plants harmful to Montana's horticultural, agricultural, forestry, livestock, wildlife, or native plant communities."

Ap proved March 24, 2003

CHAPTER NO. 99

[HB 427]

AN ACT REVISING LAWS RELATING TO AIR QUALITY; CLARIFYING CERTAIN AIR QUALITY PERMIT APPLICATIONS THAT ARE SUBJECT TO DEPARTMENT OF ENVIRONMENTAL QUALITY ACTION WITHIN 60 DAYS AFTER THE DEPARTMENT'S RECEIPT OF THE APPLICATION; PROVIDING THAT THE DEPARTMENT HAS 75 DAYS FROM THE RECEIPT OF CERTAIN AIR QUALITY PERMIT APPLICATIONS TO TAKE ACTION; REQUIRING THAT THE DEPARTMENT PREPARE A SINGLE ENVIRONMENTAL REVIEW FOR CERTAIN PERMIT APPLICATIONS; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT A RULE THAT PROVIDES FOR A 30-DAY PUBLIC COMMENT PERIOD ON CERTAIN PERMIT APPLICATIONS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, *is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661,* the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. ~~The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.~~

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

~~(c)~~*(e)* If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall *prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and* act on the ~~permit application~~ *applications* within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

~~(d)~~*(g)* Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective

date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, *is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661,* the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. ~~The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.~~

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

~~(c)~~*(e)* If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall *prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and* act on the ~~permit application~~ *applications* within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

~~(d)~~*(g)* Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for

hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 100

[HB 450]

AN ACT INCREASING CERTAIN FEES FOR THE CLERK OF DISTRICT COURT; AMENDING SECTION 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $90; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, $160; for filing a petition for legal separation, $150; and for filing a petition for a contested amendment of a final parenting plan, $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) *(i) except as provided in subsection (1)(d)(ii),* for preparing copies of papers on file in the clerk's office, ~~50 cents~~ *$1* a page for the first ~~five~~ *10* pages of each file, for each request, and ~~25~~ *50* cents for each additional page;

(ii) for a copy of a marriage license, $5, and for a copy of a dissolution decree, $10;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, ~~50 cents~~ *$2 for each name* for each year searched, ~~not to exceed a total of $25~~ *for a period of up to 7 years, and an additional $1 for each name for any additional year searched*;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, ~~$30~~ *$30*;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and

(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, $5 must be deposited in the children's trust fund account established in 52-7-102, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, $5 must be deposited in the children's trust fund account established in 52-7-102 and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q).

(6) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(7) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist,

the fees must be deposited in the county general fund for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved March 24, 2003

CHAPTER NO. 101

[HB 542]

AN ACT REVISING THE DEFINITION OF "OCCUPATIONAL THERAPY" BY MODIFYING THE DESCRIPTION OF THE TYPE OF INDIVIDUAL FOR WHOM OCCUPATIONAL THERAPY IS INTENDED AND BY MODIFYING THE TYPE OF INTERVENTIONS THAT ARE COVERED BY THE DEFINITION OF OCCUPATIONAL THERAPY; DEFINING "TOPICAL MEDICATIONS"; REVISING OCCUPATIONAL THERAPY TECHNIQUES INVOLVING SOUND OR ELECTRICAL PHYSICAL AGENT MODALITY DEVICES AND THE EDUCATIONAL REQUIREMENTS FOR THE USE OF THE TECHNIQUES; PROVIDING FOR THE APPLICATION AND ADMINISTRATION OF TOPICAL MEDICATIONS; PROVIDING FOR THE ADOPTION OF PROTOCOLS WITH RESPECT TO TOPICAL MEDICATIONS; AND AMENDING SECTIONS 37-24-103 AND 37-24-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-24-103, MCA, is amended to read:

"37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1749.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of ~~the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association~~ *the national board for certification in occupational therapy, inc.,* and adopted by the board.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(5) "Occupational therapy" means the *therapeutic* use of purposeful *goal-directed activities* ~~activity~~ and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by ~~physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition~~ *disease or*

disorders, impairments, activity limitations, or participation restrictions that interfere with the individual's ability to function independently in daily life roles. The practice encompasses *evaluation,* assessment, treatment, ~~and~~ consultation*, remediation, and restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes.* Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) ~~teaching daily living skills~~ *evaluating, developing, improving, sustaining, or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play and leisure activities*;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying ~~splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity~~ orthotic *or prosthetic* devices*, applying and training in the use of assistive technology, and training in the use of orthotic and prosthetic devices*;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) ~~adapting environments for the disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning~~ *adaptation of task, process, or the environment, as well as teaching of compensatory techniques, in order to enhance performance*;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) ~~employing~~ *application of* physical agent modalities, as defined in this section*, as an adjunct to or in preparation for engagement in purposeful goal-directed activity*; ~~and~~

(l) promoting health and wellness*;*

(m) evaluating and providing intervention in collaboration with the client, family, caregiver, or others;

(n) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;

(o) consulting with groups, programs, organizations, or communities to provide population-based services; and

(p) use of prescribed topical medications.

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter and who works under the general supervision of an occupational therapist.

~~(7)~~*(8)* "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the *shoulder, arm,* elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

~~(8)~~*(9)* "Purposeful *goal-directed* activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations.

(10) "Topical medications" means medications applied locally to the skin and includes only medications listed in [section 4(2)] for which a prescription is required under state or federal law."

Section 2. Section 37-24-106, MCA, is amended to read:

"37-24-106. Use of sound and electrical physical agent modalities. ~~A~~ *(1) Except as provided in subsection (2), a* person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:

~~(1)~~*(a)* is licensed under this chapter;

~~(2)~~*(b)* limits application of sound and electrical physical agent modalities to the *shoulder, arm,* elbow, forearm, wrist, or hand to restore and enhance ~~hand~~ *upper extremity* function; and

~~(3) (a)~~*(c) (i)* provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or

~~(b)~~*(ii)* has successfully completed ~~100~~ *20* hours of instruction or training *and five proctored treatments under the direct supervision of a licensed medical practitioner* in sound *physical agent modality devices* and *20 hours of instruction or training and five proctored treatments under the direct*

supervision of a licensed medical practitioner in electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c).

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply deep physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand."

Section 3. Use of occupational therapy techniques involving topical medications. A person may not utilize occupational therapy techniques involving topical medications as described in [section 4] unless the person has successfully completed the following hours of instruction in addition to those provided for in 37-24-106:

(1) 5 hours of instruction or training in pharmacology as it pertains to topical medications listed in [section 4(2)];

(2) one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner; and

(3) (a) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or

(b) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.

Section 4. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed occupational therapist who meets the requirements of 37-24-106 may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process in which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process in which topical medications are applied through the use of ultrasound.

(2) A licensed occupational therapist may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocortico-steroids.

(3) (a) Topical medications applied or administered by a licensed occupational therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321.

(b) Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) A licensed occupational therapist who applies or administers topical medications shall keep appropriate records with respect to those medications.

Section 5. Board adoption of protocols. The board, in consultation with the board of medical examiners and the board of pharmacy, shall adopt written protocols for each class of topical medication listed in [section 4(2)] for which a prescription is required by state or federal law. Protocols must include a description of each topical medication, its actions, indications, and contraindications, and the proper procedure and technique for its application or administration.

Section 6. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 24, part 1, and the provisions of Title 37, chapter 24, part 1, apply to [sections 3 through 5].

Ap proved March 24, 2003

CHAPTER NO. 102

[SB 3]

AN ACT ELIMINATING THE REQUIREMENT THAT THE CLERKS OF THE DISTRICT COURTS AND THE CLERK OF THE SUPREME COURT COMPILE AND MAKE AVAILABLE CERTAIN INFORMATION RELATING TO SENTENCING IN CRIMINAL CASES; REPEALING SECTION 46-18-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 46-18-604, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 103

[SB 14]

AN ACT EXTENDING THE PERIOD FOR SUSPENSION OF ADJUDICATION PROCEEDINGS DURING NEGOTIATIONS OF FEDERAL INDIAN AND NON-INDIAN RESERVED WATER RIGHTS; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-217, MCA, is amended to read:

"85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is effective until July 1, ~~2005~~ *2009*, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, ~~2005~~ *2009*, the suspension must terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies are subject to the special filing

requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their federal non-Indian and Indian reserved water rights are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

Section 2. Section 85-2-702, MCA, is amended to read:

"85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not been accomplished by July 1, ~~2005~~ *2009*, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved March 24, 2003

CHAPTER NO. 104

[SB 17]

AN ACT PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE FOR ALL LEGISLATION ENACTED DURING A SPECIAL SESSION UNLESS A DIFFERENT TIME IS PRESCRIBED IN THE ENACTING LEGISLATION; AMENDING SECTION 1-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-201, MCA, is amended to read:

"1-2-201. Statutes — effective date. (1) (a) Except as provided in subsection (1)(b), ~~or~~ (1)(c), *or (1)(d),* every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) ~~Every~~ *Subject to subsection (1)(d), every* statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) ~~Every~~ *Subject to subsection (1)(d), every* statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(d) Every statute enacted during a special session of the legislature takes effect upon passage and approval unless a different time is prescribed in the enacting legislation.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 105

[SB 21]

AN ACT GENERALLY REVISING THE MONTANA BANK ACT; ELIMINATING THE PENALTY FOR A BANK'S PURCHASE OR LOAN OF ITS OWN CAPITAL STOCK; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO AGREEMENTS WITH OTHER STATES DIVIDING SUPERVISORY RESPONSIBILITIES FOR CERTAIN ASPECTS OF INTERSTATE BANKING; REMOVING THE PROHIBITION ON THE USE OF THE WORDS "TRUST" AND "TRUSTEE" BY CERTAIN NONLICENSED ENTITIES; REMOVING CERTAIN RESTRICTIONS ON A BANK'S ABILITY TO BORROW MONEY; ESTABLISHING REQUIREMENTS FOR THE BUSINESS PLAN NEEDED BY BANKS TO HOLD REAL ESTATE FOR FUTURE USE; AND AMENDING SECTIONS 32-1-335, 32-1-370, 32-1-402, 32-1-412, AND 32-1-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-335, MCA, is amended to read:

"32-1-335. Purchase or loan of own capital stock prohibited — exception. A bank may not purchase or invest its capital or surplus or money of its depositors, or any part of either, in shares of its own capital stock or loan its capital or surplus or the money of its depositors, or any part of either, on shares of its own capital stock unless the purchase or loan is necessary to prevent loss to the bank on debts previously contracted in good faith. However, a bank may redeem or otherwise purchase its own capital stock with the prior approval of the department and subject to any conditions that the department may require. ~~A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the capital stock.~~"

Section 2. Section 32-1-370, MCA, is amended to read:

"32-1-370. Interstate merger of banks — *interstate agreements.* (1) ~~(a) A bank located in this state may not enter into a merger transaction with a bank not located in this state if the merger transaction would be effective on or before September 30, 2001.~~

~~(b) After September 30, 2001, a~~ *A* bank located in this state that has been in existence at least 5 years is authorized to enter into a merger transaction with a bank not located in this state.

~~(c)~~ Prior approval of the department is required if the resulting bank in a merger transaction authorized by this section is a bank organized under the laws of this state.

(2) ~~This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate merger transactions involving banks located in this state.~~ *With respect to interstate banking authorized in subsection (1), the department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a bank is organized and the state or states in which branch banks may be located.*"

Section 3. Section 32-1-402, MCA, is amended to read:

"32-1-402. When advertising as bank prohibited — trade names restricted. (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department~~,~~ may not:

(a) advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not transact business

under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", ~~"trust", "trustee",~~ "trust company", or "investment company" unless the department has granted a waiver. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner ~~which~~ *that* leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require."

Section 4. Section 32-1-412, MCA, is amended to read:

"32-1-412. ~~Borrowing money -- limitations~~ *Limits on excessive borrowing*. ~~(1) Except as provided in subsection (3), a bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. The bills payable and rediscounts of a bank may not be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank. When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.~~

~~(2) Subject to subsections (1) and (3), a bank may not at any time become indebted, either directly or indirectly, for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.~~

~~(3) A bank may borrow funds from a federal home loan bank for use:~~

~~(a) in financing home ownership;~~

~~(b) in financing affordable housing programs;~~

~~(c) in financing small business, small farm, and agribusiness loans; or~~

~~(d) in interest rate risk management, liquidity management, or other banking activities undertaken pursuant to federal home loan bank advance~~

~~programs authorized under the Federal Home Loan Bank Act or undertaken pursuant to rules or regulations of the federal housing finance board.~~

~~(4) Loans or extensions of credit from a federal home loan bank are not subject to any limitations based on capital or surplus.~~ The ~~division~~ *department* may prevent excessive borrowing by an institution *that would have a significant effect on the institution's safety and soundness. If it appears to the department that an institution's borrowing is having a significant effect on the institution's safety and soundness, the department may require the institution to reduce its borrowing within a timeframe determined by the department*."

Section 5. Section 32-1-423, MCA, is amended to read:

"32-1-423. Real estate that banks may purchase, hold, or convey. (1) *(a)* A bank organized under the provisions of this chapter may purchase, hold, or convey real estate that:

~~(a)~~*(i)* is for its accommodation in the transaction of its business, but it may not invest an amount exceeding 100% of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business if property held for future use as a bank office site is held pursuant to a *detailed written* business plan *formally* adopted by the directors of the bank;

~~(b)~~*(ii)* is mortgaged to it in good faith by way of security for loans previously made or money due to the bank;

~~(c)~~*(iii)* is conveyed to it in satisfaction of debts previously contracted in the course of its business;

~~(d)~~*(iv)* it purchases at sales under judgments, decrees, or mortgages held by the bank.

(b) The detailed written business plan required by subsection (1)(a)(i) must include information outlining the manner in which the acquired real estate will be developed for future use as a bank office site, including but not limited to the costs of projected construction, furniture, and equipment and fixtures. The plan must include sufficient information for the department to determine that the property will be used for a future bank office site.

(2) Real estate acquired in the manner set forth in subsections ~~(1)(c)~~ *(1)(a)(iii)* and ~~(1)(d)~~ *(1)(a)(iv)* may not be held longer than 5 years from the date of acquisition, unless special written permission is granted by the department. The real estate must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

Ap proved March 24, 2003

CHAPTER NO. 106

[SB 27]

AN ACT PROVIDING THAT ONLY INCOME FROM ACTUAL GAINS AND LOSSES BE TRANSFERRED TO THE NOXIOUS WEED STATE SPECIAL REVENUE FUND; AMENDING SECTIONS 80-7-814 AND 80-7-816, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-814, MCA, is amended to read:

"80-7-814. Administration and expenditure of funds. (1) (a) Except as provided in subsection (1)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part, *excluding unrealized gains and losses*, must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least $2.5 million.

(b) Money deposited as principal in the trust fund from [former 80-7-822] may not be expended until the principal of the trust fund reaches $10 million. However, interest or revenue generated by the trust fund, *excluding unrealized gains and losses*, must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for first-class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department shall give preference to weed control districts and community groups.

(6) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 2. Section 80-7-816, MCA, is amended to read:

"80-7-816. Account — deposit — investment. (1) There is a noxious weed account in the state special revenue fund established in 17-2-102. The interest from the noxious weed management trust fund and the funds directed to be deposited as provided in 80-7-823, *excluding unrealized gains and losses,* must be deposited in the account and must be expended as provided in 80-7-705 and 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 107

[SB 32]

AN ACT REVISING STATE LOTTERY FINGERPRINT REQUIREMENTS TO MEET CRITERIA REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION AS A PREREQUISITE TO FINGERPRINT CHECKS BY THE BUREAU; AMENDING SECTIONS 23-7-306 AND 23-7-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-306, MCA, is amended to read:

"23-7-306. Felony and gambling-related convictions — ineligibility for lottery positions. ~~No~~ *A* person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may *not* be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. ~~Prior to appointment as a commissioner, director, assistant director, or employee, a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency. The assistant director for security may require a ticket or chance sales agent to submit fingerprints prior to licensing.~~ *To determine a person's suitability for the position of commissioner, director, assistant director, or employee of the state lottery, the person shall submit the person's fingerprints to the department of justice. The department shall examine the fingerprints, and if a disqualifying record is not found, the department shall forward the fingerprints to the federal bureau of investigation for a national criminal history check."*

Section 2. Section 23-7-310, MCA, is amended to read:

"23-7-310. Disclosures by gaming suppliers. (1) ~~Any~~ *A* person, firm, association, or corporation that submits a bid or proposal for a contract to supply lottery equipment, tickets, or other material or consultant services for use in the operation of the state lottery shall disclose at the time of ~~such~~ *the* bid or proposal:

(a) the supplier's business name and address and the names and addresses of the following:

(i) if the supplier is a partnership, all of the general and limited partners;

(ii) if the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) if the supplier is an association, the members, officers, and directors;

(iv) if the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in the corporation~~; except that~~. *However*, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed~~;~~.

(v) if the supplier is a subsidiary company, each intermediary company, holding company, or parent company involved ~~therewith~~ *with the subsidiary company* and the officers, directors, and stockholders of each~~; except that~~. *However*, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company ~~which~~ *that* is a publicly traded corporation, only the names and addresses of those owning or holding 5% or more of the publicly held securities must be disclosed~~;~~.

(b) if the supplier is a corporation, all the states in which the supplier is authorized to do business and the nature of that business;

(c) other jurisdictions in which the supplier has contracts to supply gaming materials, equipment, or consultant services;

(d) the details of any conviction, state or federal, of the supplier or any person whose name and address are required by subsection (1)(a) of a criminal offense punishable by imprisonment for more than 1 year ~~and shall submit to the commission a full set of fingerprints of such person made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency~~;

(e) the details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by subsection (1)(a) regarding any matter related to gaming consultant services or the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) audited annual financial statements for the preceding 5 years;

(g) a statement of the gross receipts realized in the preceding year from gaming consultant services and the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, differentiating that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(h) the name and address of any source of gaming materials or equipment for the supplier;

(i) the number of years the supplier has been in the business of supplying gaming consultant services or gaming materials or equipment; and

(j) any other information, accompanied by any documents the commission by rule may reasonably require as being necessary or appropriate in the public interest to accomplish the purposes of this chapter.

(2) ~~No~~ *A* person, firm, association, or corporation contracting to supply gaming equipment or materials or consultant services to the state for use in the operation of the state lottery may *not* have any financial interest in any person, firm, association, or corporation licensed as a ticket or chance sales agent.

(3) ~~No~~ *A* contract for supplying consultant services or gaming materials or equipment for use in the operation of the state lottery is *not* enforceable against the state unless the requirements of this section have been fulfilled."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 108

[SB 33]

AN ACT CLARIFYING THAT ONLY PERMISSIBLE FIREWORKS MAY BE SOLD DURING AUTHORIZED TIME PERIODS; AMENDING SECTION 50-37-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-37-106, MCA, is amended to read:

"50-37-106. Sale of fireworks restricted to certain dates. A person, firm, or corporation may offer *permissible* fireworks, *as defined in 50-37-105,* of any kind for sale at retail only during the following periods:

(1) June 24 through July 5; and

(2) December 29 through December 31."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 109

[SB 38]

AN ACT REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO PROVIDE FORMS, MANUALS, AND ELECTION LAWS ELECTRONICALLY; REMOVING THE STATE'S OBLIGATION TO PAY FOR PAPER COPIES BUT REQUIRING THE STATE TO PROVIDE PAPER COPIES UPON REQUEST; AND AMENDING SECTION 13-37-117, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-117, MCA, is amended to read:

"13-37-117. Commissioner to provide forms, manuals, and election laws. (1) The commissioner shall prescribe forms for reports and other information required to be filed pursuant to chapter 35 ~~of this title~~ and this chapter and ~~furnish~~ *provide* forms and appropriate information to persons required to file reports and other information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file reports pursuant to chapter 35 ~~of this title~~ or this chapter.

(3) The commissioner shall~~, at the expense of the state, furnish~~ *provide* copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapter 35 ~~of this title~~ or this chapter.

(4) The commissioner shall provide copies of forms, manuals, and election laws referred to in this section electronically. Upon request, the commissioner shall provide paper copies."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved March 24, 2003

CHAPTER NO. 110

[SB 40]

AN ACT PROVIDING FOR COORDINATION OF THE FILING, PROCESSING, AND GRANTING OF ALCOHOLIC BEVERAGE AND GAMBLING LICENSES APPLICATIONS; ALLOWING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR THE RECEIPT AND PROCESSING OF ALCOHOLIC BEVERAGE LICENSE APPLICATIONS; REVISING ALCOHOLIC BEVERAGE INVESTIGATIVE PROCEDURES; REQUIRING ALCOHOLIC BEVERAGE AND GAMBLING LICENSE APPLICANTS TO SUBMIT FINGERPRINTS FOR PURPOSES OF A BACKGROUND INVESTIGATION; PROVIDING ADDITIONAL GROUNDS FOR TOLLING THE TIME PERIOD WITHIN WHICH AN ALCOHOLIC BEVERAGE LICENSE APPLICATION DETERMINATION MUST BE MADE; AMENDING SECTIONS 16-1-106, 16-1-302, 16-1-304, 16-4-207, 16-4-402, 16-4-406, 16-4-420, 23-5-119, AND 23-5-177, MCA; REPEALING SECTION 16-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fingerprints required of applicants. An applicant for a license under this code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the investigation must be used by the department in determining the applicant's eligibility for a license.

Section 2. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or *the* retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified, *and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302*.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(22) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(23) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(24) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(25) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(26) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(27) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Section 16-1-302, MCA, is amended to read:

"16-1-302. Functions, powers, and duties of department. The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where agency liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ the necessary employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services *and to receive and process, but not grant or deny, applications* or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate~~;~~. *If the department contracts for the receipt and processing of an application by the department of justice, the application must state that it is to be filed with the department of justice.*

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules."

Section 4. Section 16-1-304, MCA, is amended to read:

"16-1-304. Prohibited acts. (1) An employee of the department involved in the operation of the state liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with *license applications or* the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of *a* syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state, a state agent, or any person having any ownership interest in an agency liquor store may not solicit or receive, directly or indirectly, any commission, remuneration, gift, or other thing tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state, any state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf of an employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor may not be withdrawn from the regular warehouse inventory or from the agency liquor stores for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the consumer at the retail price established by the agent or for destroying damaged or defective merchandise. The state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor in the state warehouse while the distiller retains ownership of the product."

Section 5. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. ~~If the applicant does not provide the additional application information within 30 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application.~~ When the application is complete, the department ~~shall request that the department~~ of justice *shall* investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made

application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department ~~of revenue~~ within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of ..... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 20...

Dated .....

Signed
.....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents

sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses."

Section 6. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application — investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department ~~shall request that the department~~ of justice *shall* make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the ~~request from the department to the department of justice~~ *receipt of a completed application*. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. *The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed.* The basis for the tolling of the deadline must be documented.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4)."

Section 7. Section 16-4-406, MCA, is amended to read:

"16-4-406. Renewal — suspension or revocation — penalty. (1) The department ~~may upon its own motion and~~ shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after *reviewing admissions of the licensee or* receiving the results of the department of justice's *or a local law enforcement agency's* investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $1,500.

~~(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act.~~"

Section 8. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) ~~(a)~~ A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall ~~request that the department of justice make an investigation of all~~ *investigate* the items relating to the application as described in subsections (3)(a)~~(i)~~ through (3)~~(a)(iv)~~*(d)*. Based on the results of the investigation ~~or in exercising~~ *and the exercise of* its sound discretion, the department shall determine whether:

~~(i)~~*(a)* the applicant is qualified to receive a license;

~~(ii)~~*(b)* the applicant's premises are suitable for the carrying on of the business;

~~(iii)~~*(c)* the requirements of this code and the rules promulgated by the department are ~~met and~~ complied with; and

~~(iv)~~*(d)* the seating capacity ~~as~~ stated on the application is correct.

~~(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.~~

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant.

However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous

selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies~~issuing a license to an applicant~~ *an application*, the application fee, plus any interest, less a ~~$100~~ processing fee *established by rule*, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 9. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to

offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6;

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6."

Section 10. Section 23-5-177, MCA, is amended to read:

"23-5-177. Operator of gambling establishment — license — fee. (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to be used for a fingerprint and background check that must be used by the department in determining eligibility for a license;

~~(b)~~*(c)* any other relevant information requested by the department; and

~~(c)~~*(d)* a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued."

Section 11. Repealer. Section 16-4-403, MCA, is repealed.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16 apply to [section 1].

Section 13. Effective date. [This act] is effective on passage and approval.

Ap proved March 24, 2003

CHAPTER NO. 111

[HB 71]

AN ACT ELIMINATING THE TERMINATION DATE ON THE DEPARTMENT OF TRANSPORTATION'S AUTHORITY TO STOP AND INSPECT DIESEL-POWERED VEHICLES SUSPECTED OF ILLEGALLY USING DYED FUEL; REPEALING SECTION 2, CHAPTER 206, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 2, Chapter 206, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 25, 2003

CHAPTER NO. 112

[HB 264]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO REQUIRE COUNTY OFFICERS TO SUPERVISE STAFF IN A MANNER THAT COMPLIES WITH COUNTY PERSONNEL POLICIES AND PROCEDURES; AND AMENDING SECTION 7-4-2110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2110, MCA, is amended to read:

"7-4-2110. Supervision of county and other officers. The board of county commissioners has jurisdiction and power, under ~~such~~ *the* limitations and restrictions ~~as~~ *that* are prescribed by law, to:

(1) supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, ~~management~~ *managing*, or ~~disbursement of the~~ *disbursing* public ~~revenues~~ *revenue*;

(2) see that ~~they~~ *the officers* faithfully perform their duties;

(3) direct prosecutions for delinquencies; ~~and~~

(4) when necessary, require ~~them~~ *the officers* to renew their official bonds, make reports, and present their books and accounts for inspection*; and*

(5) require the officers to supervise staff in a manner that complies with personnel policies and procedures adopted by the county governing body."

Ap proved March 25, 2003

CHAPTER NO. 113

[SB 5]

AN ACT INCREASING TO $30 MILLION THE AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS TO MAKE LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTION 85-1-624, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-624, MCA, is amended to read:

"85-1-624. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation renewable resource bonds for the renewable resource grant and loan program created under Title 85, chapter 1, part 6, in accordance with the terms and conditions and in the manner provided in 85-1-617 from time to time and in amounts that, taking into consideration the principal amount of any renewable resource bonds then outstanding, will not cause the total aggregate principal amount of renewable resource bonds outstanding at any time to exceed ~~$20~~ *$30* million."

Section 2. Two-thirds vote required. Because [section 1] authorizes the creation of state debt, Article III, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved March 25, 2003

CHAPTER NO. 114

[SB 10]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 58TH LEGISLATURE; AMENDING SECTIONS 1-11-102, 2-2-106, 2-7-501, 2-15-114, 2-17-512, 3-2-605, 3-10-207, 3-20-103, 5-5-227, 7-1-202, 7-4-2502, 7-6-611, 7-6-612, 7-14-112, 7-15-4283, 7-15-4288, 7-32-2128, 13-35-226, 15-6-138, 15-7-102, 15-7-307, 15-23-703, 15-30-106, 15-30-111, 15-30-121, 15-30-136, 15-30-201, 15-30-301, 15-31-102, 15-31-114, 15-31-150, 15-31-404, 15-31-405, 15-32-405, 15-36-324, 15-50-205, 15-50-206, 15-70-201, 15-72-102, 16-11-101, 17-4-106, 17-5-703, 17-5-1102, 17-5-1103, 17-5-1111, 17-7-140, 19-1-102, 19-2-303, 19-2-405, 19-2-408, 19-3-2117, 19-5-902, 19-6-711, 19-9-1013, 19-9-1204, 19-13-1011, 19-20-101, 19-21-203, 19-21-214, 19-50-102, 19-50-103, 20-9-344, 20-10-205, 20-25-301, 20-25-427, 23-1-105, 23-2-809, 25-13-402, 27-1-732, 31-1-704, 31-2-106, 33-20-1317, 37-7-602, 37-24-104, 37-24-303, 39-10-204, 39-51-2501, 40-5-906, 40-5-909, 41-3-439, 41-5-103, 41-5-215, 41-5-216, 42-10-101, 45-5-503, 45-5-603, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 45-10-107, 46-18-242, 46-23-1004, 46-24-211, 50-2-111, 50-4-502, 50-4-504, 50-4-505, 50-5-101, 50-5-301, 50-60-313, 52-1-103, 53-2-103, 53-3-115, 53-4-221, 53-4-222, 53-4-232, 53-4-601, 53-4-609, 53-18-101, 53-21-186, 53-30-403, 61-3-103, 61-3-570, 61-3-736, 61-8-906, 69-8-104, 69-8-501, 70-24-436, 72-16-607, 75-11-302, 75-20-301, 76-6-109, 77-6-114, 80-7-814, 80-8-120, 81-6-105, 85-20-1004, 85-20-1005, 85-20-1007, 87-1-209, 87-1-221, 90-6-127, AND 90-6-715, MCA, SECTION 17, CHAPTER 414, LAWS OF 2001, AND SECTION 5, CHAPTER 522, LAWS OF 2001; AND REPEALING SECTIONS 5-18-107, 46-23-1033, 50-4-312, AND 53-2-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-102, MCA, is amended to read:

"1-11-102. Name — citation — *correct form*. *(1)* The recodified laws ~~shall be~~ *are* known as the "Montana Code Annotated" and may be cited as "MCA".

(2) An example of the correct citation form for a section of the Montana Code Annotated is "1-11-102, MCA"."

Section 2. Section 2-2-106, MCA, is amended to read:

"2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each elected official or department director shall file with the commissioner *of political practices* a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner *of political practices* on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner *of political practices* shall make the business disclosure statements available to any individual upon request."

Section 3. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed ~~control~~ *management* districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) solid waste management districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

(xxv) water conservancy districts; and

(xxvi) other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 4. Section 2-15-114, MCA, is amended to read:

"2-15-114. Security responsibilities of departments for data ~~and information technology resources.~~ Each department head is responsible for ensuring an adequate level of security for all data ~~and information technology resources~~ within that department and shall:

(1) develop and maintain written internal policies and procedures to ensure security of data ~~and information technology resources~~. The internal policies and procedures are confidential information and exempt from public inspection, except that the information must be available to the legislative auditor in performing postauditing duties.

(2) designate an information security manager to administer the department's security program for data ~~and information technology resources~~;

(3) implement appropriate cost-effective safeguards to reduce, eliminate, or recover from identified threats to data ~~and information technology resources~~;

(4) ensure that internal evaluations of the security program for data ~~and information technology resources~~ are conducted. The results of the internal evaluations are confidential and exempt from public inspection, except that the information must be available to the legislative auditor in performing postauditing duties.

(5) include appropriate security requirements, as determined by the department, in the written specifications for the department's solicitation of data and information technology resources; and

(6) include a general description of the existing security program and future plans for ensuring security of data ~~and information technology resources~~ in the agency information technology plan as provided for in 2-17-523."

Section 5. Section 2-17-512, MCA, is amended to read:

"2-17-512. Powers and duties of department. (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, *except the national guard*. The department:

(a) shall encourage and foster the development of new and innovative information technology within state government;

(b) shall promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) shall cooperate with the ~~department of commerce~~ *office of economic development* to promote economic development initiatives based on information technology;

(d) shall establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) shall establish and enforce statewide information technology policies and standards;

(f) shall review and approve state agency information technology plans provided for in 2-17-523;

(g) shall coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program

planning for the approval or disapproval of information technology budget requests. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

(h) shall staff the information technology board provided for in 2-15-1021;

(i) shall fund the administrative costs of the information technology board provided for in 2-15-1021;

(j) shall review the use of information technology resources for all state agencies;

(k) shall review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) shall review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) shall operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) shall operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) shall ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.

(p) shall coordinate public safety communications on behalf of all state agencies as provided for in 2-17-541 through 2-17-543;

(q) shall manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) shall provide electronic access to information and services of the state as provided for in 2-17-532;

(s) shall provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) shall establish rates and other charges for services provided by the department;

(u) must accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) shall dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) shall implement this part and all other laws for the use of information technology in state government;

(x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) shall represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties."

Section 6. Section 3-2-605, MCA, is amended to read:

"3-2-605. Responsibilities of supreme court for security of data and information. The supreme court is responsible for ~~assuring~~ *ensuring* an adequate level of security for data ~~and information technology resources~~, as defined in 2-15-102, within the judicial branch. In carrying out this responsibility, the supreme court shall, at a minimum:

(1) address the responsibilities prescribed in 2-15-114; and

(2) develop written minimum standards and guidelines for the judicial branch to follow in developing its security program."

Section 7. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) The board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504~~(1)~~.

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office."

Section 8. Section 3-20-103, MCA, is amended to read:

"3-20-103. (Effective on occurrence of contingency) Asbestos claims court — venue — jury pool. (1) The asbestos claims judge may hear an asbestos-related claim in any venue stipulated by the parties as provided in 25-2-202 or in any venue otherwise determined by the asbestos claims judge in accordance with a stipulation of the parties. In stipulating venue, the parties shall take into consideration the availability of courtroom facilities. The asbestos claims court may prepare a list of available courtroom facilities for consideration of the parties.

(2) The pool of prospective jurors for an asbestos-related claim may be drawn from any county in accordance with a stipulation of the parties. The jurors must be drawn, as provided in 3-15-501 and 3-15-503, from the jury lists of the counties comprising the jury pool. The clerk of the district court for the district in which the trial is conducted shall notify the prospective jurors ~~and make the statement provided for in 3-15-204(4)~~."

Section 9. Section 5-5-227, MCA, is amended to read:

"5-5-227. Revenue and transportation interim committee — powers and duties — revenue estimating and use of estimates. *(1)* The revenue and transportation interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

(2) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under

consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state."

Section 10. Section 7-1-202, MCA, is amended to read:

"7-1-202. ~~Transition of existing boards and creation~~ *Creation* of new boards. ~~(1) Unless otherwise specified by law, the state laws providing for the organization and operation of the following administrative boards, districts, and commissions must be given the status of local ordinances for 1 year following October 1, 1995, and the following boards, districts, and commissions shall continue to function during this period under the respective laws until the boards, districts, or commissions are reorganized by the county commissioners pursuant to the provisions of 7-1-201~~ *Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law*:

~~(a)~~*(1)* county building commission;

~~(b)~~*(2)* cemetery districts;

~~(c)~~*(3)* county fair commission;

~~(d)~~*(4)* mosquito control board;

~~(e)~~*(5)* museum board;

~~(f)~~*(6)* board of park commissioners;

~~(g)~~*(7)* rodent control board;

~~(h)~~*(8)* solid waste district;

~~(i)~~*(9)* television district;

~~(j)~~*(10)* weed ~~control~~ *management* district.

~~(2) Subject to 7-1-201 and 7-1-203, a county may create administrative boards, districts, and commissions, in addition to those listed in subsection (1), that are not otherwise provided for by law.~~"

Section 11. Section 7-4-2502, MCA, is amended to read:

"7-4-2502. Payment of salaries of county officials and assistants. (1) The salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salary of the county attorney is payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state treasurer. If the county has not supplied information concerning any scheduled or proposed increase in salary

for the county attorney to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary. The state's share of the county attorney's salary is payable every 2 weeks.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state treasurer of the salary of the county attorney. The state treasurer shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification.

(3) The board may, under limitations and restrictions prescribed by law, fix the compensation of all county officers not otherwise fixed by law and provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504~~(1)~~, set their salaries at the prior fiscal year level."

Section 12. Section 7-6-611, MCA, is amended to read:

"7-6-611. Role of department of administration. (1) The department of administration shall prescribe for all local governments:

(a) general methods and details of accounting in accordance with generally accepted accounting principles as provided in 2-7-504;

(b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for in 2-7-503;

(c) the form of the annual financial report as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Local governments shall file with the department of administration:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The governing body of each county or municipality shall notify the department of administration in writing, on a form prescribed by the department of ~~commerce~~ *administration*, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

(4) Each special purpose district shall obtain a permanent mailing address and notify the department of administration of the address and of any subsequent changes of the district's address."

Section 13. Section 7-6-612, MCA, is amended to read:

"7-6-612. Additional records and reports. (1) The chief executive or governing body of a county or municipality may require any elected or appointed local government official or employee to:

(a) maintain new or additional financial records;

(b) perform new or additional financial reconciliations; and

(c) submit new or additional financial reports.

(2) This part does not provide for the consolidation or reassignment, but does not prohibit delegation by mutual agreement, of any duties of elected county officials. Continuing county duties include but are not limited to the following:

(a) The county treasurer shall make a detailed monthly report to the governing body of the county of all receipts, disbursements, debt, and other proceedings of the treasurer's office.

(b) The county clerk shall compile and present to the governing body of the county the annual financial report provided for in 7-6-611(2)(a).

(3) The designated county or municipal treasurer shall:

(a) receive, disburse, and serve as the custodian of all public money;

(b) provide for accountability of all local government cash receipts and for deposits and investments of all departments, offices, and boards;

(c) pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants; and

(d) require periodic departmental reports of money receipts and their disposition on forms that the designated county or municipal treasurer prescribes.

(4) All local governments:

(a) shall deposit all public money with the county or municipal treasurer within a month of receipt unless otherwise specifically authorized by law;

(b) may not maintain separate bank accounts unless specifically authorized by the county or municipal governing body;

(c) may not maintain separate investments.

~~(5) The provisions of subsections (3) and (4) apply to local governments that are not subject to an independent audit pursuant to 2-7-503 and are in addition to laws specifically applying to those local governments.~~

~~(6)~~*(5)* The governing body of a county or municipality shall direct the county or municipal treasurer to open separate accounts for the receipt of money for the governing body. Only the county or municipal treasurer may open an account for the receipt of local government money."

Section 14. Section 7-14-112, MCA, is amended to read:

"7-14-112. Senior citizen and persons with disabilities transportation services account — use. (1) There is a senior citizen and persons with disabilities transportation services account in the state special revenue fund. Money must be deposited in the account pursuant to ~~61-3-406~~ *61-3-321(6)(a)*.

(2) Except as provided in subsection (6), the account must be used to provide operating funds to counties, incorporated cities and towns, transportation districts, or nonprofit organizations for transportation services for persons 60 years of age or older and for persons with disabilities.

(3) (a) Subject to the conditions of subsection (3)(b), the department of transportation is authorized to award grants to counties, incorporated cities and towns, transportation districts, and nonprofit organizations for transportation services using guidelines established in the state management plan for the purposes described in 49 U.S.C. 5310 and 5311.

(b) Priority for awarding grants must be determined according to the following factors:

(i) the most recent census or federal estimate of persons 60 years of age or older and persons with disabilities in the area served by a county, incorporated city or town, transportation district, or nonprofit organization;

(ii) the annual number of trips provided by the transportation provider to persons 60 years of age or older and to persons with disabilities in the transportation service area;

(iii) the ability of the transportation provider to provide matching money in an amount determined by the department of transportation; and

(iv) the coordination of services as required in subsection (5).

(4) The department of transportation shall ensure that the available funding is distributed equally among the five transportation districts provided in 2-15-2502.

(5) In awarding grants, the department of transportation shall give preference to proposals that:

(a) include the establishment of a transit authority to coordinate service area or regional transportation services;

(b) address and document the transportation needs within the community, county, and service area or region;

(c) identify all other transportation providers in the community, county, and service area or region;

(d) explain how services are going to be coordinated with the other transportation providers in the service area or region;

(e) indicate how services are going to be expanded to meet the unmet needs of senior citizens and disabled persons within the community, county, and service area or region who are dependent upon public transit;

(f) include documentation of coordination with other local transportation programs within the community, county, and service area or region, including:

(i) utilization of existing resources and equipment to maximize the delivery of service; and

(ii) the projected increase in ridership and expansion of service;

(g) invite school districts to participate or be included in the transportation coordination efforts within the community, county, and service area or region; and

(h) at a minimum, comply with the provisions in subsections (5)(b) through (5)(f).

(6) Any amount of money remaining after grants have been awarded to transportation providers who provide transportation services for persons 60 years of age or older and persons with disabilities may be awarded to other transportation providers for operating costs for the purposes described in 49 U.S.C. 5311 other than for transportation services for persons 60 years of age or older or persons with disabilities."

Section 15. Section 7-15-4283, MCA, is amended to read:

"7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4292 and 7-15-4297 through 7-15-4299, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) "Aerospace transportation and technology district" means a tax increment financing aerospace transportation *and* technology district created pursuant to 7-15-4296.

(3) "Aerospace transportation and technology infrastructure development project" means a project undertaken within or for an aerospace transportation and technology district that consists of any or all of the activities authorized by 7-15-4288.

(4) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area, industrial district, or aerospace transportation and technology district prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(5) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area, industrial district, or aerospace transportation and technology district subject to taxation.

(6) "Industrial district" means a tax increment financing industrial district created pursuant to 7-15-4299.

(7) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any or all of the activities authorized by 7-15-4288.

(8) "Municipality", for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter, means any incorporated city or town, county, or city-county consolidated local government.

(9) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area, industrial district, aerospace transportation and technology district, or a part of an area or district is located against the incremental taxable value.

(10) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

(11) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(12) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, ~~which~~ *that* levies taxes against property within the urban renewal area, industrial district, or an aerospace transportation and technology district."

Section 16. Section 7-15-4288, MCA, is amended to read:

"7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, industrial infrastructure development project, or aerospace transportation and technology infrastructure development project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of infrastructure, industrial infrastructure, or aerospace transportation and technology infrastructure that includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned buildings, and any public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions of areas;

(7) administrative costs associated with the management of the industrial district or the aerospace transportation and technology district;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district;

(10) the connection of the industrial district or the aerospace transportation and technology district to existing infrastructure outside the industrial district or the aerospace transportation and technology district;

(11) the provision of direct assistance, through industrial infrastructure development projects or aerospace transportation *and* technology infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the industrial district or the aerospace transportation and technology district; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution."

Section 17. Section 7-32-2128, MCA, is amended to read:

"7-32-2128. False claims by sheriff. ~~Every~~ *A* sheriff who falsely represents to the board of county commissioners or ~~attorney general his~~ *governor the sheriff's* actual traveling expenses in the performance of any official duty or causes to be paid to ~~him~~ *the sheriff* from the state or any county treasury a sum exceeding ~~his~~ *the* actual expenses in the performance of ~~his~~ *the sheriff's* duty is guilty of a misdemeanor."

Section 18. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes,

devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to express personal political views.

(5) A person who violates this section is liable in a civil action authorized by ~~13-27-128~~ *13-37-128*, brought by the commissioner or a county attorney pursuant to 13-37-124 and 13-37-125."

Section 19. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors~~as providers~~ as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula (W/CPI) - 1, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 20. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on

the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the ~~exemption~~ *exemptions* under 15-6-201*(1)(z) and (1)(aa)* or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year; and

(ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land

or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 21. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate — exceptions. The certificate ~~imposed~~ *required* by this part applies to all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the sale of timberland when the land is used for producing timber;

(4) *a transfer by* the United States ~~of America~~, this state, or any instrumentality, agency, or subdivision ~~thereof~~ *of the United States or this state*;

(5) an instrument ~~which~~ *that* (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6) a transfer pursuant to *a* court decree;

(7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9) a transfer of decedents' estates;

(10) a transfer of a gift;

(11) a transfer between husband and wife or parent and child with only nominal actual consideration ~~therefor~~ *for the transfer*;

(12) an instrument the effect of which is to transfer the property to the same party or parties;

(13) a sale for delinquent taxes or assessments, ~~sheriff~~ *sheriff's* sale, bankruptcy action, or mortgage foreclosure;

(14) a transfer made in contemplation of death."

Section 22. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall ~~proceed to~~ give full notice~~, as provided in 15-16-101,~~ to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 23. Section 15-30-106, MCA, is amended to read:

"15-30-106. Tax on lump-sum distributions. (1) ~~There is imposed a~~ *A* separate tax *is imposed* on lump-sum distributions.

(2) The tax is 10% of the amount of tax determined under section 402(e) of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 402(e)* ~~as amended, or as section 402(e) may be renumbered or amended~~.

(3) All means available for the administration and enforcement of income taxes ~~shall~~ *must* be applied to the tax on lump-sum distributions."

Section 24. Section 15-30-111, MCA, is amended to read:

"15-30-111. (Temporary) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal ~~income tax~~ adjusted gross income as defined in section 62 of the Internal Revenue Code ~~of 1954~~, 26 U.S.C. 62, ~~as that section may be labeled or amended,~~ and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 852(b)(5), ~~as that section may be amended or renumbered,~~ that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code ~~of 1954~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the ~~federal~~ Internal Revenue Code ~~of 1954, as labeled or amended~~, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 852(b)(5), ~~as that section may be amended or renumbered,~~ that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; and

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 38 and 51(a),* ~~as those sections may be labeled or amended,~~ is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base

used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion ~~and before application of the two-earner married couple deduction~~ exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)

15-30-111. (Effective on occurrence of contingency) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal~~income tax~~ adjusted gross income as defined in section 62 of the Internal Revenue Code ~~of 1954~~, 26 U.S.C. 62, ~~as that section may be labeled or amended,~~ and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 852(b)(5), ~~as that section may be amended or~~

~~renumbered,~~ that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code ~~of 1954~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the ~~federal~~ Internal Revenue Code ~~of 1954, as labeled or amended~~, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code ~~of 1986~~, 26 U.S.C. 852(b)(5), ~~as that section may be amended or renumbered,~~ that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the

Internal Revenue Code ~~of 1954~~, *26 U.S.C. 38 and 51(a),* ~~as those sections may be labeled or amended,~~ is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion ~~and before application of the two-earner married couple deduction~~ exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 25. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code, ~~of 1954 (~~26 U.S.C. 161 and 211~~)~~, ~~or as sections 161 and 211 are labeled or amended,~~ subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code *of 1954* (now repealed) that were in effect for the tax year *that* ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 26. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts — exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954~~, as amended~~ *(now deleted)*;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 163* ~~as amended~~;

(b) taxes paid or accrued within the tax year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 167, 611, and 642* ~~as amended~~;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 642(c)* ~~as amended~~;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 212 and 642(g)* ~~as amended~~;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 165* ~~as amended~~;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code ~~of 1954~~, *26 U.S.C. 642(d),* ~~as amended,~~ except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions are allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the tax year currently required to be distributed to beneficiaries for the year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 27. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.

(3) "Employee" means:

(a) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

(b) an officer of a corporation;

(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;

(d) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(4) "Employer" means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person;

(b) a person who pays $1,000 or more in wages within the current calendar year;

(c) a person who pays $1,000 or more in cash for domestic or household service in any quarter during the current calendar year;

(d) any individual or organization, including state government and any of its political subdivisions or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or a limited liability partnership that has filed with the secretary of state, or domestic or foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person who has or had in its employ one or more individuals performing services for it within this state; or

(e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes is considered an employer for state income tax withholding purposes.

(5) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(6) "Lookback period" means the 12-month period ending the preceding June 30.

(7) (a) "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, and includes but is not limited to the following:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;

(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;

(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;

(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code *of 1954*, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or

(vi) payments that may not be taxed under federal law. (Subsection (7)(b)(v) terminates on occurrence of contingency—sec. 3. Ch. 634, L. 1983.)"

Section 28. Section 15-30-301, MCA, is amended to read:

"15-30-301. (Temporary) Information agents' duties. (1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the tax year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code, ~~of 1965 or as that section may be amended~~ *26 U.S.C. 6049*, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, ~~of 1965 or as that section may be amended~~ *26 U.S.C. 401(c)(3)*;

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer;

(d) proceeds from real estate transactions that under rules or regulations of the ~~internal revenue service~~ *United States department of the treasury* are required to be reported.

(2) The return ~~should~~ *must* be made under the regulations and in the form and manner prescribed by the department. For ease of reporting, the form ~~should~~ *must* be identical to the comparable federal form or the department may allow submission of a copy of the federal form or submission by magnetic media or in electronic format.

(3) Notwithstanding the provisions of 15-30-321, an information agent who fails to file a return under the provisions of subsection (1)(d) is subject only to a penalty of $50 a return. (Terminates December 31, 2004—sec. 4, Ch. 461, L. 2001.)

15-30-301. (Effective January 1, 2005) Information agents' duties. (1) Every information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the taxable year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code, ~~of 1965 or as that section may be amended,~~ *26 U.S.C. 6049*, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, ~~of 1965 or as that section may be amended~~ *26 U.S.C. 401(c)(3)*;

(b) all interest income in excess of $10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer.

(2) The return ~~should~~ *must* be made under the regulations and in the form and manner prescribed by the department~~; provided, however, that for~~. *For* ease of reporting, the form ~~shall~~ *must* be as nearly identical to the comparable federal form as possible."

Section 29. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, ~~(~~26 U.S.C. 991, et seq.~~)~~, and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in *section 584(a) of the Internal Revenue Code,* 26 U.S.C. 584(a);

(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.

(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, ~~of 1954 (~~26 U.S.C. 512~~)~~, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 30. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession

of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, *26 U.S.C. 170,* as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or ~~851(h)~~ *851(g)* of the Internal Revenue Code of 1986, *26 U.S.C. 851(a) or 851(g),* as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, *26 U.S.C. 561,* as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, *26 U.S.C. 852(b)(7) and 855,* as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, *26 U.S.C. 243 through 245,* as those sections may be amended or renumbered."

Section 31. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)*(1)(B)* does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. ~~42(b)(2)(C)~~ *41(b)(2)(C)*, but includes only those supplies used in the conduct of qualified research in Montana.

(e) "Wages" has the meaning provided in 39-51-201 and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana. For a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

Section 32. Section 15-31-404, MCA, is amended to read:

"15-31-404. Offset for license taxes — income tax collected considered license tax. There ~~shall~~ *must* be offset against the corporation

income tax imposed for any period the amount of any tax imposed against ~~it~~ *the corporation* for the same period under parts 1, ~~through~~ 3, and 5 of this chapter. ~~In the event that~~ *If* taxes, interest, and penalties have been or will be assessed against, paid by, or collected from a corporation under this part~~, which~~ *and the* assessment, payment, or collection should have been made under parts 1, ~~through~~ 3, and 5 of this chapter, ~~such~~ *the* taxes, interest, and penalties ~~shall~~ *must* be considered as having been assessed, paid, or collected under parts 1, ~~through~~ 3, and 5 as of the date they were made."

Section 33. Section 15-31-405, MCA, is amended to read:

"15-31-405. Information return — period for assessment of tax. When a corporation formerly subject to tax under part 1 of this chapter becomes subject to tax under this part, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under parts 1, ~~through~~ 3, and 5 and not under this part. For years subsequent to the year in which the change occurs, the tax will be assessed under this part."

Section 34. Section 15-32-405, MCA, is amended to read:

"15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-30-162 and 15-31-123 through 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201~~(3)~~*(4)* may not be applied to a facility for which a credit is claimed pursuant to this part."

Section 35. Section 15-36-324, MCA, is amended to read:

"15-36-324. (Temporary) Distribution of taxes — rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (10)(b)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

(iii) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iv) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

(iii) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iv) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (10)(b)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

(iii) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

(iv) for the fiscal years beginning on or after July 1, 2003, 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred

from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for

the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502. (Terminates June 30, 2011—sec. 10, Ch. 531, L. 2001; sec. 8(2), Ch. 12, Sp. L. August 2002.)

15-36-324. (Effective July 1, 2011) Distribution of taxes — rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred

to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the ~~nonexpendable trust~~ *permanent* fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the ~~nonexpendable trust~~ *permanent* fund type;

(ii) 25% to the reclamation and development grants special revenue account established by 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the ~~nonexpendable trust~~ *permanent* fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that

levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 36. Section 15-50-205, MCA, is amended to read:

"15-50-205. Tax imposed on gross receipts from public contracts. (1) A public contractor, unless the contractor constructs or works on a federal research facility, shall pay to the department ~~of revenue~~ a license fee in a sum equal to 1% of the gross receipts, as defined in 15-50-101, from public contracts during the income year in which the public contractor receives payment.

(2) The license fee must be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as ~~specified in this section~~ *provided for in 15-50-206*."

Section 37. Section 15-50-206, MCA, is amended to read:

"15-50-206. Withholding license fee from payments — refunds. (1) The prime contractor shall withhold the 1% license fee from payments to subcontractors and inform the department ~~of revenue~~ on prescribed forms of the amount of the 1% license fee in the prime contractor's account to be allocated and transferred to the subcontractor. The notification to transfer portions of the 1% license fee must be filed within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and

transfer report at the time required ~~by or~~ under the provisions of this chapter, a penalty computed at the rate of 10% of the 1% license fee withheld from subcontractors is due from the prime contractor.

(2) The state, county, city, or any agency or department ~~thereof, as described in 15-50-205,~~ *of the state, county, or city* for whom the contractor is performing public work shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit that money to the department ~~of revenue~~. If the 1% of gross receipts, as defined in 15-50-101, is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts, as defined in 15-50-101, withheld or paid by any contractor must be refunded by the department ~~of revenue~~ at the end of the income year upon written application."

Section 38. Section 15-70-201, MCA, is amended to read:

"15-70-201. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

~~(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.~~

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.

15-70-201. (Effective on occurrence of contingency) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

~~(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.~~

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(11) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)

15-70-201. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

~~(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.~~

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

Section 39. Section 15-72-102, MCA, is amended to read:

"15-72-102. Legislative findings and declaration of purpose. (1) The legislature finds that the restructuring of the electric utility industry in Montana implemented by Chapter 505, Laws of 1997, including the unbundling of services and the provision that allows Montana customers to choose their supplier of electricity and related services in a competitive market, renders the existing method of property taxation of the electric utility industry an impediment to competition.

(2) The legislature further finds that the restructuring of the electric utility industry necessitates changes to the existing system of property taxation that include reducing the tax rate applied to electrical generation facilities and imposing a replacement tax in order to:

(a) avoid placing a supplier engaged in the business of generating, supplying, or selling electricity at a competitive advantage or disadvantage;

(b) preserve the revenue base of the existing property tax system for taxing jurisdictions in the state;

(c) minimize the shift in tax burden and the imposition of a higher tax burden on consumers of electricity; and

(d) minimize additional administrative costs and the burden of compliance.

(3) The legislature further finds that a reduction in the property tax rates applied to electrical generation facilities must be replaced by a wholesale energy ~~transmission~~ *transaction* tax imposed on each kilowatt hour of electricity transmitted in the state.

(4) The legislature further finds that existing property tax rates applied to electrical transmission and distribution systems are appropriate for a regulated function.

(5) The legislature therefore declares that there is a compelling public need to modify the existing system of property taxation of electrical generation facilities and to impose a wholesale energy transaction tax on kilowatt hours of electricity transmitted in the state to ensure competitive neutrality and to provide replacement revenue to taxing jurisdictions in the state."

Section 40. Section 16-11-101, MCA, is amended to read:

"16-11-101. Legislative intent. The legislature hereby declares that its intent in enacting 16-11-111 is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the ~~federal~~ Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 164, as amended*, in computing their taxable income."

Section 41. Section 17-4-106, MCA, is amended to read:

"17-4-106. Agency owed debt to receive all money collected — ~~exception~~. (1) All money collected by the department on debts transferred to the department by the various agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owed. A county shall apply a delinquent personal property tax collection by the department to the payment of the taxpayer's most delinquent personal property taxes or portion of the taxes.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the department. ~~Except as provided in subsection (3), funds~~ *Funds* deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year must be used to reduce the designated percentage of the collected proceeds charged to the various agencies.

~~(3) The amount of $400,000 is transferred from the internal service fund referred to in subsection (2) to the general fund prior to June 30, 2003.~~"

Section 42. Section 17-5-703, MCA, is amended to read:

"17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Beginning July 1, 1993, and ending June 30, ~~2013~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment fund 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Beginning July 1, 1999, and ending June 30, ~~2013~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.

17-5-703. (Effective July 1, 2003) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, ~~2013~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Until June 30, ~~2013~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)

17-5-703. (Effective July 1, 2016) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) As long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) (a) Until June 30, ~~2013~~ *2016*, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 43. Section 17-5-1102, MCA, is amended to read:

"17-5-1102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

(i) an individual whose signature to the certificated public obligation is required or permitted; or

(ii) an individual ~~whom~~ *who may be permitted by* an authorized officer ~~may~~, either alone or with the concurrence of another or others, ~~permit~~ to affix ~~his~~ *the individual's* signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection (1) as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) represented by an instrument; and

(c) either one of a class or series or by its terms *is* divisible into a class or series of obligations.

~~(3) "Code" means the Internal Revenue Code of 1954, as amended.~~

~~(4)~~*(3)* "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

~~(5)~~*(4)* "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

~~(6)~~*(5)* "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the nominee of any of them or other person or nominee ~~which~~ *that* in the ordinary course of its business maintains public obligation accounts for its customers.

(6) "*Internal Revenue Code*" *has the meaning provided in 15-30-101.*

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection (7).

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in ~~any such~~ *the* agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means*:*

(a) the officer or body that is empowered under the laws of one or more states, including this state, to provide for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents;

(b) the successor or successors of ~~any such~~ *the* official or official body; and

(c) ~~such~~ *any* other person or group of persons ~~as~~ *who* are assigned duties of ~~such~~ *the* official or official body under applicable law ~~from time to time~~.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the ~~code~~ *Internal Revenue Code*. The term ~~"public entity"~~ may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or *any* other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

(a) with respect to a certificated public obligation, that provides that:

(i) the certificated public obligation specify a person entitled to the public obligation or the rights it represents; and

(ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) "Uncertificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) not represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations."

Section 44. Section 17-5-1103, MCA, is amended to read:

"17-5-1103. Declarations of state interest — purposes. (1) Sections 103 and 103A of the ~~code~~ *Internal Revenue Code, 26 U.S.C. 103 and 103A*, provide that interest with respect to certain obligations may not be exempt from the income tax if they are not in registered form. It is therefore a matter of state concern that public entities be authorized to provide for the issuance of obligations in ~~such~~ *registered* form. It is a purpose of this part to authorize all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of sections 103 and 103A of the ~~code~~ *Internal Revenue Code, 26 U.S.C. 103 and 103A*.

(2) Obligations have traditionally been issued in bearer rather than in registered form, and a change from bearer to registered form will significantly affect the relationships, rights, and duties of issuers of and the persons that deal with obligations and~~, by such effect,~~ *may consequently affect* the costs. ~~Such~~ *The* effects will impact the various issuers and varieties of obligations differently, depending on their legal and financial characteristics, their markets, and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of state concern that public entities be provided flexibility in the development of systems of registration and control over system incidents, ~~so as~~ *in order* to accommodate differing impacts. It is a purpose of this part to provide for the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, ~~so as~~ *in order* to accommodate the differing impacts upon issuers and varieties of obligations."

Section 45. Section 17-5-1111, MCA, is amended to read:

"17-5-1111. System of registration. (1) Each issuer is authorized to establish and regularly maintain a system of registration with respect to each public obligation that it issues. The system may be either a system pursuant to which only certificated public obligations are issued or a system pursuant to which both certificated and uncertificated public obligations are issued. The issuer may discontinue and reinstitute either system from time to time.

(2) The system must be established and regularly maintained or amended, discontinued, or reinstituted for the issuer by the official or official body.

(3) The system must be described in the official actions that provide for original issuance and in subsequent official actions providing for amendments and other matters from time to time. ~~Such~~ *The* description may be by reference to a program of the issuer that is established by the official or official body.

(4) The system must define the method or methods by which transfer of the public obligations is effective with respect to the issuer, which method or methods are exclusive (substantial compliance being essential to a valid transfer) and by which payment of principal and any interest must be made. The system may permit the issuance of public obligations in any denomination to represent several public obligations of smaller denominations. The system may also provide for the form of any certificated public obligations, for differing record and payment dates, for varying denominations, and for accounting, canceled certificate destruction, and other incidental matters.

(5) Under a system pursuant to which both certificated and uncertificated public obligations are issued, both types of public obligations may be regularly issued or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners. Under a system pursuant to which uncertificated public obligations are regularly issued, provisions may be made for registration of pledges and releases.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions and the effect of ~~such~~ *those covenants* on the exemption of interest from the income tax provided for by the ~~code~~ *Internal Revenue Code*.

(7) If the effect of a conversion from one of the forms of public obligations provided for in this part to a form not provided for in this part is that interest will continue to be exempt from the income tax provided for by the ~~code~~ *Internal Revenue Code*, this part does not preclude ~~such~~ *that* conversion.

(8) To the extent not inconsistent with this part, the rights provided by other laws with respect to obligations in other forms must be provided with respect to obligations in forms that may be used under this part."

Section 46. Section 17-7-140, MCA, is amended to read:

"17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the

board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school BASE funding program, including special education; and

(e) salaries of elected officials during their terms of office.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in

the revenue estimate established pursuant to ~~5-18-107~~ *5-5-227*, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

Section 47. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) ~~The term "employee" includes~~ *"Employee" means* an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) "Employee tax" means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

~~(2)~~*(3)* (a) ~~The term "employment"~~ *"Employment"* means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute ~~"employment"~~ *employment* as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term ~~"employment"~~ *employment*.

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term ~~"employment"~~ *employment* if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

~~(3)~~*(4)* ~~The term~~ "Federal Insurance Contributions Act" means ~~subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and~~ subchapters A and B of chapter 21 of the ~~federal~~ Internal Revenue Code ~~of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended~~.

~~(4)~~*(5)* ~~The term "political subdivision" includes~~ *"Political subdivision" means* an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a ~~juristic~~ *legally constituted* entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the ~~juristic~~ entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, ~~such as~~ *including* but not limited to school districts and housing authorities.

~~(5)~~*(6)* ~~The term "secretary~~ "*Secretary* of health and human services" means the secretary of the United States department of health and human services~~;~~. *The term* includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect

to coverage under that act of employees of states and their political subdivisions~~;~~ and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

~~(6)~~*(7)* ~~The term~~ "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

~~(7)~~*(8)* ~~The term "state~~ "*State* agency" means the department of administration provided for in 2-15-1001.

~~(8)~~*(9)* ~~The term "wages"~~ "*Wages*" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for ~~"employment"~~ *employment* within the meaning of the Federal Insurance Contributions Act, would not constitute ~~"wages"~~ *wages* within the meaning of that act."

Section 48. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who is not an active or retired member.

(25) "Internal Revenue Code" ~~means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999~~ *has the meaning provided in 15-30-101*.

(26) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(42) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(43) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(44) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

(45) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(46) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts: the member's contribution account, the vested portion of the employer's contribution account, and the member's account for other contributions.

(47) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(48) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

Section 49. Section 19-2-405, MCA, is amended to read:

"19-2-405. Employment of actuary — biennial investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make a biennial actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203~~(5)(b)~~.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter."

Section 50. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for

expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

(a) expenditures to purchase intangible assets for plan administration;

(b) expenses of the defined contribution plan; or

(c) expenditures of funds allocated under 19-3-112(1)(b) ~~or (1)(c)~~ to the education fund established in 19-3-112(1)(a).

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan."

Section 51. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

(a) 4.19% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112~~(1)(c)~~*(1)(b)*.

(3) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 52. Section 19-5-902, MCA, is amended to read:

"19-5-902. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the

increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-5-901 remains valid. The decision of a member who elected not to participate under 19-5-901 may be reversed under this section."

Section 53. Section 19-6-711, MCA, is amended to read:

"19-6-711. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-6-710 remains valid. The decision of a member who elected not to participate under 19-6-710 may be reversed under this section."

Section 54. Section 19-9-1013, MCA, is amended to read:

"19-9-1013. Extended election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 or 19-9-1010 remains valid. The decision of a member who elected not to participate under 19-9-1009 and 19-9-1010 may be reversed under this section."

Section 55. Section 19-9-1204, MCA, is amended to read:

"19-9-1204. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-9-801~~(2)~~*(1)* is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or disability and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period."

Section 56. Section 19-13-1011, MCA, is amended to read:

"19-13-1011. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 3%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 3% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 3% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 3% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least ~~36~~ *12* months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 2001; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2002, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-13-1010 remains valid. The decision of a member who elected not to participate under 19-13-1010 may be reversed under this section."

Section 57. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts

may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, *26 U.S.C. 457(f)*;

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" ~~means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999~~ *has the meaning provided in 15-30-101*.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without actuarial or similar reduction in the benefits because of retirement before a specified age.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, *26 U.S.C. 457(f)*.

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 58. Section 19-21-203, MCA, is amended to read:

"19-21-203. Contributions — supplemental and plan choice rate contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 403(b), as amended*, or by employer pickup under section 414(h)(2) of that code, *26 U.S.C. 414(h)(2), as amended*.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system."

Section 59. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), the employer's contribution under subsection (1)(b) must be allocated as follows:

(a) 4.49% of compensation must be allocated to the participant's program account;

(b) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112~~(1)(c)~~*(1)(b)*.

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."

Section 60. Section 19-50-102, MCA, is amended to read:

"19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code, ~~of 1954 (~~26 U.S.C. 457~~)~~, as amended ~~or superseded~~, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee's compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other

state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

Section 61. Section 19-50-103, MCA, is amended to read:

"19-50-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter ~~shall exist and serve~~ *is* in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 403(b), as amended,* established by the state or a political subdivision, and no deferral of income under the deferred compensation program ~~shall~~ *may* affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program ~~shall not be~~ *is not* subject to taxation until distribution is actually made to the participant or ~~his~~ *the participant's* beneficiary because of separation from service, retirement, or unforeseeable emergency. For purposes of this chapter, any qualified private pension plans now in existence ~~shall qualify~~ *qualifies*."

Section 62. Section 20-9-344, MCA, is amended to read:

"20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. ~~To this end, the~~ *The* board of public education ~~shall~~:

(a) *shall* adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) ~~have the power to~~ *may* require reports from the county superintendents, ~~budget boards,~~ county treasurers, and trustees as it considers necessary; and

(c) *shall* order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, 10% of the direct state aid to each district;

(b) from December to April of the school fiscal year, 10% of the direct state aid to each district;

(c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, the remaining payment to each district of direct state aid.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month."

Section 63. Section 20-10-205, MCA, is amended to read:

"20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of ~~such~~ *those* federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the ~~county department of welfare~~ *local office of public assistance*, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund ~~shall~~ *must* be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price ~~per~~ *for each* meal *that is* charged *to* the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price ~~per~~ *for each* meal.

(3) After the county superintendent's confirmation or adjustment of the claim, ~~he~~ *the county superintendent* shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes."

Section 64. Section 20-25-301, MCA, is amended to read:

"20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings with the university system, and:

(1) must have general control and supervision of the units of the Montana university system, which is considered for all purposes one university;

(2) shall adopt rules for its own government that are consistent with the constitution and the laws of the state and that are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) shall provide, subject to the laws of the state, rules for the government of the system;

(4) shall grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of the institutions;

(5) shall keep a record of its proceedings;

(6) must have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) must receive from the board of land commissioners, from other boards or persons, or from the government of the United States all funds, ~~incomes~~ *income*, and other property *that* the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) must have general control of all receipts and disbursements of the system;

(9) shall appoint a president or chancellor and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) shall confer upon the executive board of each of the units of the system authority that may be considered expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) shall confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) shall prevent unnecessary duplication of courses at the units of the system;

(13) shall appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who is the state geologist, and appoint any other necessary assistants and employees and fix their compensation~~.~~*;*

(14) shall supervise and control the agricultural experiment station, along with any executive or subordinate board or authority that may be appointed by the governor with the advice and consent of the regents;

(15) shall adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents that may require it;

(16) shall ensure an adequate level of security for data ~~and information technology resources~~, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

(17) shall offer courses in vocational-technical education of a type and in a manner considered necessary or practical by the regents."

Section 65. Section 20-25-427, MCA, is amended to read:

"20-25-427. Allocation of indirect cost reimbursements. Any reimbursement for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the ~~university~~ current fund, as provided in 17-2-102, for distribution to the unit receiving the grant or under the contract."

Section 66. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsection (2). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an

adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

(5) There is a fund of the enterprise fund type, as defined in 17-2-102~~(1)(b)(i)~~*(2)(a)*, for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection."

Section 67. Section 23-2-809, MCA, is amended to read:

"23-2-809. Duplicate decal. If a decal required in 23-2-804 indicating that the off-highway vehicle fee has been paid for the current year is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate decal upon payment of a fee of $5 to the county treasurer, who shall distribute the fee as provided in ~~23-2-804(3)~~ *23-2-803*."

Section 68. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsection (6), execute the writ against the property of the judgment debtor no later than 120 days after receipt of the writ by:

(i) levying on a sufficient amount of property, if there is sufficient property;

(ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the ~~entity~~ *third party* or ~~other~~ *upon a* department or person designated by the third party or by *serving the writ by* mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer~~,~~ *or* supervising employee of the third party~~,~~ or ~~other~~ *to a* department or person designated by the third party. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ ~~shall~~ *is required to* forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ ~~will~~ *must* be considered served on the date and time that the writ is received by the officer,

supervising employee, or designee of the third party, but no later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ.

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (7), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) Nothing in this section is intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 69. Section 27-1-732, MCA, is amended to read:

"27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers. (1) An officer, director, or volunteer of a nonprofit corporation is not individually liable for any action or omission made in the course and scope of the officer's, director's, or volunteer's official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 501(c), as amended*;

(b) a corporation or organization that is eligible for or has been granted ~~by the department of revenue~~ tax-exempt status *by the department of revenue* under the provisions of 15-31-102; or

(c) the comprehensive health association created by 33-22-1503."

Section 70. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions;

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than $2 per check for the service; or

(c) a collection agency ~~licensed to do~~ *doing* business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender."

Section 71. Section 31-2-106, MCA, is amended to read:

"31-2-106. Exempt property — bankruptcy proceeding. An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy ~~which~~ *that* exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code, ~~of 1954 (~~26 U.S.C. 401(a), 403(b), 408, or 409~~)~~."

Section 72. Section 33-20-1317, MCA, is amended to read:

"33-20-1317. Disclosure of information to viatical settlement purchasers. (1) A viatical settlement provider shall disclose the information specified in this section to a viatical settlement purchaser prior to the date on which the parties sign the viatical settlement purchase agreement.

(2) The viatical settlement purchaser shall date and sign the information disclosure. The viatical settlement provider shall provide a copy of the information disclosure to the viatical settlement purchaser.

(3) The information disclosure must include the following:

(a) that the viatical settlement purchaser will not receive payment until the insured dies;

(b) that the actual annual rate of return on a viatical settlement purchase agreement is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death and that an annual guaranteed rate of return is not determinable;

(c) that the viatical insurance contract is not a liquid purchase since it is impossible to predict the exact timing of its maturity, that the funds are probably not available until the death of the insured, and that there is not an established secondary market for the resale of viatical settlement products by the viatical settlement purchaser;

(d) that the viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical settlement investment;

(e) (i) that the viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement, and that these payments may reduce the viatical settlement purchaser's return and may continue beyond the insured's projected life expectancy; and

(ii) if a party other than the viatical settlement purchaser is responsible for the payment, that the name of that party must also be disclosed;

(f) the amount of the premium that a purchaser is required to pay, if applicable;

(g) that the viatical settlement purchaser may be responsible for payment of the insurance premium or other costs related to the policy if the insured returns to health;

(h) the amount of any fees or other expenses to be charged to the viatical settlement purchaser;

(i) whether or not the viatical settlement purchaser is entitled to a refund of all or part of the investment under the viatical settlement purchase agreement if the policy is later determined to be void;

(j) that group policies:

(i) may contain limitations on conversion rights;

(ii) may require additional premiums to be paid if the group policy is converted; and

(iii) may be terminated and replaced by another group policy, with benefits under the new policy that may be substantially less than those in the original coverage;

(k) for group policies, the name of the party responsible for the payment of any additional premiums;

(l) that there are risks associated with policy contestability, including the risk that the viatical settlement purchaser may not have a claim or may have

only a partial claim to death benefits if the insurer rescinds the policy within the contestability period;

(m) whether or not the viatical settlement purchaser will be the beneficiary or owner of the policy and, if the viatical settlement purchaser is the beneficiary, the special risks associated with beneficiary status, including the risk that the beneficiary may be changed;

(n) a description of:

(i) the experience and qualifications of the person who has determined the life expectancy of the insured, such as in-house staff, independent physicians, or specialty firms that weigh medical and actuarial data;

(ii) the information on which the projection of life expectancy is based; and

(iii) the relationship of the person who has made the determination of life expectancy to the viatical settlement provider, if any;

(o) all of the life expectancies obtained in the process of determining the price paid to the ~~viator~~ *policyholder or certificate holder*;

(p) a description and amount of any loan or other encumbrance against or in connection with the policy; and

(q) that the viatical settlement purchaser is encouraged to consult with an attorney, accountant, or financial planner who is not affiliated with the viatical settlement broker or viatical settlement provider prior to purchase."

Section 73. Section 37-7-602, MCA, is amended to read:

"37-7-602. Definitions. As used in this part, the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device.

(5) "Prescription drug" has the same meaning as provided in 37-7-101.

(6) (a) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient.

(b) The term does not include:

(i) intracompany sales;

(ii) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(iii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 501(c)(3), as amended*, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (6)(b)(iv), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(v) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (6)(b)(v), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(vi) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(vii) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(viii) the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions."

Section 74. Section 37-24-104, MCA, is amended to read:

"37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which ~~he~~ *the person* is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent ~~himself as~~ *to the public that the person is* an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates ~~his~~ *the person's* status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the ~~American occupational therapy certification board (AOTCB)~~ *national board for certification in occupational therapy, inc. (NBCOT)*; or

(7) a person employed as an occupational therapy aide."

Section 75. Section 37-24-303, MCA, is amended to read:

"37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where ~~he~~ *the person* completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the ~~American occupational therapy certification board (AOTCB)~~ *national board for certification in occupational therapy, inc. (NBCOT)*; and

(d) pass an examination as provided for in 37-24-304.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months."

Section 76. Section 39-10-204, MCA, is amended to read:

"39-10-204. (Temporary) Authorized services. The authorized services provided under the Montana summer youth employment program include:

(1) work experience, which includes planned, structured, work-based learning experiences that may occur in a nonprofit or for-profit, private or public sector workplace for a limited period of time. To the extent feasible, work experience must include contextual learning opportunities that integrate the development of general competencies with the development of academic skills.

(2) basic and remedial education and preemployment and work maturity skills, including but not limited to the job corps, ~~the work opportunity readiness component of the FAIM project, as defined in 53-2-902,~~ youth corps programs, alternative or secondary schools, tutoring, mentoring, or study skills training, and instruction leading to the completion of secondary school, including dropout prevention strategies and leadership development opportunities;

(3) classroom training, which may, to the extent feasible, include opportunities to apply knowledge and skills related to academic subjects pertaining to the work world;

(4) support services, including transportation, child care, medical care, training-related personal supplies, and comprehensive guidance and counseling provided to individuals if the services are reasonable and necessary to enable a participant who cannot otherwise afford to pay for the services to

participate. Comprehensive guidance and counseling may include drug and alcohol abuse counseling and referral.

(5) educational linkages with appropriate educational agencies responsible for services to participants. Linkages may include arrangements to ensure that there is a regular exchange of information relating to the progress, problems, and needs of participants, including the results of assessments of the skill levels of participants. (Terminates September 15, 2003—sec. 9, Ch. 525, L. 2001.)"

Section 77. Section 39-51-2501, MCA, is amended to read:

"39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Eligibility period", relating to extended benefits, means the period consisting of the weeks in the individual's benefit year ~~which~~ *that* begin in an extended benefit period and, if the individual's benefit year ends within ~~such~~ *the* extended benefit period, any weeks thereafter ~~which~~ *that* begin in ~~such~~ *the* period.

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in the eligibility period:

(a) has received, prior to ~~such~~ *that* week, all of the regular benefits that were available under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. chapter 85, in the current benefit year that includes ~~such~~ *that* week~~; provided that~~. *However,* for the purposes of this subsection, an individual ~~shall be deemed~~ *is considered* to have received all of the regular benefits that were available although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the benefit year, the individual may subsequently be determined to be entitled to added regular benefits~~;~~.

(b) *if* the benefit year ~~having~~ *has* expired prior to ~~such~~ *that* week, has no *wages* or insufficient wages on the basis of which the individual could establish a new benefit year that would include ~~such~~ *that* week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act and ~~such~~ other federal laws ~~as~~ *that* are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking ~~such~~ *those* benefits and the appropriate agency finally determines that the individual is not entitled to benefits under ~~such~~ law, the individual is considered an exhaustee.

(3) "Extended benefit period" means a period ~~which~~ *that*:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period ~~which~~ *that* was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of ~~such~~ *the* period.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85,

payable to an individual under the provisions of this part for weeks of unemployment in the individual's eligibility period.

(5) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of ~~such~~ *the* 13-week period.

(b) Computations required by the provisions of subsection (5)(a) ~~shall~~ *must* be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 3304, as amended*."

Section 78. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with child support enforcement agencies of this and other states for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an

employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice ~~will~~ *must*, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and *payment* processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and *payment* processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and

(c) the costs charged to the department under the contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. Rules must be drafted, adopted, and applied in a manner that:

(a) minimizes the personal intrusiveness on the employer or employee of any requested information;

(b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and

(c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 79. Section 40-5-909, MCA, is amended to read:

"40-5-909. Centralized payment center — mandatory payments to center. (1) Payments due under a support order must be paid through the department for processing and distribution to the person or agency entitled to receive the payment whenever:

(a) the case is receiving IV-D services; or

(b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) (a) An employer who receives an income-withholding order issued in another state, as defined in 40-5-103, may contact the department to determine whether the withholding order was issued by the appropriate authority.

(b) The employer may elect to forward the funds to the department for distribution.

(c) If the employer elects under this section to forward the funds to the department for distribution, the employer shall immediately provide a copy of the income-withholding order to the department.

(7) Income-withholding orders may be issued in this state pursuant only to 40-5-308 through 40-5-315 and 40-5-401 through 40-5-432.

(8) Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case ~~management~~ *registry* and payment processing unit.

(9) (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case ~~management~~ *registry* and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection (9)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

(10) (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(11) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law."

Section 80. Section 41-3-439, MCA, is amended to read:

"41-3-439. Department to give placement priority to extended family member of an abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438~~(3)~~*(4)*.

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent."

Section 81. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) "Cost containment funds" means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131.

(8) "Court", when used without further qualification, means the youth court of the district court.

(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(20) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(21) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(22) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(23) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(24) "Judge", when used without further qualification, means the judge of the youth court.

(25) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(26) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(27) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(28) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(29) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

(30) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(31) "Probable cause hearing" means the hearing provided for in 41-5-332.

(32) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(33) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(34) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(35) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(36) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(37) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(38) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(39) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(40) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(41) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(42) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (42)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(43) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(44) "Youth assessment" means a multidisciplinary assessment of a youth as provided in ~~41-5-1201~~ *41-5-1203*.

(45) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(46) "Youth care facility" has the meaning provided in 52-2-602.

(47) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(48) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(49) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 82. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records — notification of school. (1) Reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the ~~records~~ *reports* referred to under 45-5-624(7); and

(j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) *of this section*, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

(i) the youth has admitted the allegation or a petition has been filed with the youth court; and

(ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. The administrative officials may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(6) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(7) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings."

Section 83. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records. (1) Youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and

(6) and that pertain to a youth covered by this chapter must be physically sealed 3 years after supervision for an offense ends. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, ~~or~~ records referred to in 42-3-203, or *reports referred to in* 45-5-624(7).

(5) After youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services shall disassociate the offense and disposition information from the name of the youth in the management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13."

Section 84. Section 42-10-101, MCA, is amended to read:

"42-10-101. Short title. ~~This part~~ *Sections 42-10-101 through 42-10-109* may be cited as "The Subsidized Adoption Act of 1977"."

Section 85. Section 45-5-503, MCA, is amended to read:

"45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)~~(iii)~~*(iv)*.

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term

of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Section 86. Section 45-5-603, MCA, is amended to read:

"45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if the person purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support the person is responsible.

(2) (a) Except as provided in subsection (2)(b), a person convicted of aggravated promotion of prostitution shall be punished by:

(i) life imprisonment~~,~~*; or*

(ii) ~~by~~ imprisonment in a state prison for a term not to exceed 20 years~~,~~ or ~~by~~ a fine in an amount not to exceed $50,000, or both.

(b) Except as provided in 46-18-219 and 46-18-222, a person convicted of aggravated promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

(i) life imprisonment~~,~~*; or*

(ii) ~~by~~ imprisonment in a state prison for a term of not less than 4 years or more than 100 years~~,~~ or ~~by~~ a fine in an amount not to exceed $100,000, or both."

Section 87. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal distribution of dangerous drugs. (1) A person commits the offense of criminal distribution of dangerous drugs if the person sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state

prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners, *as defined in 50-32-101,* and agents under their supervision acting in the course of a professional practice~~, as defined by 50-32-101,~~ are exempt from this section."

Section 88. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or *by* imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or *by* both ~~such fine and imprisonment~~.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(6) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners, *as defined in 50-32-101,* and agents under their supervision acting in the course of a professional practice~~, as defined by 50-32-101,~~ are exempt from this section."

Section 89. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to distribute. (1) A person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners, *as defined in 50-32-101,* and agents under their supervision acting in the course of a professional practice ~~as defined by 50-32-101~~ are exempt from this section."

Section 90. Section 45-9-110, MCA, is amended to read:

"45-9-110. Criminal production or manufacture of dangerous drugs. (1) A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than $50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than $100,000.

(5) Practitioners, *as defined in 50-32-101,* and agents under their supervision acting in the course of a professional practice~~, as defined in 50-32-101,~~ are exempt from this section."

Section 91. Section 45-10-107, MCA, is amended to read:

"45-10-107. Exemptions. Practitioners, *as defined in 50-32-101,* and agents under their supervision acting in the course of a professional practice ~~as defined by 50-32-101~~ are exempt from this part."

Section 92. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that a victim of the offense may have sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss, submitted by the victim or by the ~~board of crime control~~ *department of justice* if compensation for the victim's loss has been reimbursed by the state.

(2) When a presentence report is not authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing."

Section 93. Section 46-23-1004, MCA, is amended to read:

"46-23-1004. Duties of department. The department is responsible for any investigation and supervision requested by the board or the courts for felony offenders. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, that are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the ~~interstate compact for the supervision of parolees and probationers~~ *Interstate Compact for Adult Offender Supervision*; and

(9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted of an offense involving theft from an employer."

Section 94. Section 46-24-211, MCA, is amended to read:

"46-24-211. Information concerning appeal or postconviction remedies. If the defendant appeals~~,~~ *or* pursues a postconviction remedy~~,~~ or the district court grants a hearing under *Title 41, chapter 5*, part 25, the attorney general~~,~~ or the county attorney if the case has not been referred to the attorney general~~,~~ shall promptly inform the victim of the notice of appeal, hearing under *Title 41, chapter 5,* part 25, or postconviction petition, of the date, time, and place of any hearing, and of the decision."

Section 95. Section 50-2-111, MCA, is amended to read:

"50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(2) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) Subject to 15-10-420, the county's part of the total expenses is financed by a levy on the taxable value of all taxable property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 40. If the levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Subject to 15-10-420, each participating city's part of the total expenses is financed by a levy on the taxable ~~[value]~~ *value* of all taxable property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 40.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(e) The levies authorized by this subsection (2) are in addition to all other levies authorized by law."

Section 96. Section 50-4-502, MCA, is amended to read:

"50-4-502. Health care database — information submitted. (1) The department~~, with advice from the health care advisory council,~~ shall design and develop a health care database that includes data on health care resources and the cost and quality of health care services. The purpose of the database is to assist in developing and monitoring the progress of incremental health care reform measures that increase access to health care services, promote cost containment, and maintain quality of care.

(2) The department shall work in conjunction with health care providers, health insurers, health care facilities, private entities, and entities of state and local governments to determine the information necessary to fulfill the purposes of the database provided in subsection (1).

(3) The department shall adopt by rule a confidentiality code to ensure that information in the database is maintained and used according to state law governing confidential health care information.

(4) The department shall make recommendations to the legislature by October 1, 1996, on the actions needed to establish the database, including an estimate of the fiscal impact on state and local government, health care providers, health insurers, health care facilities, and private entities."

Section 97. Section 50-4-504, MCA, is amended to read:

"50-4-504. Definitions. As used in this part, the following definitions apply:

(1) "Database" means the health care database created pursuant to 50-4-502.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Health care" includes both physical health care and mental health care.

~~(4) "Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.~~

~~(5)~~*(4)* "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

~~(6)~~*(5)* "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

~~(7)~~*(6)* "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."

Section 98. Section 50-4-505, MCA, is amended to read:

"50-4-505. Uniform claim forms and procedures. The commissioner of insurance~~, after consultation with the health care advisory council,~~ may adopt by rule uniform health insurance claim forms and uniform standards and procedures for the use of the forms and processing of claims, including the submission of claims by means of an electronic claims processing system."

Section 99. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including ~~chemical dependency~~ *licensed addiction* counselors. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(20) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(21) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(22) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(23) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(24) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

(25) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(26) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(27) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(28) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(29) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(30) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(35) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(41) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(42) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(43) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(44) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(45) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(46) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(47) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(48) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(49) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 100. Section 50-5-301, MCA, is amended to read:

"50-5-301. When certificate of need is required — definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during the 2 years prior to the date on which the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(f) the expansion of the geographical service area of a home health agency;

(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101;

(h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical dependency treatment; or

(i) the construction, development, or other establishment of a facility for ambulatory surgical care through an outpatient center for surgical services in a county with a population of 20,000 or less according to the most recent federal census or estimate.

(2) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility, or an inpatient chemical dependency facility. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h);

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including ~~chemical dependency~~ *licensed addiction* counselors; or

(iii) a rehabilitation facility or an outpatient center for surgical services.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

Section 101. Section 50-60-313, MCA, is amended to read:

"50-60-313. Petition for designation of county jurisdictional area and adoption of building code. (1) A county jurisdictional area and a building code applicable to that area may be adopted by petition as provided in this section.

(2) A petition may be circulated by the record owner of real property to which the county jurisdictional area will be applied or extended for the purpose of gathering signatures on the petition. Only a record owner of real estate within the proposed county jurisdictional area is qualified to sign a petition.

(3) A petition to designate a county jurisdictional area may also be circulated by the board of county commissioners. A petition circulated by the board of county commissioners is not subject to the requirements of 50-60-310.

(4) Before a petition may be circulated for signatures, the language of the proposed building code must be approved by the department of labor and industry and the form of the petition must be approved by the election administrator of the county in which the real property is located. A building code proposed pursuant to this section must be approved by the department of ~~commerce~~ *labor and industry* if it meets the criteria provided in 50-60-302 for the approval of a code within a code enforcement program. The election administrator shall approve the form of the petition if the petition meets~~, and the election administrator shall comply with,~~ the requirements of 7-5-134, 7-5-135, and this section, *and the election administrator shall comply with those requirements*, except that:

(a) the number of valid signatures required for the creation or extension of the county jurisdictional area is a majority of the record owners of real property located within the proposed jurisdictional area; and

(b) a petition containing the number of valid signatures required by this section is not submitted to a vote by electors.

(5) An individual circulating a petition for signatures ~~must~~ *shall* make available to individuals who may sign the petition a copy of the building code approved by the department of labor and industry and a map showing the county jurisdictional area within which the code will apply. The petition must clearly indicate that the individual signing the petition read and understood the provisions of the code and understood the geographic area in which the code would be applied.

(6) The county jurisdictional area and the building code applicable to that area become effective 60 days after the determination by the county election administrator that the petition has been signed by the number of record owners of real property required by this section.

(7) (a) Except as provided in this subsection, once adopted by petition as provided in this section, a county building code may not be amended except by petition in accordance with this section or by submitting the modification to the electors as provided in 50-60-312.

(b) A county building code adopted by petition may be modified without petition or election if:

(i) the modification consists of a provision taken from a uniform or model building code; and

(ii) the provision does not regulate a wholly new component of a structure, such as wiring, plumbing, or concrete foundation, that was previously unregulated."

Section 102. Section 52-1-103, MCA, is amended to read:

"52-1-103. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;

(6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(7) administer the ~~interstate compact for children~~ *Interstate Compact for the Placement of Children*;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 52, chapter 7, part 1; and

(b) administer elder abuse prevention services;

(9) develop a statewide youth services and resources plan that takes into consideration local needs;

(10) administer services to the aged;

(11) provide consultant services to:

(a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and

(b) youth care facilities;

(12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(13) contract, as necessary, for administration of child and adult protection services for each county; and

(14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter."

Section 103. Section 53-2-103, MCA, is amended to read:

"53-2-103. Records and reports. (1) Each ~~county department~~ *local office of public assistance* shall keep ~~such~~ records and make ~~such~~ reports ~~and~~ in ~~such~~ *the* detail ~~as~~ *that* the department ~~may from time to time require~~ *requires* and shall transmit to the department upon its request copies of applications and any ~~or all~~ other records pertaining to any case.

(2) The department ~~is hereby authorized and directed to~~ *shall* keep ~~such~~ *the* records in ~~such~~ *the* form and containing ~~such~~ *the* information ~~as~~ *that* the federal social security board ~~may from time to time require~~ *requires* and *shall* comply with ~~such~~ *the* provisions ~~as~~ *that* the federal board ~~may from time to time find~~

~~necessary to assure~~ *finds necessary to ensure* the correctness and verification of ~~such~~ *the* reports."

Section 104. Section 53-3-115, MCA, is amended to read:

"53-3-115. Legislative findings. (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of public health and human services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

(i) medicaid;

(ii) ~~aid for dependent children~~ *financial assistance, as defined in 53-2-902*;

(iii) food stamps;

(iv) commodities; and

(v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from a county mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state."

Section 105. Section 53-4-221, MCA, is amended to read:

"53-4-221. County department charged with local administration. The ~~county department of public welfare~~ *local office of public assistance* is ~~charged with~~ *responsible for* the local administration and supervision of programs funded under the temporary assistance for needy families block grant, subject to the powers, duties, and functions prescribed for the ~~county department~~ *office* in chapter 2 of this title."

Section 106. Section 53-4-222, MCA, is amended to read:

"53-4-222. County administration subject to rules prescribed by department. The ~~county department of public welfare~~ *local office of public assistance* shall administer the provisions of this part in the respective counties subject to the rules prescribed by the department of public health and human services pursuant to the provisions of this part."

Section 107. Section 53-4-232, MCA, is amended to read:

"53-4-232. Application for assistance. Application for assistance under this part ~~shall~~ *must* be made to the ~~county department of~~ *local office of public assistance in* the county in which the dependent child is residing. ~~Such~~ *The* application ~~shall~~ *must* be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if

they reside with the same person. All individuals wishing to make application for this assistance ~~shall have~~ *must be given* the opportunity to do so."

Section 108. Section 53-4-601, MCA, is amended to read:

"53-4-601. Demonstration project — purpose. (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for ~~FAIM~~ financial assistance. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform in the ~~FAIM~~ financial assistance, food stamp, and medicaid programs."

Section 109. Section 53-4-609, MCA, is amended to read:

"53-4-609. Categorical eligibility for other assistance. Recipients of ~~FAIM~~ financial assistance under ~~a component of~~ the FAIM project are not categorically eligible for food stamp benefits and the low-income energy assistance program but are eligible only if they satisfy all the eligibility requirements for those programs."

Section 110. Section 53-18-101, MCA, is amended to read:

"53-18-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501(c)(3) organization under the ~~United States~~ Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 501(c)(3)*, as amended, and that was organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more persons who are residents of this state and are persons with developmental disabilities, mental illness, or physical disabilities or are otherwise eligible for department services, as defined by the department."

Section 111. Section 53-21-186, MCA, is amended to read:

"53-21-186. Support of patient conditionally released. When a mental health facility conditionally releases a patient committed to its care, it is not liable for ~~his~~ *the patient's* support while conditionally released. Liability ~~devolves upon~~ *transfers to* the legal guardian, parent, or person under whose care the patient is placed when conditionally released or ~~upon~~ *to* any other person legally liable for ~~his~~ *the patient's* support. The ~~public welfare officials of the county~~ *local office of public assistance in the county* where the patient resides or is found ~~are~~ *is* responsible for providing relief and care for a conditionally released patient who is unable to ~~maintain himself~~ *be self-supporting* or who is unable to secure support from the person under whose care ~~he~~ *the patient* was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws."

Section 112. Section 53-30-403, MCA, is amended to read:

"53-30-403. Boot camp incarceration program — eligibility — rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate:

(a) must be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201~~(4)(o)~~*(4)(m)*;

(b) shall obtain the concurrence of the sentencing court; and

(c) shall pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

Section 113. Section 61-3-103, MCA, is amended to read:

"61-3-103. (Temporary) Filing of security interests — perfection — rights — procedure — fees. (1) Except as provided in 61-3-109, the department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the

address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and

the action and the names of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.

(11) A fee of $8 must be paid to the department to file any security interest or other lien against a motor vehicle. The $8 fee includes the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the $8 fee, $4 must be deposited in the state general fund in accordance with 15-1-504. The remaining $4 must be forwarded to the ~~state treasurer~~ *department of revenue* for deposit in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)

61-3-103. (Effective July 1, 2008) Filing of security interests — perfection — rights — procedure — fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file ~~such~~ *the* satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $8 must be paid to the department to file any security interest or other lien against a motor vehicle. The $8 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the $8 fee, $4 must be deposited in the state general fund in accordance with 15-1-504. The remaining $4 must be forwarded to the ~~state treasurer~~ *department of revenue* for deposit in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)

61-3-103. (Effective July 1, 2011) Filing of security interests — perfection — rights — procedure — fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in

the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales

contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file ~~such~~ *the* satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 114. Section 61-3-570, MCA, is amended to read:

"61-3-570. Local option flat fee. (1) A *local option* flat fee for each vehicle may be imposed within a county by the board of county commissioners by adoption of a resolution and referral to the electorate. The imposition of the *local option flat* fee must be approved by the majority of the electorate voting in the election.

(2) The *local option* flat fee is distributed as provided in 61-3-537."

Section 115. Section 61-3-736, MCA, is amended to read:

"61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of fees required for registration. (1) (a) The department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in 61-3-528 and 61-3-529 on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors and the light vehicle registration fee under 61-3-560 and 61-3-561 on light vehicles in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax or registration fee on interstate motor vehicle fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax or registration fee under this part or any other provision of the laws of Montana, the fee in lieu of tax or registration fee on fleet vehicles must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(c) Vehicles subject to the light vehicle registration fee as part of a fleet under this subsection (1) are not subject to the local option *vehicle* tax or flat fee imposed under 61-3-537 or 61-3-570.

(2) With respect to a renewal application for a fleet, the fee in lieu of tax and the light vehicle registration fee are imposed for a full year. The department of transportation shall prorate the new fee in lieu of tax in 61-3-529 for motor vehicles that are proportionally registered, as provided in 61-3-721, and whose annual registration period does not coincide with the calendar year.

(3) Vehicles contained in a fleet for which current fees have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of fees for the current registration year. The payment of fleet vehicle fees in lieu of tax, light vehicle registration fees, and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

(4) All fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 61-3-738."

Section 116. Section 61-8-906, MCA, is amended to read:

"61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

(i) $300,000 for class A tow trucks;

(ii) $500,000 for class B tow trucks; and

(iii) $750,000 for class C tow trucks;

(b) insurance to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage ~~keepers legal~~ liability insurance.

(2) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

(a) adequate for the secure storage and safekeeping of stored vehicles;

(b) located in a place that is reasonably convenient for public access;

(c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays; and

(d) large enough to store all the vehicles towed for law enforcement agencies."

Section 117. Section 69-8-104, MCA, is amended to read:

"69-8-104. Pilot programs. (1) Except as provided in 69-8-201~~(3)~~*(4)* and 69-8-311, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2005.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for small customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of small customers;

(c) the electricity suppliers' interest in serving small customers and the opportunities in providing service to small customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to small customers."

Section 118. Section 69-8-501, MCA, is amended to read:

"69-8-501. Transition advisory committee. (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of twelve voting members who are appointed as follows:

(a) The speaker of the house shall appoint six members from the house of representatives, not more than three of whom may be from one political party.

(b) The president of the senate shall appoint six members from the senate, not more than three of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana ~~electrical cooperative~~ *electric cooperatives'* association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed to terms for up to 2 years, expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on December 31, 2007.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the region at that time.

(15) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

(16) On or before November 1 of each odd-numbered year, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to this chapter to utilities or their affiliates located outside the state of Montana. That information must be included in a report to each legislature."

Section 119. Section 70-24-436, MCA, is amended to read:

"70-24-436. Mobile home parks — grounds for termination of rental agreement. (1) With respect to a tenant who rents space in a mobile home park but does not rent the mobile home, if there is a noncompliance by the tenant with the rental agreement or with a provision of 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon a date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 ~~calendar~~ days;

(b) a violation of a mobile home park rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any resident of the mobile home park or its manager or owner, for which the notice period is 14 days;

(c) a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, for which the notice period is 24 hours;

~~(d) subject to the right to terminate in subsections (1)(e) through (1)(l), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance;~~

~~(e)~~*(d)* late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period ~~for termination~~ for the final late payment is 30 days;

~~(f)~~*(e)* a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection ~~(1)(d)~~ *(3)*, for which the notice period ~~for termination~~ is 14 days;

~~(g)~~*(f)* two or more violations within a 12-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period ~~for termination~~ for the final violation is 30 days;

~~(h)~~*(g)* two or more violations of 70-24-321(1) within a 12-month period, for which the notice period ~~for termination~~ for the final violation is 14 days;

~~(i)~~*(h)* any violation of 70-24-321(2), for which the notice period is as provided in 70-24-422(3);

~~(j)~~*(i)* disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

~~(k)~~*(j)* any other noncompliance or violation not covered by subsection (1)(a) through ~~(1)(j)~~ *(1)(i)* that endangers other residents or mobile home park personnel or causes substantial damage to the mobile home park premises, for which the notice period is 14 days;

~~(l)~~*(k)* conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

~~(m)~~*(l)* changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

~~(n)~~*(m)* any legitimate business reason not covered elsewhere in this subsection (1), provided that the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land ~~composing~~ *comprising* the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

~~(3)~~*(4)* For purposes of calculating the total number of notices given within a 12-month period under subsection ~~(1)(c)~~ *(1)(d)*, only one notice for each violation per month may be included in the calculation."

Section 120. Section 72-16-607, MCA, is amended to read:

"72-16-607. Allowance for exemptions, deductions, and credits. (1) In making an apportionment, allowances ~~shall~~ *must* be made for any exemptions granted, *for* any classification made of persons interested in the estate, and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing ~~such~~ *the* relationship or receiving the gift, but if an interest is subject to a prior present interest ~~which~~ *that* is not allowable as a deduction, the tax apportionable against the present interest ~~shall~~ *must* be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or ~~his~~ *the decedent's* estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession, or estate taxes or taxes ~~in the~~ *of that* nature ~~thereof~~ applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment ~~thereof~~ to the extent proportionately that the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in 72-16-603 and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code, ~~of 1954~~ *26 U.S.C. 2053(d)*, as amended, ~~of the United States,~~ relating to deduction for state death taxes on transfers for public, charitable, or religious uses."

Section 121. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation ~~gasoline~~ *fuel* as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a *storage* tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 122. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of department — findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest, convenience, and necessity;

(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; or

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, do not pose any threat of serious injury or damage to:

(i) the environment; or

(ii) the social and economic conditions of inhabitants of the affected area; or

(iii) the health, safety, or welfare of area inhabitants.

(4) For facilities defined in ~~77-20-104(8)~~ *75-20-104*, if the department cannot make the findings required in ~~75-20-301~~ *this section*, it shall deny the certificate."

Section 123. Section 76-6-109, MCA, is amended to read:

"76-6-109. Powers of public bodies. (1) A public body has the power to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and use grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state, ~~or~~ a city, town, *or* other municipality, or *a* county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, subject to subsection (3); and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Property taxes levied to pay the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

(a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;

(b) forest land as defined in 15-44-102;

(c) all agricultural improvements on agricultural land referred to in subsection (3)(a);

(d) all noncommercial improvements on forest land referred to in subsection (3)(b); *and*

(e) agricultural implements and equipment described in 15-6-138(1)(a)~~; and~~

~~(f) livestock described in 15-6-136(1)(a)~~."

Section 124. Section 77-6-114, MCA, is amended to read:

"77-6-114. Lessee responsible for assessments and taxes for weed control. It~~shall be~~ *is* the duty of the board in leasing any agricultural state land to provide in ~~such~~ *the* lease that the lessee of *any agricultural state* lands ~~so leased~~ lying within the boundaries of any ~~noxious~~ weed ~~control~~ *management* district shall assume and pay all assessments and taxes levied by the board of county commissioners for ~~such~~ *any* district on ~~such~~ *those* state lands, and ~~such~~ *the* assessments and tax levy ~~shall~~ *must* be imposed on ~~such~~ *the* lessee as a personal property tax and ~~shall~~ *must* be collected by the county treasurer in the same manner as regular personal property taxes are collected. All ~~such state~~ lessees ~~shall be~~ *of these state lands are* required under the terms of~~such~~ *the* lease to pay ~~such~~ *the* assessment and tax levy at the same time and *in the same* manner as other regular personal taxes are paid."

Section 125. Section 80-7-814, MCA, is amended to read:

"80-7-814. Administration and expenditure of funds. (1) (a) Except as provided in subsection (1)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in

the special revenue fund and may be expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least $2.5 million.

(b) Money deposited as principal in the trust fund from [former 80-7-822] may not be expended until the principal of the trust fund reaches $10 million. However, interest or revenue generated by the trust fund must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section.

(2) The department may expend funds under this section through grants or contracts to communities, weed ~~control~~ *management* districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for first-class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed ~~control~~ *management* districts;

(c) special grants to local weed ~~control~~ *management* districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department shall give preference to weed ~~control~~ *management* districts and community groups.

(6) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 126. Section 80-8-120, MCA, is amended to read:

"80-8-120. Local pesticide regulation. (1) (a) A unit of local government may adopt an ordinance to require a commercial applicator, as defined in 80-8-102~~(6)~~, to provide notification when applying a pesticide, subject to the following provisions:

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.

(ii) A sign must be:

(A) at least 4 inches in height and 5 inches in width; and

(B) made of weather-resistant material if used for outdoor application.

(iii) A sign must contain:

(A) the words "pesticide application"; and

(B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.

(iv) A sign must be posted:

(A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;

(B) for an interior application, at each public access to the treated property with the front of the sign facing the access;

(C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.

(v) Notification for an application by a mosquito control district or a weed ~~control~~ *management* district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.

(vi) Posting or notification is not required for the following:

(A) a spot treatment of an area that is less than 100 square feet;

(B) an applicator subject to the environmental protection agency's worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

(C) an application on land classified as agricultural land or forest land for taxation purposes;

(D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;

(E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;

(F) an application on a railroad facility or right-of-way;

(G) an application on a public utility facility or right-of-way.

(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and

(ii) fund the costs, including but not limited to:

(A) educating its citizens of the ordinance's requirements;

(B) compensating personnel to enforce the ordinance; and

(C) prosecution of a violation of the ordinance.

(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commercial applicator.

(2) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105(3)(a).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1)."

Section 127. Section 81-6-105, MCA, is amended to read:

"81-6-105. Special livestock deputy — duties — compensation. The county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the department and the sheriff, whose duties are to assist the department and the sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws ~~which~~ *that* are of particular concern to the livestock industry of the county, particularly ~~as regards~~ *with regard to* cattle. The special livestock deputy may receive a commission from the department and appointment as a deputy from the sheriff of the county and shall give the *same* bond for the faithful performance of ~~his~~ *the* duties as *the bond* required from officers performing similar duties. The special livestock deputy ~~shall~~ *must* receive compensation for ~~his~~ services and for mileage traveled in the performance of ~~his~~ *the special livestock deputy's* duties in an amount set by the board of county commissioners on the recommendation of the committee, to be paid from the ~~stockmen's~~ *livestock* special deputy fund and from the county general fund in the proportions set by the board of county commissioners."

Section 128. Section 85-20-1004, MCA, is amended to read:

"85-20-1004. Mitigation account. (1) ~~An expendable~~ *A private purpose* trust account, called the mitigation account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for mitigation measures required by Article VI of the compact.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the mitigation account must be made available to the United States bureau of reclamation to cover the state's cost-share for

construction of mitigation measures chosen on completion of a feasibility study and appropriate state and federal environmental review by the bureau of reclamation and on consideration of the economic development plan authorized by 85-20-1008."

Section 129. Section 85-20-1005, MCA, is amended to read:

"85-20-1005. Watershed improvement trusts. (1) A ~~nonexpendable trust~~ *permanent* fund account, called the state Milk River watershed improvement trust, is established, as provided for in 17-2-102, for deposit of funds appropriated pursuant to the compact for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(2) A ~~nonexpendable trust~~ *permanent* fund account, called the federal Milk River watershed improvement trust, is established, as provided for in 17-2-102, for receipt of federal funds appropriated for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(3) The state and federal Milk River watershed improvement trusts must be collectively referred to as the Milk River watershed improvement trusts."

Section 130. Section 85-20-1007, MCA, is amended to read:

"85-20-1007. Peoples Creek minimum flow account. (1) ~~An expendable~~ *A private purpose* trust account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations."

Section 131. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries~~,~~ *or* nursery ponds~~, or alternative livestock ranches~~;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation, as provided in Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and water rights acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and water rights for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water rights to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 132. Section 87-1-221, MCA, is amended to read:

"87-1-221. Acquisition, importation, and propagation of fish and game — waterfowl food. The department may:

(1) acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals for propagation, experimental, or scientific purposes;

(2) provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals;

(3) use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries~~, alternative livestock ranches,~~ or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds;

(4) appropriate money from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game or fur-bearing animals, or game or nongame birds;

(5) spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state."

Section 133. Section 90-6-127, MCA, is amended to read:

"90-6-127. Allocation of state limit. (1) All of the aggregate amount of qualified mortgage bonds that may be issued during any calendar year in accordance with section 146 of the Internal Revenue Code, ~~of 1954 (~~26 U.S.C. 146~~)~~, as amended, is allocated to the board of housing.

(2) The board of housing may adopt standards for determining and may designate areas of chronic economic distress within the meaning of section 143(j)(3) of the Internal Revenue Code, ~~of 1954 (~~26 U.S.C. 143(j)(3)~~)~~, as amended."

Section 134. Section 90-6-715, MCA, is amended to read:

"90-6-715. (Temporary) Special revenue account — use. (1) The treasure state endowment regional water system special revenue account may be used to provide matching funds to plan and construct regional drinking water systems in Montana. Each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710~~(4)~~.

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton,

and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of commerce for eligible projects. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)"

Section 135. Section 17, Chapter 414, Laws of 2001, is amended to read:

"**Section 17. Termination.** *(1)* [Sections 1 through 6, ~~and~~ 8, ~~through~~ *10, and* 11] terminate December 31, 2006.

(2) [Section 9] terminates June 30, 2005."

Section 136. Section 5, Chapter 522, Laws of 2001, is amended to read:

"**Section 5. Termination ~~— contingent termination~~.** ~~(1) Except as provided in subsection (2), [this act]~~ *[This act]* terminates October 1, 2005.

~~(2) If the office of surface mining of the United States department of the interior disapproves the changes to Montana's program that are provided in [this act], then [this act] terminates 60 days after the department of environmental quality receives notification of that disapproval. The department of environmental quality shall provide a copy of the document that disapproves the changes to Montana's program to the Montana code commissioner.~~"

Section 137. Repealer. Sections 5-18-107, 46-23-1033, 50-4-312, and 53-2-303, MCA, are repealed.

Section 138. Instructions to code commissioner. The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 58th legislature.

Ap proved March 25, 2003

CHAPTER NO. 115

[SB 31]

AN ACT CLARIFYING THAT THE STATUTORY MILL LEVY LIMIT DOES NOT APPLY TO ANY LOCAL GOVERNMENT JUDGMENT LEVY; AND AMENDING SECTION 15-10-420, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property; and

(e) transfer of property from tax-exempt to taxable status.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the

department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, *7-6-4015,* or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Ap proved March 25, 2003

CHAPTER NO. 116

[SB 49]

AN ACT PROHIBITING THE DISCLOSURE OF MILITARY DISCHARGE CERTIFICATES TO UNAUTHORIZED INDIVIDUALS; AMENDING SECTIONS 2-6-401 AND 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-401, MCA, is amended to read:

"2-6-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Local government" means:

(a) any city, town, county, consolidated city-county, or school district; and

(b) any subdivision of an entity named in subsection (1)(a).

(2) (a) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record, regardless of physical form or characteristics, that has been made or received by any local government in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana, *except military discharge certificates filed under 7-4-2614.*

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records."

Section 2. Section 7-4-2614, MCA, is amended to read:

"7-4-2614. Records of certificates of discharge from military service. *(1)* It is the duty of the county clerk of any county of this state to record, without

charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces.

(2) Military discharge certificates are confidential and are exempt from the provisions of Title 2, chapter 6. A military discharge certificate may be disclosed only to:

(a) the service member who filed the certificate;

(b) if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;

(c) a veterans' service officer or a veterans' service organization, as defined in 10-2-111;

(d) the veterans' affairs division of the Montana department of military affairs; or

(e) any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 25, 2003

CHAPTER NO. 117

[SB 88]

AN ACT PROVIDING INSTRUCTION FOR THE RENUMBERING AND CODIFICATION OF SECTION 85-2-521, MCA, CONCERNING REQUIREMENTS FOR COAL BED METHANE WELLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Directions to code commissioner. Section 85-2-521 is intended to be renumbered and codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to 85-2-521. The code commissioner shall change any references to this chapter that are within 85-2-521 to "Title 85, chapter 2".

Ap proved March 25, 2003

CHAPTER NO. 118

[SB 94]

AN ACT PROVIDING FOR THE MULTIAGENCY CHILDREN'S SERVICES SYSTEM OF CARE INITIATIVE FOR HIGH-RISK CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE TO BUILD STATE AND COMMUNITY CAPACITY TO SUPPORT THE APPROPRIATE CARE AND TREATMENT OF HIGH-RISK CHILDREN IN THE LEAST RESTRICTIVE AND MOST APPROPRIATE SETTING; AMENDING SECTIONS 52-2-301, 52-2-302, 52-2-303, 52-2-304, AND 52-2-308, MCA; REPEALING SECTIONS 52-2-305, 52-2-306, AND 52-2-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-301, MCA, is amended to read:

"52-2-301. State policy. The legislature declares that it is the policy of this state:

(1) ~~to the extent that funds are available and using a managed care system,~~ to provide for and encourage the development of a ~~continuum of~~ *stable system of care, including* quality education, treatment, and services for the *high-risk* children of this state with multiagency service needs*, to the extent that funds are available*;

(2) to serve *high-risk* children with multiagency service needs either in their homes or in the least restrictive *and most appropriate* setting ~~that is most appropriate to~~ *for* their needs ~~as provided in 52-2-306 and 52-2-307~~ *in order to preserve the unity and welfare of the family, whenever possible, and to provide for their care and protection and mental, social, and physical development*;

(3) to serve *high-risk* children with multiagency service needs within ~~the~~ *their home, community, region, and* state*, whenever possible,* and *to* use out-of-state providers as a last resort*;*

(4) to provide integrated services to high-risk children with multiagency service needs;

(5) to contain costs and reduce the use of high-cost, highly restrictive, out-of-home placements;

(6) to increase the capacity of communities to serve high-risk children with multiagency service needs in the least restrictive and most appropriate setting for their needs by promoting collaboration and cooperation among the agencies that provide services to children; and

(7) to prioritize available resources for meeting the essential needs of high-risk children with multiagency service needs."

Section 2. Section 52-2-302, MCA, is amended to read:

"52-2-302. Definitions. The following definitions apply to this part:

(1) *(a)* ~~"Child~~ "*High-risk child* with multiagency service needs" means a child under 18 years of age *who is seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting, and* who has a need for ~~services that are available~~ *collaboration* from more than one state agency *in order to address the child's needs.*

(b) The term does not include a child incarcerated in a state youth correctional facility.

(2) "Least restrictive *and most appropriate* setting" means a setting in which a *high-risk* child with multiagency service needs is served:

(a) within the child's family or community; or

(b) outside the child's family or community where the needed services are not available within the child's family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child's family and community if proximity is important to the child's treatment ~~or does not adversely affect the child's treatment~~.

~~(3) "Local agency" means a local interagency staffing group formed pursuant to 52-2-203 or parents who are seeking placement of a child with multiagency service needs and who is suffering from mental, behavioral, or emotional disorders.~~

~~(4) "Managed care" means control of the provision of services to a defined population through a planned delivery system.~~

~~(5)~~*(3)* "Provider" means an agency of state or local government, a person, or a program authorized to provide treatment or services to a *high-risk* child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

~~(6) "Request for proposals" has the meaning as defined in 18-4-301.~~

~~(7)~~*(4)* "Services" has the meaning as defined in 52-2-202.

(5) "System of care" means an integrated service support system that:

(a) emphasizes the strengths of the child and the child's family;

(b) is comprehensive and individualized; and

(c) provides for:

(i) culturally competent and developmentally appropriate services in the least restrictive and most appropriate setting;

(ii) full involvement of families and providers as partners;

(iii) interagency collaboration; and

(iv) unified care and treatment planning at the individual child level."

Section 3. Section 52-2-303, MCA, is amended to read:

"52-2-303. ~~Multiagency service placement plan~~ *Children's system of care planning* committee — membership — administration. (1) There is a ~~multiagency service placement plan~~ *children's system of care planning* committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department of public health and human services *representing the mental health program*;

(b) an appointee of the director of the department of public health and human services representing child protective services;

(c) an appointee of the director of the department of public health and human services representing the developmental disability program;

(d) an appointee of the director of the department of public health and human services representing the chemical dependency treatment program;

(e) other appointees considered appropriate by the director of the department of public health and human services who may be representatives of families of high-risk children with multiagency service needs, service providers, or other interested persons or governmental agencies;

~~(b)~~*(f)* an appointee of the superintendent of public instruction *representing education*; ~~and~~

~~(c)~~*(g)* an appointee of the director of the department of corrections*;*

(h) an appointee of the youth justice council of the board of crime control; and

(i) an appointee of the supreme court representing the youth courts.

(3) The committee is attached to the department of public health and human services for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122."

Section 4. Section 52-2-304, MCA, is amended to read:

"52-2-304. Committee duties. *(1)* The committee established in 52-2-303 shall*, to the extent possible within existing resources*:

~~(1) assist the department in the development of the plan required by 52-2-305;~~

~~(2) develop policies aimed at allowing local agencies, through a managed care system, to access funding for services for children with multiagency service needs:~~

~~(a) that are currently provided by out-of-state providers; and~~

~~(b) who may have a future need to obtain services provided by out-of-state providers unless in-state services are developed; and~~

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

~~(3)~~*(c)* advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in *committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in* making any determination that a *high-risk* child with multiagency service needs cannot be served by an in-state provider*;*

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care; and

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care in the initiative.

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county interdisciplinary child information team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115; and

(v) a local citizen review board as provided for in 41-3-1003.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

Section 5. Section 52-2-308, MCA, is amended to read:

"52-2-308. Rulemaking. The department shall adopt rules necessary to implement 52-2-301 through ~~52-2-307~~ *52-2-304*. The rules must be adopted in cooperation with the committee established in 52-2-303."

Section 6. Repealer. Sections 52-2-305, 52-2-306, and 52-2-307, MCA, are repealed.

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved March 25, 2003

CHAPTER NO. 119

[HB 79]

AN ACT PROVIDING THAT AN INDIVIDUAL OR A NONPROFIT ORGANIZATION IS NOT LIABLE FOR CIVIL DAMAGES RESULTING FROM THE INDIVIDUAL'S OR ORGANIZATION'S PLACEMENT OF A SIGN OR MARKER WARNING OF A HAZARD IN WATER THAT IS UNDER THE JURISDICTION OF THE STATE AND THAT IS LEGALLY ACCESSIBLE TO THE PUBLIC; PROVIDING CRITERIA FOR THE PLACEMENT OF THE SIGNS OR MARKERS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO INFORM THE PUBLIC OF THE PLACEMENT, USE, AND SIGNIFICANCE OF WATER HAZARD SIGNS AND MARKERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Placement of warning sign in water legally accessible to public — liability limitation — role of department. (1) Unless acting with gross negligence, an individual or a nonprofit organization is not liable for civil damages resulting from the individual's or organization's placement of a sign or marker warning of a hazard in water legally accessible to the public as long as:

(a) the sign or marker is a white plastic milk bottle attached by a cord to the hazard or is a sign or marker approved by the department;

(b) the sign or marker contains or bears the name and telephone number of the individual or nonprofit organization that placed it;

(c) the individual or nonprofit organization maintains or removes the sign or marker when dictated by changing water conditions or seasonal changes; and

(d) the individual or nonprofit organization places the sign or marker only for the purpose of identifying hazards.

(2) (a) The provisions of this section are not intended to prohibit the placement of nonhazard signs or markers for water skiing, diving, safe channels, or swimming areas or for posting speed limits.

(b) The department shall inform members of the public involved in the recreational use of the waters of this state of the placement, use, and significance of signs or markers warning of hazards in the water that are placed by individuals or nonprofit organizations pursuant to the provisions of this section.

(3) The provisions of this section apply only to the waters of this state that have not been determined to be navigable for purposes of federal jurisdiction over navigation aids.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 3. Effective date.[This act] is effective on passage and approval.

Ap proved March 26, 2003

CHAPTER NO. 120

[HB 178]

AN ACT AUTHORIZING AN EMPLOYER TO EMPLOY A CERTIFIED TEACHER, SPECIALIST, OR ADMINISTRATOR WHO HAS BEEN RECEIVING A RETIREMENT ALLOWANCE FOR AT LEAST 12 MONTHS TO BE REEMPLOYED WITHOUT THE LOSS OR INTERRUPTION OF TEACHER RETIREMENT BENEFITS; DEFINING "EMPLOYER"; REQUIRING AN EMPLOYER TO REPORT MONTHLY EMPLOYMENT DATA TO THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM; REQUIRING A REPORT BY THE OFFICE OF PUBLIC INSTRUCTION AND THE TEACHERS' RETIREMENT SYSTEM TO THE 2005 LEGISLATURE; AMENDING SECTION 19-20-804, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reemployment of certain retired teachers, specialists, or administrators — limitations — employer defined. (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance, except a disability retirement allowance pursuant to part 9 of this chapter, for at least 12 months may be employed on a part-time or full-time basis by an employer without the loss or interruption of any payments of retirement benefits if:

(i) the member holds a valid certificate under the provisions of 20-4-106; and

(ii) the employer provides evidence to the office of public instruction each year that the employer has been unable to fill the position because the employer has received no applications for the open position or has not received an acceptance to an offer to fill the position from a nonretired teacher, specialist, or administrator;

(b) an employer shall by the 15th day of each month report to the office of public instruction and to the teachers' retirement system the name, social security number, and gross earnings of each teacher, specialist, or administrator employed in the preceding month under the provisions of this section;

(c) a retired member reemployed under this section is ineligible for active membership under 19-20-302; and

(d) the office of public instruction and the teachers' retirement system shall report to the appropriate committee in the 2007 legislative session regarding the implementation and results of this section.

(2) A retiree reemployed pursuant to this section must be considered an active member for the purposes of calculating retirement system contributions required under 19-20-604 and 19-20-605.

(3) A retiree reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-804(2) through (5).

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retiree is subject to all terms and conditions of the agreement and is entitled to all benefits and protections provided by the agreement.

(5) The board may adopt rules to implement this section.

(6) As used in this section, "employer" means a public school district, as defined in 20-6-101 and 20-6-701, youth correctional facilities, special education cooperatives, and the Montana school for the deaf and blind.

Section 2. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. (1) ~~Upon~~ *Except as provided in [section 1], upon* termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409~~.~~.

(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board~~.~~.

(3) ~~On~~ *Each year on* July 1 ~~of each year~~ following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year~~.~~.

(4) (a) Except as provided in *[section 1] and* subsection ~~(5)~~ *(5) of this section*, the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed~~.~~.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to [section 1].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date — applicability. [This act] is effective July 1, 2003, and applies to teachers, specialists, and administrators who are employed for the school fiscal year beginning on or after [the effective date of this act] and who are earning more than one-third of the average final compensation provided for under 19-20-804.

Section 6. Termination. [This act] terminates July 1, 2006.

Ap proved March 25, 2003

CHAPTER NO. 121

[HB 212]

AN ACT ELIMINATING THE REQUIREMENT THAT AN AWARD OF PUNITIVE DAMAGES MUST BE UNANIMOUS AS TO LIABILITY AND AMOUNT; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in Finstad v. W.R. Grace & Co., 2000 MT 228, 301 Mont. 240, 8 P.3d 778 (2000), the Montana Supreme Court held that the portion of section 27-1-221(6), MCA, which requires that an award of punitive damages must be unanimous as to liability and amount, violates Article II, section 26, of the Montana Constitution, guaranteeing a verdict by a two-thirds majority in all civil cases.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-221, MCA, is amended to read:

"27-1-221. Punitive damages — liability — proof — award. (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. ~~An award of punitive damages must be unanimous as to liability and amount.~~

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate

proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 25, 2003

CHAPTER NO. 122

[HB 326]

AN ACT INCREASING THE ALLOWABLE TIME PERIOD FOR AUTHORIZATION OF A TEMPORARY CHANGE OF A WATER APPROPRIATION RIGHT IN THE UPPER CLARK FORK RIVER BASIN FROM 10 YEARS TO UP TO 30 YEARS UNDER CERTAIN CONDITIONS; AMENDING SECTION 85-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-407, MCA, is amended to read:

"85-2-407. (Temporary) Temporary changes in appropriation right. (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change is made available from the development of a new water conservation or storage project, a temporary change in appropriation right pursuant to 85-2-408 *or 85-2-439* may

be approved for a period equal to the expected life of the project, not to exceed 30 years. (Terminates June 30, 2005—sec. 3, Ch. 433, L. 2001.)

85-2-407. (Effective July 1, 2005) Temporary changes in appropriation right. (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.

(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

(i) during the initial temporary change application process;

(ii) during the temporary change renewal process; and

(iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates June 30, 2005.

Ap proved March 25, 2003

CHAPTER NO. 123

[HB 490]

AN ACT REVISING THE REQUIREMENT THAT A TAXPAYER FILE, FOR THE PURPOSE OF CLAIMING AN ADDITIONAL INCOME TAX EXEMPTION, WRITTEN DOCUMENTATION OF A DEPENDENT'S PERMANENT DISABILITY; PROVIDING THAT WRITTEN DOCUMENTATION OF A DEPENDENT'S PERMANENT DISABILITY BY A LICENSED PHYSICIAN REMAINS IN EFFECT IN SUBSEQUENT TAX YEARS FOR THE PURPOSE OF CLAIMING THE ADDITIONAL EXEMPTION; REQUIRING THE TAXPAYER TO INFORM THE DEPARTMENT OF REVENUE CONCERNING A CHANGE IN THE DEPENDENT'S ELIGIBILITY FOR THE ADDITIONAL EXEMPTION; ALLOWING THE DEPARTMENT OF REVENUE TO INQUIRE ABOUT THE DEPENDENT'S ELIGIBILITY FOR THE ADDITIONAL EXEMPTION; AMENDING SECTION 15-30-115, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-115, MCA, is amended to read:

"15-30-115. Physician's verification of disability required. ~~A~~ *For tax years beginning after December 31, 2002, a* taxpayer claiming the exemption provided for in 15-30-114 shall provide with the taxpayer's income tax ~~statement~~ *return* written documentation by a licensed physician that the disability qualifies under 15-30-114. *The written documentation remains in effect in subsequent tax years for the purpose of claiming the additional exemption unless there is a change in the dependent's physical circumstances to the extent that the dependent no longer qualifies for the additional exemption. The taxpayer shall inform the department of any change in the dependent's eligibility. The department may inquire by mail whether any material change has occurred in the dependent's physical circumstances that may affect the dependent's eligibility for the additional exemption and that may require additional written documentation by a licensed physician at any time that it considers necessary.*"

Section 2. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Ap proved March 25, 2003

CHAPTER NO. 124

[HB 552]

AN ACT ALLOWING AN AFFILIATED GROUP THAT FILES A CONSOLIDATED RETURN AN AUTOMATIC 6-MONTH EXTENSION OF TIME FOR FILING A RETURN; AMENDING SECTION 15-31-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-141, MCA, is amended to read:

"15-31-141. Consolidated returns — computation and procedure. (1) Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) ~~Any~~ *A* corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. ~~Any~~ *A* corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) ~~When~~ *If* an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its ~~taxable year~~ *tax period* in which its income is not included in the consolidated return of the group. The separate return must be filed no later than the 15th day of the 5th month following the close of the ~~taxable year~~ *tax period* for which a consolidated return of the affiliated group is filed.

(b) *(i)* ~~A 1-month to 6-month extension of time is automatically allowed for filing a return if on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department~~ *A corporation is allowed an automatic extension of*

time for filing its tax return of up to 6 months following the date prescribed for filing its return. The tax and interest must be paid when the return is filed. Interest must be added to the tax due as provided in 15-31-510(2).

(ii) The department may grant an additional extension of time for filing of a tax return whenever in its judgment good cause exists."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to tax returns due after [the effective date of this act].

Ap proved March 25, 2003

CHAPTER NO. 125

[SB 78]

AN ACT CLARIFYING WHEN A BOARD OF LAND COMMISSIONERS OR A DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ACTION UNDER TITLE 77, MCA, BECOMES A FINAL AGENCY ACTION UNDER THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; and

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the

adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) *(i)* A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (6)(a)*(ii)* must take precedence over other cases or matters in the district court unless otherwise provided by law.

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 26, 2003

CHAPTER NO. 126

[HB 32]

AN ACT ALLOWING THE HUNTING OF MOUNTAIN LIONS DURING WINTER OPEN SEASON WITH THE AID OF A DOG OR DOGS; ALLOWING THE HUNTING OF BOBCATS DURING TRAPPING SEASON WITH THE AID OF A DOG OR DOGS; ESTABLISHING A TRAINING SEASON DURING WHICH MOUNTAIN LIONS AND BOBCATS MAY BE PURSUED WITH A DOG OR DOGS; CREATING A CLASS D-3 RESIDENT HOUND TRAINING LICENSE AND ESTABLISHING THE CONDITIONS AND FEE FOR THE LICENSE; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-124, MCA, is amended to read:

"87-3-124. Dogs — restrictions on hunting — penalty for chasing hooved game animals. (1) (a) Except as provided in 87-3-127 and subsections (2) and (3) of this section, a person may not chase with a dog any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Except as provided in subsection (2), any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing hooved game animals may destroy that dog, on public land or on private land at the request of the landowner, without criminal or civil liability.

(d) Except as provided in subsection (2), a person who purposely, knowingly, or negligently permits a dog to chase, stalk, pursue, attack, or kill hooved game animals is guilty of a misdemeanor and is subject to the penalty in 87-1-102(1). If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) A person may use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (1)(c).

(3) *(a)* ~~The commission has authority to allow and regulate the use of dogs for hunting and chasing mountain lion and bobcat.~~ *A person may hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs.*

(b) A person may hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs.

(c) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year."

Section 2. Class D-3—resident hound training license. A person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $5, may receive a Class D-3 hound training license that entitles the holder to use a dog or dogs to aid in pursuing mountain lions or bobcats during the training season established in 87-3-124(3)(c).

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved March 26, 2003

CHAPTER NO. 127

[HB 55]

AN ACT EXPANDING THE AUTHORITY OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ADOPT RULES RESTRICTING NONRESIDENT MOUNTAIN LION HUNTERS IN ALL HUNTING DISTRICTS THAT QUALIFY AND ELIMINATING THE TERMINATION DATE FOR THIS AUTHORITY; AMENDING SECTION 87-1-301, MCA; AND REPEALING SECTION 3, CHAPTER 575, LAWS OF 2001.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. ~~(Temporary)~~ Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office; and

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts ~~in the administrative region designated by the department as region 1~~; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts ~~in the administrative region designated by the department as region 1, which may include limiting the number of nonresident hound handler permits~~.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.~~(Terminates April 30, 2004 -- sec. 3, Ch. 575, L. 2001.)~~

87-1-301. (Effective May 1, 2004) Powers of commission. ~~(1) The commission:~~

~~(a) shall set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;~~

~~(b) shall establish the hunting, fishing, and trapping rules of the department;~~

~~(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;~~

~~(d) must have the power within the department to establish wildlife refuges and bird and game preserves;~~

~~(e) shall approve all acquisitions or transfers by the department of interests in land or water;~~

~~(f) shall review and approve the budget of the department prior to its transmittal to the budget office; and~~

~~(g) shall review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000.~~

~~(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.~~

~~(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.~~

~~(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:~~

~~(i) separate deer licenses from nonresident elk combination licenses;~~

~~(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;~~

~~(iii) condition the use of the deer licenses; and~~

~~(iv) limit the number of licenses sold.~~

~~(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property.~~

~~(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:~~

~~(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and~~

~~(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.~~"

Section 2. Repealer. Section 3, Chapter 575, Laws of 2001, is repealed.

Ap proved March 26, 2003

CHAPTER NO. 128

[HB 89]

AN ACT EXTENDING THE SCHEDULE FOR COMPLETING TOTAL MAXIMUM DAILY LOADS FOR STREAMS LISTED IN 1997; AND AMENDING SECTION 75-5-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-703, MCA, is amended to read:

"75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) Within ~~10~~ *15* years from May 5, 1997, the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. The department shall establish a schedule for completing the TMDLs within the ~~10-year~~ *15-year* period established by this subsection. The schedule must also provide a reasonable timeframe for TMDL development for impaired and threatened water bodies that are listed subsequent to May 5, 1997, and are prioritized as set forth in 75-5-702.

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and

watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue ~~provided~~ *if* those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312."

Ap proved March 26, 2003

CHAPTER NO. 129

[HB 97]

AN ACT DEFINING "TAXIDERMIST"; INCREASING THE ANNUAL TAXIDERMIST'S LICENSE FEE FROM $15 TO $50; AND AMENDING SECTION 87-4-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-201, MCA, is amended to read:

"87-4-201. ~~Taxidermist's license, fee, and penalty~~ *Regulation of taxidermists.* ~~A~~ *(1) As used in this section, "taxidermist" means a* person ~~who engages in conducting any taxidermy business, as the term is generally understood, or any person~~ who conducts a business for the purpose of mounting, preserving, or preparing ~~any~~ *all or part* of the dead bodies of any wildlife ~~or any part thereof~~.

(2) Before conducting the business of a taxidermist, a taxidermist shall ~~must first~~ obtain from the ~~director~~ *department* a taxidermist's license and pay an annual license fee of ~~$15 therefor~~ *$50*.

(3) ~~Such person~~ *A taxidermist* shall keep a written record of all the articles of wildlife in ~~his~~ *the taxidermist's* possession or control, *including the following information:*

(a) the kind and number of each~~,~~ *article of wildlife;*

(b) ~~by whom owned, and the~~ *the name and* residence of *the* owner~~,~~ *of the article of wildlife; and*

(c) all the articles of wildlife shipped and to whom and where shipped.

(4) The ~~above~~ *taxidermist shall keep the written* record ~~shall be kept~~ *required under subsection (3)* for as long as ~~such~~ *the* articles *of wildlife* remain in the possession of the ~~licensee~~ *taxidermist* ~~but in any event~~ *or* at least 5 years, *whichever is longer.* These records ~~shall~~ *must* be open to inspection by ~~any state game~~ *a* warden at any reasonable time.

(5) ~~In all cases of~~ *Upon* conviction ~~of~~ *for a* violation of this section, the *taxidermist's* license of the person convicted may be revoked by the court."

Ap proved March 26, 2003

CHAPTER NO. 130

[HB 135]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO USE ITS TUITION FUND TO PAY THE COSTS FOR A RESIDENT STUDENT WHO ENROLLS IN A DAY-TREATMENT PROGRAM UNDER AN APPROVED INDIVIDUALIZED EDUCATION PROGRAM AT A PRIVATE, NONSECTARIAN SCHOOL LOCATED IN OR OUTSIDE OF THE STUDENT'S RESIDENT DISTRICT; AMENDING SECTION 20-5-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-324, MCA, is amended to read:

"20-5-324. Tuition report and payment provisions — exemption. (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(b), (1)(d), or (1)(e);

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; ~~and~~

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state*; and*

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools.

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in ~~subsection~~ *subsections* (1)(d) *and (1)(e)* to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b)~~,~~ *or when a child has approval to attend a day-treatment program under an*

approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(b) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(10) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to tuition paid for attendance in school fiscal years beginning on or after July 1, 2003.

Ap proved March 26, 2003

CHAPTER NO. 131

[HB 142]

AN ACT REQUIRING THE STATE OFFICIAL RESPONSIBLE FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT TO CONSULT WITH ANY LOCAL GOVERNMENT THAT MAY BE DIRECTLY IMPACTED BY A PROJECT; AMENDING SECTIONS 75-1-104 AND 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-104, MCA, is amended to read:

"75-1-104. Specific statutory obligations unimpaired. ~~Nothing in~~ *Sections* 75-1-103 ~~or~~ *and* 75-1-201 ~~shall in any way~~ *do not* affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality;

(2) coordinate or consult with any ~~other~~ *local government, other* state *agency,* or federal agency; or

(3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency."

Section 2. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for

regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; and

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action

in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved *and with any local government, as defined in 7-12-1103, that may be directly impacted by the project*. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court

considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

(5) (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

(6) (a) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate. Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(b) Any action or proceeding under subsection (6)(a) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to environmental impact statements commenced on or after [the effective date of this act].

Ap proved March 26, 2003

CHAPTER NO. 132

[HB 198]

AN ACT CLARIFYING THE LANGUAGE IN STATEMENTS OF IMPLICATION FOR BALLOT MEASURES; PROVIDING THAT STATEMENTS OF IMPLICATION MUST BE WRITTEN SO THAT A POSITIVE VOTE INDICATES SUPPORT FOR THE MEASURE AND A NEGATIVE VOTE INDICATES OPPOSITION TO THE MEASURE; AND AMENDING SECTION 13-27-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of petition by attorney general — preparation of statements — fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and legal sufficiency, as provided in 13-27-202, and, if the proposed ballot issue has an effect on the ~~revenues~~ *revenue*, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note.

(2) If the petition form is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall prepare:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, ~~such~~ *and the* statement ~~to~~ *must* be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure. *Statements of implication must be written so that a positive vote indicates support for the measure and a negative vote indicates opposition to the measure.*

(5) The statement of purpose, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right to vote to persons 18 years of age

(7) If the petition is rejected as to form, the attorney general shall forward the comments to the secretary of state within 21 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general.

(8) If the petition is approved as to form, within 30 days of the approval, the attorney general shall forward to the secretary of state the determination regarding legal sufficiency, as provided in 13-27-202."

Ap proved March 26, 2003

CHAPTER NO. 133

[HB 215]

AN ACT STANDARDIZING THE FEE FOR REINSTATEMENT OF A DRIVER'S LICENSE OR DRIVING PRIVILEGE AFTER SUSPENSION OR REVOCATION BY INCREASING THE FEE FOR REINSTATEMENT AFTER CERTAIN SUSPENSIONS OR REVOCATIONS FROM $25 TO $100; EXEMPTING THE HOLDER OF A COMMERCIAL DRIVER'S LICENSE FROM THE STANDARDIZED REINSTATEMENT FEE; AMENDING SECTIONS 61-5-215 AND 61-5-216, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. License reinstatement fee following license suspension or revocation. (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of $100 to the department to have the driver's license or driving privilege reinstated.

(2) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or 61-8-402 shall pay a reinstatement fee as required by 61-2-107. A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(3) The department shall deposit the fees collected under subsection (1) in the general fund.

Section 2. Section 61-5-215, MCA, is amended to read:

"61-5-215. Provisional licenses prohibited ~~— reinstatement fee~~. ~~(1)~~ ~~No~~ *A* provisional, restricted, or probationary license may *not* be issued upon a suspension under 61-5-214.

~~(2) A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of $25 to the court for deposit in the state general fund.~~"

Section 3. Section 61-5-216, MCA, is amended to read:

"61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and *if* the reinstatement fee *required under 61-2-107 or [section 1] has been paid*, the department shall ~~immediately~~ reinstate the license, unless the operator otherwise is not entitled to reinstatement."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Applicability. [This act] applies to the reinstatement of a driver's license or driving privilege that is suspended or revoked on or after July 1, 2003.

Ap proved March 26, 2003

CHAPTER NO. 134

[HB 250]

AN ACT REVISING THE DESIGN OF LICENSE PLATES FOR RECIPIENTS OF A PURPLE HEART MEDAL; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"61-3-332. (Temporary) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (4)(c) and (4)(d) of this section, all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word “Montana” must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as “A 1" or “AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words “State Owned”, and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated

by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number

on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal*and the words "combat wounded"* or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal *and the words "combat wounded"*.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

(12) Fees collected under this section must be deposited in the state general fund. (Terminates July 1, 2005—sec. 21, Ch. 402, L. 2001.)

61-3-332. (Effective July 1, 2005) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in subsections (4)(c) and (4)(d), all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the

distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as

govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal*and the words "combat wounded"* or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter

irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance

of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal *and the words "combat wounded"*.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

(12) Fees collected under this section must be deposited in the state general fund."

Section 2. Effective date. [This act] is effective January 1, 2004.

Ap proved March 26, 2003

CHAPTER NO. 135

[HB 311]

AN ACT INCLUDING EGGNOG IN THE DEFINITION OF "CLASS I MILK" INSTEAD OF IN THE DEFINITION OF "CLASS II MILK" TO CORRELATE WITH FEDERAL STANDARDS; REQUIRING THE DEPARTMENT OF LIVESTOCK TO ASSESS A FEE FOR ALL CLASSES OF MILK SOLD BY A PERSON LICENSED BY THE DEPARTMENT TO BE USED FOR THE ADMINISTRATION OF THE MILK INSPECTION AND MILK DIAGNOSTIC LABORATORY FUNCTIONS OF THE DEPARTMENT; PROVIDING THAT THE FEE MUST BE ESTABLISHED COMMENSURATE WITH COSTS OF THE PROGRAM; REQUIRING LICENSEES TO REPORT TO THE DEPARTMENT ON A MONTHLY BASIS THE VOLUME OF MILK PRODUCED; AMENDING SECTIONS 81-23-101 AND 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-101, MCA, is amended to read:

"81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-3105.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks,*eggnog,* and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, ~~eggnog,~~ cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed

under this chapter, for resale over the counter at retail or for consumption on the premises.

(h) "Licensee" means a person who holds a license from the department.

(i) "Market" means an area of the state designated by the department as a natural marketing area.

(j) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which ~~is~~ *are* designated as grade A by a ~~duly~~ constituted health authority and ~~also includes~~ *including* those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(k) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

(l) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

(m) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(n) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(o) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class ~~which~~ *that* in its discretion it determines to be proper."

Section 2. Section 81-23-202, MCA, is amended to read:

"81-23-202. Licenses — disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department, as provided in 81-22-202, or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is $2 and is due before July 1 and must be deposited by the department ~~to the credit of~~ *in* the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) *(a)* In addition to the fees established in subsections (1) through (3), the department shall assess a fee ~~of 14.97 cents~~ per hundredweight on the volume of ~~class I~~ *all classes of* milk produced and sold by a ~~producer~~ *person licensed by the department* to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. *The fee must be established pursuant to 81-1-102(2).* ~~The board shall include this fee in its formulas for fixing by rule the minimum producer prices for class I milk in 81-23-302.~~

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the assessments must be computed by applying the fee designated by the department and the fee established in subsection (4) to the volume of milk sold in the preceding calendar quarter.

(6) Failure of a *producer-distributor,* producer, ~~producer-distributor,~~ or distributor to pay an assessment when due is a violation of this chapter, and a license under this chapter automatically terminates and is void. A terminated license must be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment that was due.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved March 26, 2003

CHAPTER NO. 136

[HB 126]

AN ACT PROVIDING FOR THE DISPOSITION OF CIVIL FINES, COSTS, AND FEES RECOVERED UNDER CERTAIN CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; PROVIDING FOR THE USE OF

THE MONEY TO FUND CONSUMER PROTECTION FUNCTIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

(3) All civil fines, costs, and fees received or recovered by a county attorney pursuant to this part must be paid to the general fund of the county where the action was commenced.

Section 2. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 30, chapter 14, part 2, and the provisions of Title 30, chapter 14, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved March 26, 2003

CHAPTER NO. 137

[HB 144]

AN ACT REVISING CERTAIN UNDERGROUND STORAGE TANK LAWS; INCREASING THE TIME LIMIT FOR SUBMITTING CLEANUP EXPENSE REIMBURSEMENT REQUESTS; AMENDING DEFINITIONS; CHANGING THE ANNUAL TANK REGISTRATION FEES; REVISING REQUIREMENTS

FOR COMPLIANCE INSPECTIONS AND PERMITS; AMENDING SECTIONS 75-11-307, 75-11-503, 75-11-505, AND 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by ~~a~~ release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

(h) expenses for work completed by or on behalf of the owner or operator more than ~~2~~ 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid

to third parties for bodily injury or property damage. *The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.*

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 2. Section 75-11-503, MCA, is amended to read:

"75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

(6) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

(7) "Underground storage tank" *or "tank"*:

(a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; ~~and~~

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground; *and*

(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less~~,~~ and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less~~,~~ and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or (7)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix); or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to ~~facility-wide~~ *facilitywide* corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."

Section 3. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules. The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) procedures and standards for the issuance, *nonissuance, renewal, nonrenewal, modification, revocation, suspension,* and enforcement of permits authorizing the operation of underground storage tanks;

(5) standards for design, construction, installation, and closure;

(6) development of a schedule of annual fees~~, not to exceed $70 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank registration~~, *not to exceed $108 for a tank over 1,100 gallons and not to exceed $36 for a tank 1,100 gallons or less, for each tank, for tank registration* to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(7) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks."

Section 4. Section 75-11-509, MCA, is amended to read:

"75-11-509. Inspections — permits. (1) The owner or operator of an *active* underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an

inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.

(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.

(3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.

~~(2)~~*(4)* The department shall by rule provide*:*

(a) requirements for the scope and timing of inspections~~.~~*; and*

(b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.

~~(3)~~*(5)* The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

~~(4)~~*(6)* The owner or operator shall retain the original inspection report and mail a copy to the department.

~~(5)~~*(7)* If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.

~~(6)~~*(8)* A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. ~~who certifies that~~ *Except as provided in subsection (9), prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, that* the operation and maintenance of the tank was in compliance with this part and rules adopted pursuant to this part on the date of inspection.

(9) The department may issue and renew permits for tanks that are not in full compliance with the operation and maintenance requirements of this part and rules adopted pursuant to this part only if the department requires, in a compliance order issued pursuant to 75-11-512 or 75-11-525, that the noncompliance be corrected at the earliest practicable time. The department may also take other enforcement actions, including actions for penalties under this chapter, and may pursue any other remedy available to the department to address noncompliance with this part or with rules, permits, or orders issued pursuant to this part.

(10) The department may determine to not issue or not renew a permit for a tank if the department finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [Section 1] applies to all claims for reimbursement of expenses on file with the department of environmental quality on [the effective date of this act].

Ap proved March 26, 2003

CHAPTER NO. 138

[HB 164]

AN ACT REVISING CERTAIN PROVISIONS RELATED TO PERMANENT TOTAL DISABILITY BENEFITS; REMOVING THE PROVISIONS LIMITING A WORKER TO A MAXIMUM OF 10 BENEFIT ADJUSTMENTS AND LIMITING THE ADJUSTMENT PERCENTAGE INCREASE TO 3 PERCENT; AMENDING SECTION 39-71-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-702, MCA, is amended to read:

"39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.

(4) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. ~~A worker may not receive more than 10 adjustments.~~ The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year ~~or 3%, whichever is less~~.

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to injuries that occur on or after [the effective date of this act].

Ap proved March 26, 2003

CHAPTER NO. 139

[HB 172]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~February 9, 2001~~ *[the effective date of this act]*."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 27, 2003

CHAPTER NO. 140

[HB 180]

AN ACT ALLOCATING LIQUOR LICENSE FEES AND BEER AND WINE TAX REVENUE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; STATUTORILY APPROPRIATING FUNDS FOR DISTRIBUTION TO STATE-APPROVED PRIVATE AND PUBLIC CHEMICAL DEPENDENCY PROGRAMS FOR GRANTS AND FOR TREATMENT OF PERSONS WITH CO-OCCURRING SERIOUS MENTAL ILLNESS AND CHEMICAL DEPENDENCY; AMENDING SECTIONS 17-7-502, 53-24-108, 53-24-204, AND 53-24-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; *53-24-108;* 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 53-24-108, MCA, is amended to read:

"53-24-108. (Temporary) Use of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 and allocated to the department to be used as matching funds for the Montana medicaid program and to be used in state-approved private or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, which for the purposes of this section includes chemical dependency, may be distributed in any of the following ways:

(a) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services;

(b) as grants to state-approved private or public alcoholism programs; or

(c) as matching funds for the Montana medicaid program administered by the department that are used for the treatment of alcoholism, chemical dependency, and related illnesses.

(2) (a) Services provided by funding under this chapter may include treatment and rehabilitation for persons with co-occurring mental illness and chemical dependency.

(b) The department shall distribute at least $1 million to state-approved chemical dependency programs during fiscal year 2003. During fiscal year 2003, the department may use other sources of funding to meet its obligations under this subsection (2)(b). At least $730,000 of funds distributed under this subsection (2)(b) must be derived from revenue generated by 16-1-404, 16-1-406, and 16-1-411 and must be distributed to counties, as provided in 53-24-206(3)(b), for the private or public programs approved pursuant to 53-24-208. The remaining balance may consist of a combination of funds generated by taxation on alcoholic beverages and other funds available to the department.

(3) A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1).

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment,

rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in 53-24-206(3)(b). (Terminates July 1, 2003—sec. 6, Ch. 470, L. 2001; sec. 3, Ch. 21, Sp. L. August 2002.)

53-24-108. (Effective July 1, 2003) Use of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 and allocated to the department to be used in state-approved private or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, which for the purposes of this section includes chemical dependency, ~~may be distributed in any of the following ways~~ *must be distributed as follows*:

~~(a) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services;~~

~~(b)~~*(a) 20% is statutorily appropriated, as provided in 17-7-502, to be allocated as provided in 53-24-206(3)(b), and must be distributed* as grants to state-approved private or public alcoholism programs; ~~or~~

(b) 6.6% is statutorily appropriated, as provided in 17-7-502, to be distributed to state-approved private or public alcoholism programs that provide services for treatment and rehabilitation for persons with co-occurring serious mental illness and chemical dependency; and

(c) *the remainder of funds not statutorily appropriated in subsections (1)(a) and (1)(b) may be distributed:*

(i) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services; or

(ii) as matching funds for the Montana medicaid program administered by the department that are used for alcoholism and chemical dependency programs.

(2) A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1)*(a)*.

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(6) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in 53-24-206(3)(b)."

Section 3. Section 53-24-204, MCA, is amended to read:

"53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of *53-24-108 and* 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to persons with a chemical dependency;

(f) establish criteria to be used for the development of new programs;

(g) encourage planning for the greatest ~~utilization~~ *use* of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(h) cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for intoxicated persons and persons with a chemical dependency in or on parole from penal institutions;

(i) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

(j) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

Section 4. Section 53-24-206, MCA, is amended to read:

"53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical

dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private or public programs on a discretionary basis must be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds *that are not appropriated, as provided in subsection (3)(a), or that are not statutorily appropriated in 53-24-108(1)(b)* must be distributed to the counties for use by approved private or public programs. The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and must be distributed in the following manner:

(i) Eighty-five percent must be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent must be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism and chemical dependency."

Section 5. Effective date. [This act] is effective July 1, 2003.

Ap proved March 26, 2003

CHAPTER NO. 141

[HB 240]

AN ACT PROVIDING THAT THE WRITTEN JUDGMENT IN A CRIMINAL CASE MUST BE ENTERED ON THE RECORD WITHIN 30 DAYS AFTER ORAL PRONOUNCEMENT OF THE DISPOSITION OF THE CASE; REQUIRING AN ORDER SIGNED BY THE SENTENCING JUDGE ON THE DATE OF ORAL PRONOUNCEMENT OF SENTENCE STATING THAT THE DEFENDANT IS SENTENCED TO THAT PLACE FOR IMPRISONMENT, COMMITMENT, PLACEMENT, OR EXECUTION, AS THE CASE MAY BE; PROVIDING THAT THE ORDER IS AUTHORITY FOR THAT PLACE TO HOLD THE DEFENDANT PENDING RECEIPT BY THAT PLACE OF A COPY OF THE WRITTEN JUDGMENT; AND AMENDING SECTIONS 46-18-116 AND 46-19-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-116, MCA, is amended to read:

"46-18-116. Judgment — conflict between written judgment and oral pronouncement — correction of factually erroneous sentence or judgment. (1) The judgment must set forth the plea, *the* verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The *written* judgment must be signed and *must be* entered on the record *within 30 days after the oral pronouncement of the disposition of the case*. At the time that the judgment is filed, the prosecutor of the county in which the sentence was imposed shall serve a copy of the judgment on the defendant. The written judgment must include a statement of the rights set forth in subsection (2).

(2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement at a hearing, and the defendant must be present at the hearing unless the defendant waives the right to be present or elects to proceed pursuant to 46-18-115. The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

(3) The court may correct a factually erroneous sentence or judgment at any time. Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief."

Section 2. Section 46-19-101, MCA, is amended to read:

"46-19-101. Commitment of defendant. Upon ~~rendition of judgment after~~ *oral* pronouncement of a sentence imposing punishment of imprisonment, *commitment to the department of corrections, placement in a prerelease center, community corrections facility, or other place of confinement,* or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of ~~his~~ confinement, *commitment,* or execution *and give that place an order, which must be signed by the sentencing judge on the date of oral pronouncement of sentence, stating that the defendant is sentenced to that place for imprisonment, commitment, placement, or execution, as the case may be. The order is authority for that place to hold the defendant pending receipt by that place of a copy of the written judgment*."

Ap proved March 26, 2003

CHAPTER NO. 142

[HB 246]

AN ACT REQUIRING A PEACE OFFICER WHO IS ABOUT TO INTERROGATE A PERSON WHO IS IN CUSTODY TO GIVE THE PERSON THE MIRANDA WARNING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Miranda warning prior to custodial interrogation. Before interrogating a person who is in custody, a peace officer shall inform the person that the person has the right to remain silent, that anything the person says can be used against the person in a court of law, that the person has the right to

speak to an attorney and to have an attorney present during any questioning, and that if the person cannot afford an attorney, one will be provided for the person at no cost to the person. A person who is stopped under 46-5-401 and 46-5-402 is not in custody unless the stop goes beyond the purposes of those sections.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 6, part 1, and the provisions of Title 46 apply to [section 1].

Ap proved March 27, 2003

CHAPTER NO. 143

[HB 280]

AN ACT ALLOWING FOR THE USE OF ORIGINAL MONTANA LICENSE PLATES ON MOTOR VEHICLES THAT ARE 25 YEARS OLD OR OLDER AND THAT ARE USED FOR GENERAL TRANSPORTATION PURPOSES; REQUIRING PERMANENT REGISTRATION OF GENERAL TRANSPORTATION COLLECTOR'S ITEM VEHICLES; DEFINING "GENERAL TRANSPORTATION COLLECTOR'S ITEM"; AND AMENDING SECTIONS 61-3-412 AND 61-3-562, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-412, MCA, is amended to read:

"61-3-412. Display of original Montana license plates on collector's item ~~vehicle~~ *and general transportation collector's item vehicles* — definition — validation. (1) As used in *[section 2] and* this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 *or [section 2]* to display original Montana license plates, with validation as required in *[section 2] or* subsection (3) *of this section*, after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a $5 fee, receipt of the highway patrol officer's certification that the officer has determined that*:*

(i) the license plate is legible and meets the requirements of subsection (1); *and*

(ii) in the case of a license plate intended for use on a general transportation collector's item, the license plate is visible at night; ~~and~~

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411 *or [section 2]; and*

(d) in the case of general transportation collector's item applications, certification from the department that a duplicate license plate number does not exist among currently issued license plates.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in 61-3-101; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(2)(a); or

(B) "V" to designate vehicles described in 61-3-411(2)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if a windshield does not exist, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of $20."

Section 2. Registration of motor vehicle as general transportation collector's item — definition — permanent registration required. (1) For the purposes of 61-3-412 and this section, a "general transportation collector's item" is a motor vehicle that is 25 years old or older that is used for general transportation purposes.

(2) An owner of a general transportation collector's item who wishes to display original Montana license plates on the motor vehicle shall file with the department an application for the registration of the motor vehicle. The application must state:

(a) the name and address of the owner;

(b) the year and number of the license plate the applicant wishes to use; and

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle.

(3) Upon receipt of an application for registration of a general transportation collector's item, the department shall compare the number of the license plate that the applicant intends to use with the license plate numbers assigned to currently registered vehicles. The department may reject an application if the number the applicant intends to use matches a number that is assigned to a currently registered vehicle. If the department approves the application, the department shall file the application and register the motor vehicle in the manner specified in 61-3-101.

(4) Once an application is approved, appropriate fees are paid, and the requirements provided in 61-3-412(2) are met, an owner of a general transportation collector's item shall permanently register the motor vehicle as provided in 61-3-562 and shall display on the motor vehicle's license plate a decal indicating that the motor vehicle has been permanently registered.

Section 3. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license

fees under 61-3-321 *and 61-3-412*, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b);

(iii) the former county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;

(vi) if applicable, the amateur radio operator license plate fee under 61-3-422;

(vii) if applicable, the annual scholarship donation fee under 61-3-465; and

(viii) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)"

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 2].

Ap proved March 26, 2003

CHAPTER NO. 144

[HB 305]

AN ACT PROVIDING A STATUTORY DEFINITION OF "CURRENT TERM" AS USED IN MONTANA'S CONSTITUTIONAL PROVISION ON TERM LIMITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition of current term for purposes of term limits. As used in Article IV, section 8, of the Montana constitution, "current term" means the term served after regular election to a full term to an office and does not include time served in an appointed or an elected capacity in an office to finish the term of the original incumbent after a vacancy has occurred.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 16, and the provisions of Title 2, chapter 16, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 27, 2003

CHAPTER NO. 145

[HB 339]

AN ACT CLARIFYING WHICH COUNTIES MUST HAVE COUNTY AUDITORS AND WHICH COUNTIES MAY HAVE COUNTY AUDITORS; ALLOWING COMMISSIONERS IN CERTAIN COUNTIES THE DISCRETIONARY AUTHORITY TO PROVIDE FOR AN ELECTED OR APPOINTED COUNTY AUDITOR; AMENDING SECTION 7-6-2401, MCA; AND REPEALING SECTION 7-6-2402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2401, MCA, is amended to read:

"7-6-2401. Creation of office of county auditor. (1) ~~Except as provided in subsection (2), the~~ *The* office of county auditor exists in all counties of the first, second, third, or fourth class *and having a population in excess of 15,000.*

(2) ~~The provisions of 7-6-2401 through 7-6-2413 do not apply to~~ *County commissioners in* counties ~~having a population of less than 15,000 persons according to the most recent federal census~~ *to which subsection (1) does not apply may create a county auditor's position, either as a full-time or a part-time position or in combination with another position pursuant to 7-4-2301.*

(3) The provisions of 7-6-2403 through 7-6-2412 do not apply to counties that do not have county auditors."

Section 2. Repealer. Section 7-6-2402, MCA, is repealed.

Ap proved March 27, 2003

CHAPTER NO. 146

[HB 402]

AN ACT INCREASING THE MAXIMUM IMPRISONMENT PENALTIES AND REQUIRING OFFENDER REGISTRATION FOR THE CRIME OF OPERATING AN UNLAWFUL CLANDESTINE ILLEGAL DRUG LABORATORY; AND AMENDING SECTIONS 45-9-132 AND 46-23-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-132, MCA, is amended to read:

"45-9-132. Operation of unlawful clandestine laboratory — penalties. (1) A person commits the offense of operation of an unlawful clandestine laboratory if the person purposely or knowingly engages in:

(a) the procurement, possession, or use of chemicals, precursors to dangerous drugs, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;

(b) the transportation of or arranging for the transportation of chemicals, precursors to dangerous drugs, supplies, or equipment for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110; or

(c) the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110.

(2) Except as provided in subsections (3) and (4), a person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $25,000, be imprisoned in a state prison for a term not to exceed ~~20~~ *40* years, or both.

(3) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $50,000, be imprisoned in a state prison for a term not to exceed ~~25~~ *50* years, or both, if 46-1-401 is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation:

(a) created a substantial risk of death of or serious bodily injury to another;

(b) took place within 500 feet of a residence, business, church, or school; or

(c) took place in the presence of a person less than 18 years of age.

(4) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $100,000, be imprisoned in a state prison for a term not to exceed ~~40~~ *50* years, or both, if 46-1-401 is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation involved the use of a firearm or booby trap."

Section 2. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a).

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-401, ~~or~~ 45-6-103, *or 45-9-132*; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Ap proved March 27, 2003

CHAPTER NO. 147

[HB 436]

AN ACT ELIMINATING COMPLIANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT FOR STATE LAND LEASES THAT ARE SUBJECT TO FURTHER PERMITTING REQUIREMENTS; AMENDING SECTION 77-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-121, MCA, is amended to read:

"77-1-121. Environmental review — exemptions. (1) *(a)* ~~The~~ *Except as provided in subsection (1)(b), the* department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing

provisions within Title 77 only if the department is actively proposing to issue a sale, exchange, right-of-way, easement, placement of improvement, lease, license, or permit, or is acting in response to an application for an authorization for such a proposal.

(b) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease that expressly states that the lease is subject to further permitting under any of the provisions of Title 75 or 82.

(2) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board chooses not to take any action, even though either may have the authority to take an action.

(3) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

(a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;

(b) development or adoption of zoning regulations;

(c) review of a proposed subdivision pursuant to Title 76, chapter 3;

(d) actions related to annexation;

(e) development or adoption of plans or reports on extension of services; and

(f) other actions that are related to local planning."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 27, 2003

CHAPTER NO. 148

[HB 455]

AN ACT PROVIDING FOR THE INSPECTION AND REGULATION OF NONCOMMERCIAL FEEDS; CLARIFYING THAT THE DEPARTMENT OF AGRICULTURE HAS ACCESS TO PREMISES IN ADDITION TO COMMERCIAL ESTABLISHMENTS TO CONDUCT FEED INSPECTIONS FOR THE PURPOSE OF PROTECTING HUMAN AND ANIMAL HEALTH AND SAFETY; AMENDING SECTIONS 80-9-101 AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-9-101, MCA, is amended to read:

"80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "AOAC international" means the association of official analytical chemists.

(2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) *(a)* "Commercial feed" means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically ~~exempted~~ *excluded* by law.

(b) ~~Unmixed~~ *The term does not include unmixed* whole seeds and physically altered entire unmixed seeds~~,~~ when those seeds are not chemically changed or adulterated within the meaning of 80-9-204~~, are exempt~~. The department may by rule ~~exempt~~ *exclude* from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(4) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract ~~whereby~~ *under which* the commercial feed is supplied, furnished, or otherwise provided to that person and ~~whereby~~ *under which* that person's remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

(5) "Customer formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to *the* specific instructions of the final purchaser.

(6) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(7) "Distributor" means a person who distributes *commercial feed.*

(8) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

(9) "Feed ingredient" means each of the constituent materials making up a commercial feed *or a noncommercial feed*.

(10) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(11) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

(12) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

(13) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(14) (a) "Noncommercial feed" means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or

adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

~~(14)~~*(15)* "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

~~(15)~~*(16)* "Percent" or "percentage" means percentage by weights.

~~(16)~~*(17)* "Person" means an individual, partnership, corporation, or association.

~~(17)~~*(18)* "Pet" means any domesticated animal normally maintained in or near the household of its owner.

~~(18)~~*(19)* "Pet food" means any commercial feed prepared and distributed for consumption by pets.

~~(19)~~*(20)* "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

~~(20)~~*(21)* "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

~~(21)~~*(22)* "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~(22)~~*(23)* "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

~~(23)~~*(24)* "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 2. Section 80-9-301, MCA, is amended to read:

"80-9-301. Enforcement — inspection — notice — sampling and analysis. (1) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, distributed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in ~~them~~ *a factory, warehouse, establishment, or vehicle.* The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(14).

(2) The department may enter premises to inspect, sample, and analyze noncommercial feeds and ingredients. The department shall provide at least 2 hours' notice prior to the inspection and must be accompanied by the owner or the owner's representative. However, the department's authority is limited to determining whether the feeds and ingredients are adulterated for commercial feed purposes as provided in 80-9-204. The department may issue orders or condemn noncommercial feeds in the same manner as provided for commercial feeds in 80-9-302.

~~(2)~~*(3)* Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be notified of the completion.

~~(3)~~*(4)* If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

~~(4)~~*(5)* To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

~~(5)~~*(6)* Sampling and analysis must be conducted in accordance with methods published by AOAC international or with other generally recognized methods.

~~(6)~~*(7)* The results of all analyses of official samples must be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the official sample.

~~(7)~~*(8)* The department, in determining for administrative purposes whether a commercial feed is deficient in any component, must be guided by the official sample as defined in 80-9-101~~(14)~~*(15)* and obtained and analyzed as provided for in subsections ~~(3)~~ *(4)* through ~~(5)~~ *(6)* of this section.

~~(8)~~*(9)* All official analyses must be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman. However, the department may arrange with other laboratories for specific analyses conducted as part of an official analysis."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 26, 2003

CHAPTER NO. 149

[HB 493]

AN ACT EXEMPTING FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ARRANGEMENT" HEALTH CARE FACILITIES THAT PROVIDE THEIR OWN EMPLOYEES TO PERFORM SERVICES AT AND ON BEHALF OF OTHER HEALTH CARE FACILITIES AND AT AND ON BEHALF OF PRIVATE OFFICES OF OTHER LICENSED HEALTH CARE WORKERS; EXEMPTING HEALTH CARE FACILITIES FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ORGANIZATION"; AND AMENDING SECTION 39-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-8-102, MCA, is amended to read:

"39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person ~~who~~ *that* obtains all or part of its workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Licensee" means a person licensed as a professional employer organization or group under this chapter.

(7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

(8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group; ~~and~~

(iii) arrangements ~~exist~~ *existing* for employment of an independent contractor, as defined in 39-71-120*; and*

(iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(9) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) *(a)* "Professional employer organization" means:

~~(a)~~*(i)* a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

~~(b)~~*(ii)* a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

Ap proved March 26, 2003

CHAPTER NO. 150

[HB 562]

AN ACT REVISING THE LAWS RELATING TO A CUSTOMER'S TELECOMMUNICATIONS CARRIER; PROVIDING THAT AN ELECTRONIC SIGNATURE MAY BE USED TO AUTHORIZE A CHANGE IN A CUSTOMER'S TELECOMMUNICATIONS CARRIER OR TO AUTHORIZE A CHARGE FOR A SERVICE OR PRODUCT TO BE BILLED ON A CUSTOMER'S BILL; ELIMINATING THE REQUIREMENT THAT A TELECOMMUNICATIONS CARRIER OBTAIN A CUSTOMER'S AUTHORIZATION TO PROVIDE SERVICES TO THE CUSTOMER AS A RESULT OF ACQUIRING THE SUBSCRIBER BASE OF ANOTHER CARRIER; AMENDING SECTIONS 69-3-1302 AND 69-3-1303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-1302, MCA, is amended to read:

"69-3-1302. Definitions. As used in this part, the following definitions apply:

~~(1) "Commission" means the public service commission provided for in 2-15-2602.~~

~~(2)~~*(1)* "Customer" means a person who has purchased telecommunications services from a telecommunications carrier.

(2) "Electronic signature" has the meaning as provided in 30-18-102.

(3) "Local exchange company" ~~means the same~~ *has the meaning* as provided in 53-19-302.

(4) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(5) *(a)* "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services is considered a telecommunications carrier only to the extent that the person is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 2. Section 69-3-1303, MCA, is amended to read:

"69-3-1303. Prohibition — exceptions. (1) A telecommunications carrier may not request a change in a customer's primary interexchange carrier or local exchange company ~~except~~ *unless*:

(a) ~~when~~ the requesting carrier has obtained ~~from the customer a document signed by~~ the ~~customer~~ *customer's written or electronic signature on a form* that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) ~~when~~ the customer affected by the change initiates the contact with the carrier in order to request the change; ~~or~~

(c) ~~when~~ the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission*; or*

(d) the change in carrier is the result of a sale or transfer of a subscriber base from one carrier to another and the carrier that has acquired the subscriber base has notified the commission and customers affected by the change in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must ~~be signed by~~ *include the written or electronic signature of* the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

(3) A telecommunications carrier or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications provider or other entity has obtained ~~a document signed by~~ the ~~customer~~ *customer's written or electronic signature on a form* containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(4) The documentation provided for in ~~subsections (3)(a) and (3)(b)~~ *subsection (3)*:

(a) must ~~be signed by~~ *include the written or electronic signature of* the customer responsible for paying the charges on the telecommunications bill; and

(b) may not be a part of a sweepstakes, contest, or similar promotional program.

(5) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier or entity for products or services that the customer did not authorize or that were not provided to the customer.

(6) The provisions of subsections (3), (4), and (5) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 26, 2003

CHAPTER NO. 151

[SB 16]

AN ACT REVISING THE LAWS RELATED TO SCHOOL BOUNDARY TRANSFERS; ESTABLISHING CRITERIA, A STANDARD OF PROOF, AND PROCEDURES FOR TERRITORY TRANSFER HEARINGS; AUTHORIZING AN APPEAL OF THE COUNTY SUPERINTENDENT'S DECISION TO THE DISTRICT COURT; AMENDING SECTIONS 20-3-205, 20-6-214, 20-6-215, 20-6-308, AND 20-6-322, MCA; REPEALING SECTIONS 20-6-213, 20-6-309, AND 20-6-320, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court. (1) Except as provided in 20-6-214, 20-6-215, 20-6-308, and 20-6-322, a petition to transfer territory from one school district to another may be presented to the county superintendent if:

(a) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(b) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(c) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(d) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(2) On or after [the effective date of this act], once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

(i) class size;

(ii) ability to maintain demographic diversity;

(iii) local control;

(iv) parental involvement; and

(v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

(i) safety;

(ii) cost; and

(iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretional levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section.

Section 2. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript ~~and reconcile~~ *of* the district boundaries of the county ~~in accordance with the provisions of 20-6-103~~;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 3. Section 20-6-214, MCA, is amended to read:

"20-6-214. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. *If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of [section 1(1) and (2)] and the resolution must include information outlined in [section 1(3)].* The resolution ~~shall~~ *must* be addressed to the county superintendent of schools who, upon receiving ~~such a~~ *the* resolution, shall proceed *to a hearing* as set forth in ~~20-6-213~~ *[section 1(6)]*."

Section 4. Section 20-6-215, MCA, is amended to read:

"20-6-215. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. ~~This~~ *The* review and any recommended boundary changes *must include information that the territory proposed for transfer complies with the provisions of [section 1(1) through (3)] and* ~~shall~~ *must* be presented by the superintendent at a hearing conducted under ~~20-6-213~~ *[section 1(6)]*. If the superintendent orders a boundary change after the hearing, ~~he~~ *the superintendent* shall forward copies of ~~his~~ *the* review

and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction."

Section 5. Section 20-6-308, MCA, is amended to read:

"20-6-308. ~~Limitations for organization~~ *Organization* of joint high school district. The boundaries of ~~any~~ *a* high school district ~~which~~ *that* encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. ~~Such~~ *The* high school district boundary change ~~shall~~ *must* be a transfer of all the territory located in another county's portion of the same joint elementary district *and must be made pursuant to the procedures provided in [section 1]*. ~~No such boundary change shall be made when:~~

~~(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than $1 million; or~~

~~(2) a portion of the territory to be transferred is less than 3 miles from an operating accredited high school located in another high school district.~~"

Section 6. Section 20-6-322, MCA, is amended to read:

"20-6-322. Boundary adjustments in high school districts. The trustees of a high school district may, by resolution, request a change in the boundaries between their district and an adjacent district. *If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of [section 1(1) and (2)] and the resolution must include information outlined in [section 1(3)].* The resolution must be addressed to the county superintendent of schools who, upon receiving ~~a~~ *the* resolution, shall proceed *to a hearing* as provided in ~~20-6-320~~ *[section 1(6)]*."

Section 7. Repealer. Sections 20-6-213, 20-6-309, and 20-6-320, MCA, are repealed.

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 1, and the provisions of Title 20, chapter 6, part 1, apply to [section 1].

Section 9. Effective date — applicability. [This act] is effective on passage and approval and applies to school territory transfer proceedings beginning on or after [the effective date of this act].

Ap proved March 27, 2003

CHAPTER NO. 152

[SB 19]

AN ACT GENERALLY REVISING LAWS RELATING TO STATE ASSUMPTION OF DISTRICT COURT COSTS; CLARIFYING JURORS' AND WITNESSES' WARRANT PAYMENT PROCESSES; REVISING THE APPOINTING AUTHORITY FOR COURT REPORTERS, JUVENILE PROBATION OFFICERS, AND YOUTH ASSESSMENT OFFICERS; CLARIFYING WORKERS' COMPENSATION REQUIREMENTS FOR INDEPENDENT CONTRACTOR COURT REPORTERS; ELIMINATING STATUTORY PROVISIONS RELATING TO JOB QUALIFICATIONS FOR JUVENILE PROBATION OFFICERS; AMENDING SECTIONS 3-5-510, 3-5-511, 3-5-601, 3-5-902, 3-15-204, 41-5-1701, 41-5-1703, 41-5-1706, AND

41-5-1707, MCA; REPEALING SECTION 41-5-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-510, MCA, is amended to read:

"3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors' Warrants", which must contain ~~the~~ blank warrants ~~and copies~~ as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank warrants ~~and copies~~ as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage. ~~(the~~ *The* distance from any point to the county seat must be determined by the shortest traveled route~~)~~."

Section 2. Section 3-5-511, MCA, is amended to read:

"3-5-511. Procedure in reference to witnesses' warrants. (1) The witnesses in criminal actions shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a *county* warrant ~~taken from a book containing a carbon copy of the warrant~~, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) The *state shall reimburse the clerk for the* amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902."

Section 3. Section 3-5-601, MCA, is amended to read:

"3-5-601. Court reporters — appointment — oath — employment status. (1) The judge of a district court may appoint a reporter for the court who is an officer of the court ~~and holds office at the pleasure of the appointing judge~~. The court reporter shall take the constitutional oath of office and file it with the clerk of court. In districts where there are two or more judges, each judge may appoint a reporter. The judge shall direct the performance of the court reporter's duties.

(2) Court reporter services may be provided by a court reporter appointed:

(a) as a state employee foregoing transcription fees;

(b) as a state employee retaining transcription fees; or

(c) as an independent contractor.

(3) A court reporter appointed under subsection (2)(a) or (2)(b) is subject to classification and compensation as determined by the judicial branch personnel plan adopted under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

(4) (a) If a court reporter is appointed under subsection (2)(a), the state shall provide all equipment and supplies for the reporter's use. Any transcription fees paid for the reporter's transcription services must be forwarded to the department of revenue for deposit in the state general fund.

(b) If a court reporter is appointed under subsection (2)(b), the state shall provide equipment and supplies for the reporter's use, except that the reporter

shall provide and maintain all equipment and supplies for performance of transcription duties unless equipment is shared as provided in subsection (5). A reporter may not receive overtime for time spent on preparation of transcripts for which the reporter retains fees. The reporter shall retain all transcription fees paid for the reporter's transcription services.

(c) A court reporter appointed under subsection (2)(c) shall contract with the judicial branch as an independent contractor. The reporter shall provide and maintain the reporter's necessary equipment and supplies, retain all transcription fees paid for the reporter's transcript preparation services, and maintain professional liability insurance and workers' compensation coverage *unless an exemption from workers' compensation coverage has been obtained pursuant to 39-71-401.*

(5) A court reporter may use state-owned equipment under policies adopted by the district court council under 3-1-1602 to avoid duplication of equipment costs. Use of shared equipment under this subsection is not a violation of 2-2-121(2)(a)."

Section 4. Section 3-5-902, MCA, is amended to read:

"3-5-902. Fiscal administration for payment of court expenses. The supreme court administrator shall establish procedures for disbursement of funds for payment of district court expenses listed in 3-5-901 *and other statutorily assumed or reimbursable district court costs and expenses* and record payments at a detailed level for budgeting and auditing purposes."

Section 5. Section 3-15-204, MCA, is amended to read:

"3-15-204. (Temporary) Duties of clerk as to jurors. (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk shall give to each juror, at the time that the juror is excused from further service, a *county* warrant signed by the clerk, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The *state shall reimburse the clerk for the* amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902.

3-15-204. (Effective on occurrence of contingency) Duties of clerk as to jurors. (1) The clerk shall keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk shall give to each juror, at the time that the juror is excused from further service, a *county* warrant signed by the clerk, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) The *state shall reimburse the clerk for the* amount specified in the warrant ~~must be paid by the state~~ as provided in 3-5-901 and 3-5-902.

(4) The clerk of court for the county in which an asbestos-related claim is tried shall perform the functions required in subsections (1) through (3). The payment of costs incurred under this section must be made from the asbestos claims administration fund provided for in 3-20-104."

Section 6. Section 41-5-1701, MCA, is amended to read:

"41-5-1701. ~~Appointment~~ *Employment* of juvenile probation officers *and youth court staff.* ~~(1) The youth court judge of each judicial district shall appoint probation officers, deputy probation officers, and part-time probation officers necessary to administer this chapter. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also ensure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. A person while serving as a law enforcement officer may not be appointed or perform the duties of a full-time or part-time probation officer.~~

~~(2)~~ All probation officers and youth ~~division office~~ *court* staff ~~hired or appointed under subsection (1)~~ are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18."

Section 7. Section 41-5-1703, MCA, is amended to read:

"41-5-1703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-1302;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under the probation officer's supervision, including enforcement of the terms of probation or intervention;

(d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;

(e) perform any other functions designated by the court.

(2) A probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the probation officer's duties except that a probation officer may take into custody any youth who violates either the youth's probation or a lawful order of the court.

(3) The duties of a full-time or part-time probation officer may not be performed by a person serving as a law enforcement officer."

Section 8. Section 41-5-1706, MCA, is amended to read:

"41-5-1706. Juvenile probation officer training. (1) The department of justice may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

~~(3) A juvenile probation officer is entitled to the officer's salary and expenses, as provided in 2-18-501 through 2-18-503, while attending a program or training course. The court shall also pay any program or course registration fee.~~

(3) Each chief probation officer and deputy probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers in a program or course conducted by the department of justice or approved by the board of crime control.

(4) The board may adopt rules to implement this section."

Section 9. Section 41-5-1707, MCA, is amended to read:

"41-5-1707. ~~Designation of assessment~~ *Assessment* officers — duties — *access to records.* ~~(1) The youth court judge of each judicial district may appoint and supervise assessment officers necessary to administer this chapter. Assessment officers appointed under this section are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.~~

~~(2)~~*(1)* An assessment officer *employed by the state judicial branch* shall perform the duties set out in 41-5-1201 and 41-5-1302.

~~(3)~~*(2)* Proceedings under 41-5-1201 and 41-5-1302 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom that information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student."

Section 10. Repealer. Section 41-5-1702, MCA, is repealed.

Section 11. Effective date. [This act] is effective on passage and approval.

Ap proved March 26, 2003

CHAPTER NO. 153

[SB 20]

AN ACT EXEMPTING COURT REPORTERS APPOINTED AS INDEPENDENT CONTRACTORS FROM THE MONTANA PROCUREMENT ACT; AMENDING SECTION 18-4-132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by

this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; ~~or~~

(h) a claims adjuster*; or*

(i) a court reporter appointed as an independent contractor under 3-5-601.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 26, 2003

CHAPTER NO. 154

[SB 68]

AN ACT PROVIDING THAT A CIRCUMSTANCE OR FACT USED TO ENHANCE A PENALTY OR AN AGGRAVATING CIRCUMSTANCE USED TO IMPOSE A DEATH PENALTY MUST BE PLEADED AND ADMITTED OR MUST BE FOUND BY THE TRIER OF FACT BEYOND A REASONABLE DOUBT; AND AMENDING SECTIONS 46-1-401, 46-18-302, 46-18-305, AND 46-18-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-1-401, MCA, is amended to read:

"46-1-401. ~~Incarceration penalty~~ *Penalty* enhancement — pleading, proof, and mental state requirements. (1) A court may not impose ~~an incarceration~~ *a* penalty enhancement specified in Title 45, Title 46, or any other provision of law unless:

(a) the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the enhancing act, omission, or fact;

(b) if the case was tried before a jury, the jury unanimously found in a separate finding that the enhancing act, omission, or fact occurred beyond a reasonable doubt; ~~and~~

(c) if the case was tried to the court without a jury, the court finds beyond a reasonable doubt that the enhancing act, omission, or fact occurred*; and*

(d) a defendant who knowingly and voluntarily pleaded guilty to an offense also admitted to the enhancing act, omission, or fact.

(2) The enhancement issue may be submitted to a jury on a form separate from the verdict form or may be separately stated on the verdict form. The jury must be instructed that it is to reach a verdict on the offense charged in the information, complaint, or indictment before the jury can consider whether the enhancing act, omission, or fact occurred.

(3) An enhancing act, omission, or fact is an act, omission, or fact, whether stated in the statute defining the charged offense or stated in another statute, that is not included in the statutory definition of the elements of the charged offense and that allows or requires a sentencing court to add to, as provided by statute, ~~an incarceration period~~ *a penalty* provided by statute for the charged offense or to impose the death penalty instead of a statutory incarceration period provided by statute for the charged offense. *Except as provided in subsection (4), the aggravating circumstances contained in 46-18-303 are enhancing acts, omissions, or facts.*

~~(4)~~*(4)* Use of the fact of one or more prior convictions for the same type of offense or for one or more other types of offenses to enhance the ~~incarceration~~ penalty for a charged offense is ~~not~~ *not* subject to the requirements of this section."

Section 2. Section 46-18-302, MCA, is amended to read:

"46-18-302. Evidence that may be received. ~~In~~ *(1) (a) Subject to subsection (1)(b), in* the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to*:*

(i) the nature and circumstances of the crime;

(ii) the defendant's character, background, history, and mental and physical condition;

(iii) the harm caused to the victim and the victim's family as a result of the offense; and

(iv) any other facts in aggravation or mitigation of the penalty.

(b) Evidence of an aggravating circumstance may not be admitted or considered unless the defendant pleaded guilty to the offense and admitted the aggravating circumstance or the trier of fact found beyond a reasonable doubt that the aggravating circumstance existed.

(2) Any evidence that the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to aggravating or mitigating circumstances must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or the defendant's counsel must be permitted to present argument for or against sentence of death."

Section 3. Section 46-18-305, MCA, is amended to read:

"46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if ~~it finds one or more of the aggravating circumstances~~ *the trier of fact found beyond a reasonable doubt, or the defendant pleaded guilty to the offense and admitted to, one or more aggravating circumstances* and *the court* finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense."

Section 4. Section 46-18-310, MCA, is amended to read:

"46-18-310. Supreme court's determination as to ~~the~~ sentence. (1) The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(a) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(b) whether the evidence supports the *trier of fact's finding of the existence or nonexistence of the aggravating circumstances enumerated in 46-18-303 and the sentencing* judge's finding of the existence or nonexistence of the ~~aggravating or~~ mitigating circumstances enumerated in ~~46-18-303 and~~ 46-18-304; and

(c) whether the sentence of death is excessive or disproportionate to the penalty imposed in other cases in which a sentencing hearing was held pursuant to 46-18-301, whether the sentence imposed was death or a sentence other than death, considering both the crime and the defendant. The court shall include in its decision a reference to those other cases it took into consideration.

(2) The supreme court shall uphold the sentencing court's findings of fact issued pursuant to 46-18-306 unless those findings are clearly erroneous. The

supreme court may not substitute its judgment for that of the sentencing court in:

(a) assessing the credibility of witnesses;

(b) drawing inferences from testimonial, physical, documentary, or other evidence; or

(c) resolving conflicts in the evidence presented at the sentencing hearing or considered by the sentencing court."

Ap proved March 26, 2003

CHAPTER NO. 155

[SB 71]

AN ACT REVISING THE DEFINITION OF "LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICE" WITH RESPECT TO ELIGIBILITY FOR AN INCOME TAX CREDIT; REMOVING THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S RULEMAKING AUTHORITY FOR ESTABLISHING EMISSION TESTING AND EMISSION CERTIFICATION STANDARDS FOR LOW EMISSION WOOD OR BIOMASS COMBUSTION DEVICES; AMENDING SECTIONS 15-32-102 AND 15-32-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative energy system" means the generation system or equipment used to convert energy sources into usable sources using fuel cells that do not require hydrocarbon fuel, geothermal systems, low emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 1 megawatt, and other recognized nonfossil forms of energy generation.

(2) "Building" means:

(a) a single or multiple dwelling, including a mobile home or manufactured home; or

(b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and a roof.

(3) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(4) "Energy conservation purpose" means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(5) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(6) "Low emission wood or biomass combustion device" means a ~~noncatalytic stove or furnace that~~ *wood-burning appliance*:

~~(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and~~

~~(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or~~

~~(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or~~

~~(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.~~

(a) certified by the U.S. environmental protection agency pursuant to 40 CFR 60.533; or

(b) that uses wood pellets as its primary source of fuel.

(7) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(8) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources, including electricity, by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste;

(iv) the decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells that do not require hydrocarbon fuel; or

(vii) an alternative energy system;

(b) a system that produces electric power from biomass or solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 2. Section 15-32-203, MCA, is amended to read:

"15-32-203. Department to make rules. ~~(1)~~ The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

~~(2) The department of environmental quality shall adopt rules establishing emission testing and emission certification standards for low-emission wood or~~

~~biomass combustion devices and shall maintain a list of the devices that are certified.~~"

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001.

Ap proved March 26, 2003

CHAPTER NO. 156

[SB 144]

AN ACT GENERALLY REVISING STATE SECURITIES LAWS; MODIFYING THE INDIVIDUALS NOT INCLUDED IN THE DEFINITION OF "SALESPERSON"; PROVIDING FOR A CHARGE OF 50 CENTS FOR EACH PAGE FOR OBTAINING CERTAIN COPIES FROM THE SECURITIES COMMISSIONER; PROVIDING A $50 FEE FOR AN ISSUER FILING A NAME CHANGE FOR A SERIES, PORTFOLIO, OR OTHER SUBDIVISION OF AN INVESTMENT COMPANY OR SIMILAR ISSUER; REQUIRING THE FILING OF CERTAIN DOCUMENTS WITH RESPECT TO FEDERAL COVERED SECURITIES; AND AMENDING SECTIONS 30-10-103, 30-10-107, 30-10-209, AND 30-10-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of

securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents:

(a) an issuer in:

(i) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 ~~for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933~~ *if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer*; or

(iv) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 2. Section 30-10-107, MCA, is amended to read:

"30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter must be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out the provisions of parts 1 through 3 of this

chapter. A rule or form may not be adopted unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports whenever practicable.

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information filed with or obtained by the commissioner and not made public. The provisions of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or employees to disclose any information or the fact that an investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to an act done or omitted in good faith in conformity with a rule, form, or order of the commissioner, ~~notwithstanding that~~ *even though* the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding must be public.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders that have ever been entered under parts 1 through 3 of this chapter. The register must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under rules the commissioner prescribes.

(6) Upon request and at a ~~reasonable~~ charge *of 50 cents for each page,* the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document that is a matter of public record. In a proceeding or prosecution under parts 1 through 3 of this chapter, a certified copy is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, the securities registration depository, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last-recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed."

Section 3. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of $200 for the first $100,000 of initial issue or portion of the first $100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum fee of $1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than $200 or more than $1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. *The issuer shall pay a fee of $50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.*

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer. A salesperson who is ~~dually~~ registered as an investment adviser representative with a broker-dealer ~~dually~~ registered as an investment adviser is not required to pay the $50 fee to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is $200 for the initial notice filing and $200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) Except for portfolio notice filing fees established in this section, all fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund."

Section 4. Section 30-10-211, MCA, is amended to read:

"30-10-211. Federal covered securities. (1) ~~The commissioner may require an~~ *An* issuer *is required* to file ~~any or all of~~ the following documents with respect to a federal covered security provided for in section 18(b)(2) of the Securities Act of 1933:

(a) documents that are part of a current federal registration statement filed with the securities and exchange commission or amendments to a current registration statement filed with the securities and exchange commission;

(b) a consent to the service of process signed by the issuer and payment of the fee required in 30-10-209; and

(c) annual or periodic reports of the value of the federal covered securities offered or sold in this state.

(2) ~~The commissioner may require the~~ *The* issuer of a federal covered security under 18(b)(4)(D) of the Securities Act of 1933 *is required* to file within 15 days after the first sale in this state a notice on a form prescribed by the commissioner and a consent to service of process and ~~may require the issuer~~ *is required* to pay the notice filing fee prescribed in 30-10-209.

(3) The commissioner may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed in 30-10-209.

(4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal covered security if the commissioner finds that the order is in the public interest and there is a failure to comply with any requirement of this section.

(5) The commissioner may waive any of the provisions of this section."

Ap proved March 26, 2003

CHAPTER NO. 157

[HB 156]

AN ACT REVISING THE ABILITY TO PLACE A YOUTH ADJUDICATED DELINQUENT FOR AN ACT THAT WOULD BE A MISDEMEANOR IF COMMITTED BY AN ADULT IN A STATE YOUTH CORRECTIONAL FACILITY; AND AMENDING SECTION 41-5-1513, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-1513, MCA, is amended to read:

"41-5-1513. Disposition — delinquent youth — restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. ~~The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth.~~ The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). *The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:*

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

Ap proved March 28, 2003

CHAPTER NO. 158

[HB 176]

AN ACT PROVIDING FOR THE FUNDING OF ADMINISTRATIVE EXPENSES ASSOCIATED WITH REGIONAL DRINKING WATER SYSTEMS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; MODIFYING THE RESPONSIBILITY FOR ADMINISTRATION OF THE FUNDS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-715, MCA, is amended to read:

"90-6-715. (Temporary) Special revenue account — use. (1) The treasure state endowment regional water system special revenue account may be used to provide matching funds to plan and construct regional drinking water systems in Montana *and to provide funding of administrative expenses for state and local entities associated with regional drinking water systems*. ~~Each~~ *Except for the administrative expenses provided for in this subsection, each* state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

(2) Up to 25% of the local matching funds required under subsection (1) for the treasure state endowment regional water system may be in the form of debt that was incurred by local government entities included in the regional water system to construct individual drinking water systems before the individual systems were connected to the regional system. However, the amount of an individual entity's debt that may be used for matching funds is limited to the amount necessary to allow the entity to maintain its water service charges below the hardship standard established by the department through administrative rules adopted under 90-6-710(4).

(3) The funds in the account are further restricted to be used to finance regional drinking water systems that supply water to large geographical areas and serve multiple local governments, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(4) The funds must be administered by the department of ~~commerce~~ *natural resources and conservation* for eligible projects. (Terminates June 30, 2016—sec. 1, Ch. 70, L. 2001.)"

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved March 28, 2003

CHAPTER NO. 159

[HB 391]

AN ACT CORRECTING INDIVIDUAL AND CORPORATE TAX LAW THAT RELATES TO FEDERAL TAX LAW, INCLUDING THE TAX ON LUMP-SUM DISTRIBUTIONS, THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT, AND THE SMALL BUSINESS INVESTMENT TAX CREDIT; AMENDING SECTIONS 15-30-106, 15-32-402, AND 15-32-405, MCA; REPEALING SECTIONS 15-30-161, 15-30-162, AND 15-31-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-106, MCA, is amended to read:

"15-30-106. Tax on lump-sum distributions. (1) ~~There is~~ *A separate tax is* imposed ~~a separate tax~~ on *that portion of a* lump-sum ~~distributions~~ *distribution for which a deduction was allowed by section 62(a)(8) of the Internal Revenue Code (now repealed).*

(2) The tax is 10% of the amount of tax determined under section ~~402(e)~~ *402(d)* of the Internal Revenue Code ~~of 1954, as amended, or as section 402(e) may be renumbered or amended~~ *that was in effect and applicable to a distribution before amendment by section 1401 of Public Law 104-188.*

(3) All means available for the administration and enforcement of income taxes ~~shall~~ *must* be applied to the tax on lump-sum distributions."

Section 2. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit — alternative energy systems. (1) An individual, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of $5,000 or more in certain depreciable property qualifying under section ~~38~~ *48(a)* of the Internal Revenue Code of ~~1954~~ *1986,* as amended, for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify *as energy property* under section ~~38~~ *48(a)(3)* of the Internal Revenue Code of ~~1954~~ *1986,* as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

Section 3. Section 15-32-405, MCA, is amended to read:

"15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by ~~15-30-162 and 15-31-123 through~~ *15-31-124 and* 15-31-125, may be claimed for the investment. Property tax reduction allowed by 15-6-201~~(3)~~*(4)* may not be applied to a facility for which a credit is claimed pursuant to this part."

Section 4. Repealer. Sections 15-30-161, 15-30-162, and 15-31-123, MCA, are repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1999.

(2) [Section 2] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001.

Ap proved March 28, 2003

CHAPTER NO. 160

[HB 429]

AN ACT ESTABLISHING A PROPERTY TAX EXEMPTION STUDY COMMITTEE; PROVIDING AN APPROPRIATION TO THE COMMITTEE; AND PROVIDING EFFECTIVE DATES.

WHEREAS, property has been and continues to be taken off the property tax rolls under the property tax exemption laws; and

WHEREAS, local governments and school districts experience financial constraints because of property tax exemptions; and

WHEREAS, other property taxpayers bear a larger tax burden because of property tax exemptions; and

WHEREAS, it is the goal of the Legislature to ensure that Montana has an equitable property tax system; and

WHEREAS, it is the desire of the Legislature to determine whether existing property tax exemptions contribute to or impede the goal of an equitable property tax system.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax reform study committee. (1) There is a property tax exemption study committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) one representative of local government;

(ii) one representative of K-12 public schools;

(iii) two representatives of property tax-exempt organizations;

(iv) one representative of business; and

(v) one representative of the executive branch.

(2) Committee members must be appointed by July 1, 2003.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) The committee is attached to the department of revenue for administrative purposes. The committee may request staff assistance and other resources from legislative agencies, appropriate state agencies, and private entities.

(5) (a) The members of the committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committee may adopt rules of procedure for conducting meetings.

(6) The purpose of the committee is to conduct a study of property tax exemptions. The committee shall determine whether property tax exemptions contribute to or impede the goal of an equitable property tax system and determine whether existing property tax exemption laws should be modified or repealed in order to achieve the goal of an equitable property tax system.

(7) Based on the analyses conducted under subsection (6), the committee shall submit a written report to the governor and the legislature not later than November 1, 2004, that must include options, if options are considered necessary, and proposed legislation necessary to implement any proposals.

(8) (a) Legislators serving on the committee must be reimbursed and compensated, as provided for in 5-2-302, for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Nonlegislative members of the committee may not be reimbursed for expenses incurred in attending meetings or conducting committee business.

Section 2. Appropriation. There is appropriated from the general fund to the committee created pursuant to [section 1] $6,000 for the biennium for the operating expenses and personnel expenses of the committee.

Section 3. Effective dates. (1) [Section 1 and this section] are effective on passage and approval.

(2) [Section 2] is effective July 1, 2003.

Ap proved March 28, 2003

CHAPTER NO. 161

[HB 683]

AN ACT REVISING REQUIREMENTS FOR A CHANGE IN A WATER APPROPRIATION RIGHT; AUTHORIZING A CHANGE IN A WATER APPROPRIATION RIGHT WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR A REPLACEMENT WELL FOR A MUNICIPAL WELL WHEN THE APPROPRIATION DOES NOT EXCEED 450 GALLONS A MINUTE; AUTHORIZING THE CONSTRUCTION OF CERTAIN REDUNDANT WELLS WITHOUT THE PRIOR APPROVAL OF THE DEPARTMENT, SUBJECT TO CERTAIN REQUIREMENTS; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ *subsections (15) and (16)* of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), ~~and~~ (15), *and (16),* the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed*:*

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year *for all other wells*;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice

to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995; sec. 14, Ch. 487, L. 1995.)

85-2-402. (Effective July 1, 2005) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ *subsections (15) and (16)* of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), ~~and~~ (15)*, and (16)*, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned

uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed*:*

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year *for all other wells*;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).<eff>

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-402. (Effective July 1, 2009) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed.

In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and ~~subsection (15)~~ *subsections (15) and (16)* of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), ~~and~~ (15), *and (16)*, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed*:*

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year *for all other wells*;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved March 28, 2003

CHAPTER NO. 162

[SB 45]

AN ACT INCREASING THE LIMIT ON CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES THAT MAY BE DIRECTLY NEGOTIATED BY A GOVERNMENTAL AGENCY; AMENDING SECTIONS 18-8-212 AND 85-1-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-212, MCA, is amended to read:

"18-8-212. Exception. (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed ~~$10,000~~ *$20,000* may contract for those professional services by direct negotiation.

(2) ~~No~~ *An* agency may *not* separate service contracts or split or break projects for the purpose of circumventing the provisions of this part."

Section 2. Section 85-1-219, MCA, is amended to read:

"85-1-219. State-owned works — department approval — bids — procurement of goods and services. (1) For all state-owned works constructed, repaired, altered, improved, maintained, rehabilitated, or reconstructed, the department shall:

(a) review and approve all plans and working drawings prepared by engineers or architects, if any;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder, considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and approve all change orders;

(e) accept the works when completed according to approved plans and specifications.

(2) Except as provided in subsection (3), the department shall solicit sealed, competitive bids before awarding a contract under subsection (1) and may award a contract only after receipt of at least one bid, if reasonably available.

(3) The department may negotiate a contract, without competitive bidding, with a contractor qualified to do business in Montana if:

(a) the department rejects all bids for the work;

(b) an emergency threatening life or property exists;

(c) the proposed construction costs are $50,000 or less;

(d) an exigency exists; ~~or~~

(e) the cost of goods, nonconstruction services, or professional services is $15,000 or less*; or*

(f) the cost of architectural, engineering, and land surveying services is $20,000 or less.

(4) (a) Except as provided in subsection (4)(b), the provisions of Title 18, chapter 2, parts 2 through 4, apply to contracts awarded for construction under this section.

(b) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to contracts for which the proposed construction costs are $50,000 or less.

(c) The requirements of Title 18, chapter 4, do not apply to contracts for which the cost of goods or nonconstruction services is $15,000 or less.

(d) *(i)* ~~The~~ *Except as provided in subsection (4)(d)(ii), the* department may contract for professional services by direct negotiation when the cost of professional services covered by the contract does not exceed $15,000.

(ii) The department may contract for architectural, engineering, and land surveying services by direct negotiation when the cost of the services covered by the contract does not exceed $20,000.

(iii) The department may not separate service contracts or split or break projects for the purpose of circumventing the provisions of Title 18, chapter 8, part 2."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 28, 2003

CHAPTER NO. 163

[SB 55]

AN ACT PROVIDING FOR A 3-MONTH COMMUNITY COMMITMENT UNLESS THERE HAS BEEN EVIDENCE OF A PREVIOUS INVOLUNTARY COMMITMENT FOR INPATIENT TREATMENT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTION 53-21-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) commit the respondent to the state hospital for a period of not more than 3 months; or

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements *or conditions as provided in 53-21-149*, for a period of*:*

(i) not more than ~~6~~ *3* months*; or*

(ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the community rather than a more restrictive placement in the state hospital if a respondent has been previously involuntarily committed for inpatient treatment in a mental health facility and the court determines that the admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190.

(4) Except as provided in subsection (3)(b)*(ii)*, a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed

by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment as provided in subsection (3)(b), and may not require commitment at the state hospital.

(8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; and

(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

Ap proved March 28, 2003

CHAPTER NO. 164

[SB 56]

AN ACT LIMITING THE PERIOD OF CONFINEMENT FOR A PERSON FOUND NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT; REQUIRING THE COURT TO DETERMINE THE MAXIMUM PERIOD OF CONFINEMENT AND TO MAKE SPECIFIC FINDINGS REGARDING VICTIMS; AND AMENDING SECTIONS 46-14-214 AND 46-14-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-214, MCA, is amended to read:

"46-14-214. Form of verdict and judgment — *determination of maximum period of confinement — victim findings.* *(1)* When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect the defendant did not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment must state that reason.

(2) The court shall determine on the record the charged offense or offenses or any lesser included offense for which the person otherwise may have been

convicted and the maximum sentence that the defendant may have received. If there is more than one offense charged, the maximum sentence is limited to the longest single sentence from all charged offenses.

(3) The court shall make specific findings regarding whether there is a victim of the crime for which the defendant is found not guilty and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant."

Section 2. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge — *limitation on confinement.* (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of the department of public health and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others;

(b) an imminent threat of physical injury to the person or others; or

(c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. *The period of commitment may not exceed the maximum sentence determined under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment proceedings may be instituted in the manner provided in Title 53, chapter 21.*

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

Ap proved March 28, 2003

CHAPTER NO. 165

[SB 64]

AN ACT PROVIDING THAT NOTICE OF THE FILING OF PETITIONS FOR CIVIL COMMITMENT OF PERSONS ALLEGED TO SUFFER FROM A MENTAL DISORDER BE GIVEN TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND ANY MENTAL HEALTH FACILITY TO WHICH THE PETITIONS REQUIRE COMMITMENT; AMENDING SECTION 53-21-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-121, MCA, is amended to read:

"53-21-121. Petition for commitment — contents of — notice of. (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, including a report by a mental health professional if any, a statement of the disposition sought pursuant to 53-21-127, and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the respondent for whom evaluation is sought; if there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney; ~~and~~

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading*; and*

(i) the name and address of the mental health facility to which it is proposed that the respondent may be committed, if known.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered ~~or~~, mailed*, or sent by a facsimile transmission* to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, ~~and~~ any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent*, the director of the department or the director's designee, and the mental health facility to which the respondent may be committed, if known.* The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 28, 2003

CHAPTER NO. 166

[SB 87]

AN ACT REMOVING THE DEPARTMENT OF AGRICULTURE'S AUTHORITY TO MAKE GRANTS UNDER THE VERTEBRATE PEST MANAGEMENT PROGRAM; AMENDING SECTION 80-7-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-1102, MCA, is amended to read:

"80-7-1102. Expenditures authorized. The department may make expenditures to:

(1) purchase equipment, materials, supplies, and personal services ~~which~~ *that* are necessary to execute the functions imposed on it by this part;

(2) obtain data on vertebrate pesticide registration and research information on alternative vertebrate pest management techniques;

(3) conduct research or evaluation studies;

(4) ~~make grants to or~~ enter contracts with individuals, universities, other states, state or federal agencies, or other entities it considers appropriate to conduct vertebrate pest management projects;

(5) maintain and support registration of current rodenticides such as compound 1080, strychnine, and zinc phosphide;

(6) seek registration of alternative rodenticides;

(7) develop and implement new vertebrate pest management methods and crop damage assessment techniques;

(8) support vertebrate pest management research and evaluation projects;

(9) educate the agricultural community regarding vertebrate pest management problems and needs;

(10) educate the general public regarding vertebrate pest concerns and the need for vertebrate pest management; and

(11) perform any other related activities."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 28, 2003

CHAPTER NO. 167

[SB 102]

AN ACT INCREASING TO 40 YEARS FROM 10 YEARS THE ALLOWABLE LENGTH OF TIME THAT THE DEPARTMENT OF TRANSPORTATION MAY LEASE AIRPORTS OR SIMILAR PROPERTY; AND AMENDING SECTION 67-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-2-302, MCA, is amended to read:

"67-2-302. State airports — operation. (1) The department may:

(a) lease, for a term not exceeding ~~10~~ *40* years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either ~~of them,~~ for operation;

(b) lease or assign, for a term not exceeding 10 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality ~~thereof~~ *of the United States* for *purposes incidental to or for* aeronautical purposes ~~or purposes incidental thereto~~; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in

~~so doing~~ *conferring the concessions,* the public may not be deprived of its rightful, equal, and uniform use ~~thereof~~ *of the subject of the concessions*.

(2) ~~It~~ *The department* may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the ~~properties~~ *property* may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges ~~shall~~ *must* be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations."

Ap proved March 28, 2003

CHAPTER NO. 168

[HB 30]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO PERMIT THE INSTALLATION OF ELECTRONIC COMMUNICATION EQUIPMENT AND ELECTRONIC INFORMATIONAL KIOSKS ON A HIGHWAY RIGHT-OF-WAY, INCLUDING A CONTROLLED-ACCESS FACILITY; ALLOWING THE DEPARTMENT TO SET TERMS AND CONDITIONS FOR THE EQUIPMENT OR KIOSKS; ALLOWING A FEE AND PROVIDING FOR THE DEPOSIT OF THE FEE; AND AMENDING SECTION 60-5-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-5-110, MCA, is amended to read:

"60-5-110. Commercial enterprise or structure prohibited — exception. *(1)* Except as provided in 60-5-505 *and subsection (2) of this section*, ~~no~~ *a* commercial enterprise or structure ~~shall~~ *may not* be ~~constructed or~~ operated on the publicly owned *or leased* right-of-way of a controlled-access highway or *controlled-access* facility ~~or on any publicly leased land used in connection therewith~~.

(2) The department may, under the terms and conditions that it considers appropriate, install or allow others to install electronic communication equipment or electronic informational kiosks on the right-of-way of any state highway, including a controlled-access facility. The department may charge a fee for the use of the equipment or kiosk. The fees must be deposited in the nonrestricted highway state special revenue account to be used for highway purposes."

Ap proved March 28, 2003

CHAPTER NO. 169

[HB 60]

AN ACT PROHIBITING THE GOVERNOR FROM DIRECTING A REDUCTION IN SPENDING FOR THE MONTANA SCHOOL FOR THE DEAF AND BLIND IN THE EVENT OF A PROJECTED GENERAL FUND BUDGET DEFICIT; AMENDING SECTION 17-7-140, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-140, MCA, is amended to read:

"17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must

be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school BASE funding program, including special education; ~~and~~

(e) salaries of elected officials during their terms of office; *and*

(f) the Montana school for the deaf and blind.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-18-107, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to fiscal years beginning on or after July 1, 2003.

Ap proved March 28, 2003

CHAPTER NO. 170

[HB 656]

AN ACT ELIMINATING THE SAFETY EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; AMENDING SECTIONS 39-71-1501, 39-71-1502, AND 39-71-1503, MCA; REPEALING SECTION 2-15-1708, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-1501, MCA, is amended to read:

"39-71-1501. Short title. ~~Section 2-15-1708 and this~~ *This* part may be cited as the "Montana Safety Culture Act"."

Section 2. Section 39-71-1502, MCA, is amended to read:

"39-71-1502. Purpose. The purpose of ~~2-15-1708 and~~ this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees."

Section 3. Section 39-71-1503, MCA, is amended to read:

"39-71-1503. Safety consultation. (1) As used in ~~2-15-1708 and~~ this part, "safety consultation services" means assistance rendered by an insurer to advise and aid an insured employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an insured employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise insured employers relative to risk, exposure, and experience in the insured employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures."

Section 4. Repealer. Section 2-15-1708, MCA, is repealed.

Section 5. Effective date. [This act] is effective July 1, 2003.

Ap proved March 28, 2003

CHAPTER NO. 171

[SB 81]

AN ACT AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO AWARD AN HONORARY HIGH SCHOOL DIPLOMA TO CERTAIN VETERANS WHO DID NOT RECEIVE A DIPLOMA DUE TO MILITARY SERVICE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Honorary high school diploma for certain veterans. (1) The superintendent of public instruction may award an honorary high school diploma to a current or former Montana resident who:

(a) did not receive a high school diploma; and

(b) actively served in the United States armed services during World War II from 1939 through 1947, during the Korean war from 1950 through 1953, or during the Vietnam conflict from 1961 through 1975; and

(i) died in active service;

(ii) was honorably discharged; or

(iii) was released from active duty because of a service-related disability.

(2) (a) The superintendent shall identify acceptable documentation of eligibility and establish procedures for applying for an honorary diploma.

(b) The superintendent may accept an affidavit to support the award if acceptable documentation is not readily available from the military or other sources.

(3) An eligible person shall apply for the diploma on a form provided by the superintendent. If an eligible person is deceased or incapacitated, an immediate family member may apply on the person's behalf.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the provisions of Title 20, chapter 3, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 28, 2003

CHAPTER NO. 172

[SB 190]

AN ACT ESTABLISHING CRITERIA FOR WHEN A LICENSED DENTAL HYGIENIST MAY PROVIDE DENTAL HYGIENE PREVENTATIVE SERVICES WITHOUT THE PRIOR AUTHORIZATION OR PRESENCE OF A LICENSED DENTIST; DEFINING "PUBLIC HEALTH FACILITY" AND "PUBLIC HEALTH SUPERVISION"; REQUIRING THE BOARD OF DENTISTRY TO ADOPT RULES DEFINING THE QUALIFICATIONS NECESSARY TO OBTAIN A LIMITED ACCESS PERMIT; REQUIRING A LICENSED DENTAL HYGIENIST PRACTICING UNDER PUBLIC HEALTH SUPERVISION TO OBTAIN A LIMITED ACCESS PERMIT AND TO FOLLOW CERTAIN GUIDELINES; AND AMENDING SECTION 37-4-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-405, MCA, is amended to read:

"37-4-405. Dental hygienist to practice under supervision of licensed dentist—*exceptions—definitions.* (1) A licensed dental hygienist~~,~~ ~~with the permission of the supervising dentist,~~ may*:*

(a) with the permission of the supervising dentist, practice in the office of a licensed and actively practicing dentist~~, in a public or private institution, under~~

~~a board of health, or in a public clinic authorized by the board,~~ under the general supervision of a licensed dentist; *or*

(b) provide dental hygiene preventative services in a public health facility under the general supervision of a licensed dentist or, subject to the provisions of subsection (4), under public health supervision. ~~however, the~~

(2) A dental hygienist may give instruction in oral hygiene without the *direct supervision or general* supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

~~(2)~~*(3)* For the purposes of this section, ~~"supervision" is defined as follows~~ *the following definitions apply*:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

(c) "public health facility" means:

(i) federally qualified health centers; federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b; nursing homes; extended care facilities; home health agencies; group homes for the elderly, disabled, and youth; head start programs; migrant worker facilities; local public health clinics and facilities; public institutions under the department of public health and human services; and mobile public health clinics; and

(ii) other public health facilities and programs identified by the board under subsection (6); and

(d) "public health supervision" means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

(4) (a) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services that include removal of deposits and stains from the surfaces of teeth, the application of topical fluoride, polishing restorations, root planing, placing of sealants, oral cancer screening, exposing radiographs, and charting of services provided.

(b) A licensed dental hygienist practicing under public health supervision may not provide dental hygiene preventative services that include local anesthesia, denture soft lines, temporary restorations, or any other service prohibited under 37-4-401.

(c) A licensed dental hygienist practicing under public health supervision shall provide:

(i) for the referral to a licensed dentist of any patient needing treatment outside the scope of practice authorized for a licensed dental hygienist under this subsection (4); and

(ii) treatment based upon medical and dental health guidelines adopted by rule by the board.

(5) (a) A dental hygienist practicing under public health supervision shall obtain a limited access permit from the board.

(b) The board shall adopt rules:

(i) defining the qualifications necessary to obtain a limited access permit; and

(ii) providing a process for obtaining a limited access permit.

(c) The provision of services under a limited access permit is limited to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care.

(6) The board may identify, by rule, other public health facilities and programs, in addition to those listed in subsection (3)(c), at which services under a limited access permit may be provided."

Ap proved March 28, 2003

CHAPTER NO. 173

[SB 202]

AN ACT ALLOWING THE BOARD OF PUBLIC EDUCATION TO USE A PORTION OF THE TEACHER CERTIFICATION FEE FOR ACTIVITIES IN SUPPORT OF THE BOARD'S CONSTITUTIONAL AND STATUTORY DUTIES; AND AMENDING SECTION 20-4-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-109, MCA, is amended to read:

"20-4-109. Fees for teacher and specialist certificates. (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed $6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used in the following manner:

(a) $4 for expenses of the certification standards and practices advisory council created in 2-15-1522;

(b) $2 to the board of public education ~~to be used by~~ *and* the certification standards and practices advisory council for ~~research in accordance with the~~ *activities in support of the constitutional and statutory* duties of the *board of public education and the certification standards and practices advisory* council ~~provided for in 20-4-133~~.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account."

Ap proved March 28, 2003

CHAPTER NO. 174

[HB 154]

AN ACT GENERALLY REVISING PROVISIONS OF THE TEACHERS' RETIREMENT SYSTEM; REVISING THE POWERS OF THE BOARD; REVISING THE DUTIES OF EMPLOYERS; CLARIFYING METHODS OF PURCHASING SERVICE; CLARIFYING PROVISIONS ON ESTABLISHING AN ARRANGEMENT FOR PAYMENT OF EXCESS BENEFITS; CLARIFYING DATES RELATED TO PURCHASING OUT-OF-STATE PUBLIC TEACHING SERVICE; PROVIDING THAT BENEFITS MUST BE CORRECTED UPON DISCOVERY OF A FORGED SIGNATURE; PROVIDING THAT COST-OF-LIVING INCREASES MUST BE INCLUDED WITH RESPECT TO MAXIMUM BENEFIT AND MAXIMUM COMPENSATION LIMITS; REVISING THE WAITING PERIOD REQUIRED BEFORE RECEIVING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING PROVISIONS ON TRANSFERRING CREDIT FOR PART-TIME EMPLOYMENT; CLARIFYING PROVISIONS ON RESTORATION OF MEMBERSHIP; ALLOWING BENEFICIARIES TO HAVE CERTAIN INSURANCE PREMIUMS WITHHELD FROM THEIR BENEFIT PAYMENTS; AMENDING SECTIONS 19-20-101, 19-20-201, 19-20-208, 19-20-212, 19-20-402, 19-20-414, 19-20-705, 19-20-710, 19-20-715, 19-20-718, 19-20-719, 19-20-805, 19-20-905, AND 19-20-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code;

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without *an* actuarial ~~or similar~~ reduction in the benefits ~~because of retirement before a specified age~~.

(12) "Part-time service" means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-201, MCA, is amended to read:

"19-20-201. Administration by retirement board. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning ~~as a part of the information required by 17-7-111,~~ detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system;

(g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(h) annually determine the rate of regular interest as prescribed in 19-20-501;

(i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

~~(2)~~*(3)* The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To

facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board."

Section 3. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-804;

~~(5)~~*(6)* whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

~~(6)~~*(7)* at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

~~(7)~~*(8)* notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board;

~~(8)~~*(9)* if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement."

Section 4. Section 19-20-212, MCA, is amended to read:

"19-20-212. (Effective on occurrence of contingency) General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the

federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. ~~The~~ *If the board elects to establish a qualified governmental excess benefit arrangement, the* board shall adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement. The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement. The benefit arrangement must be a separate part of the system. The benefit arrangement is subject to the following requirements:

(a) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(b) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30."

Section 5. Section 19-20-402, MCA, is amended to read:

"19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The

contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after *the salary was reported to the system for the fiscal year beginning* July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 6. Section 19-20-414, MCA, is amended to read:

"19-20-414. ~~Rollover or transfer of accumulated contributions~~ *Payment methods for purchase of service credit.* (1) A member who is eligible to purchase service under this chapter may at any time before retirement apply to ~~roll over or transfer the member's accumulated contributions on deposit with any other eligible retirement plan~~ *purchase the service credit by making payment as provided in this section*.

(2) Subject to subsection (3), service credit may be purchased by one, or a combination of, the following methods:

(a) a lump-sum payment;

(b) installment payments;

(c) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;

(d) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income;

(e) a direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity for permissive service credit, as defined in section 415(n) of the Internal Revenue Code.

(3) (a) The total amount transferred *or rolled over* to the retirement system *pursuant to subsection (2),* may not exceed the amount due to purchase *the* service.

~~(2)~~*(b)* If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

~~(3)~~*(4)* To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by ~~subsection (1)~~ *this section*, the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

(5) If the member dies before having completed the payment required to purchase the service that the member had applied to purchase, the member's surviving spouse may, subject to the rules and regulations of the Internal Revenue Code, apply to complete the member's service purchase as provided in this section. The surviving spouse must apply to complete the payments and pay the balance due to the system prior to the distribution of benefits."

Section 7. Section 19-20-705, MCA, is amended to read:

"19-20-705. Correction of ~~erroneous payments~~ *errors*. (1) If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1)."

Section 8. Section 19-20-710, MCA, is amended to read:

"19-20-710. Maximum benefit limitation. A monthly benefit paid under the retirement system provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code *as adjusted for cost-of-living increases* for calendar years 1988 and ~~thereafter~~ *succeeding years*. However, benefits in excess of those limits may be paid from ~~an~~ *a qualified governmental* excess benefit arrangement subject to ~~19-20-718~~ *19-20-212*."

Section 9. Section 19-20-715, MCA, is amended to read:

"19-20-715. Compensation limit. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code *as adjusted for cost-of-living increases* must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. *Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.*

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up

the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716."

Section 10. Section 19-20-718, MCA, is amended to read:

"19-20-718. (Effective on occurrence of contingency) Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system ~~if the amount of the contribution~~ *that* would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) ~~If the system's law requires a lump-sum payment for purchase of service credit, the~~ *The* board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified *governmental* excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code *if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212*.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of sections 125, *132(f),* 403(b), or 457 of the Internal Revenue Code. *Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.*"

Section 11. Section 19-20-719, MCA, is amended to read:

"19-20-719. Guaranteed annual benefit adjustment — rulemaking. (1) Subject to subsection (3), on January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the ~~retiree's most recent~~

~~retirement effective date is~~ *retiree has received* at least 36 ~~months~~ *monthly retirement benefit payments* prior to January 1 of the year in which the adjustment is to be made.

(3) On January 1, 2002, and January 1 of each year following the system's biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:

(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;

(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and

(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.

(4) The board shall adopt rules to administer the provisions of this section."

Section 12. Section 19-20-805, MCA, is amended to read:

"19-20-805. Earned compensation — part-time service. *(1)* The earned compensation of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time service during the 5 years *immediately* preceding the member's ~~retirement~~ *termination* is the compensation that the member would have earned in the ~~final~~ 3 years *used to calculate average final compensation* had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

(2) (a) Subject to subsection (2)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation may be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit, divided by the member's part-time teachers' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter."

Section 13. Section 19-20-905, MCA, is amended to read:

"19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302, the retiree's retirement allowance must cease. If the retiree is employed *full-time* by an employer covered under this chapter, the retiree shall again become an active member of the retirement system. Any prior service certificate on the basis of which the member's service was computed at the time of the member's disability retirement must be restored to full force, and upon the member's subsequent retirement, the member must be credited with the prior service and all subsequent service as a member.

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member."

Section 14. Section 19-20-1101, MCA, is amended to read:

"19-20-1101. Withholding of group insurance premium from retirement allowance. *(1)* A retired member who is a participant in an employer-sponsored group insurance plan may elect to have the monthly premium for ~~such~~ *the* group insurance withheld from ~~his~~ *the member's* retirement allowance by the retirement system and paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer's insurance carrier."

Section 15. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 175

[HB 621]

AN ACT REMOVING THE DESIGNATION OF THE MONTANA CHIROPRACTIC LEGAL PANEL AS A STATE AGENCY; AMENDING SECTION 27-12-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-12-104, MCA, is amended to read:

"27-12-104. Creation of panel. There is a Montana chiropractic legal panel. The panel is ~~a state agency~~ allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved March 31, 2003

CHAPTER NO. 176

[HB 635]

AN ACT REVISING LAWS RELATING TO ABANDONED, WRECKED, AND DISABLED VEHICLES; ALLOWING CERTAIN ABANDONED VEHICLES TO BE DISPOSED OF IN THE SAME MANNER AS JUNK VEHICLES; PERMITTING A QUALIFIED TOW TRUCK OPERATOR TO OBTAIN A CERTIFICATE OF RELEASE AND A CERTIFICATE OF OWNERSHIP FOR CERTAIN ABANDONED VEHICLES; PERMITTING A QUALIFIED OPERATOR TO OBTAIN A CERTIFICATE OF OWNERSHIP FOR CERTAIN WRECKED OR DAMAGED VEHICLES; AND AMENDING SECTIONS 61-12-402, 61-12-404, 61-12-405, AND 61-12-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after a vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle is being stored of where and when the vehicle was taken into custody and of where the vehicle is being stored. In addition, the Montana highway patrol shall furnish the sheriff or the chief of police:

(a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;

(b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and

(c) any available information concerning the vehicle's ownership.

(2) The highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle was taken into custody of the location at which the vehicle is being stored if the vehicle was removed to a different county.

(3) The sheriff or the city police in the jurisdiction where the vehicle is being stored shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner, lienholder, or person of the location of the vehicle.

(4) If the vehicle is registered in the office of the department, notice is considered to have been given when a certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

(5) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle is being stored is sufficient to meet all requirements of notice pursuant to this part. The notice by publication may contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(6) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required

search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (3) through (5). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(7) *(a)* A vehicle found by law enforcement officials to be a junk vehicle, as defined by 75-10-501, and that has a value of $500 or less may be directly submitted for disposal in accordance with the provisions of Title 75, chapter 10, part 5, upon a release given by the sheriff or the city police. The county representative designated to implement the county motor vehicle recycling and disposal program pursuant to 75-10-521 for the county where the vehicle is being stored shall determine the value of the vehicle. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. ~~A release provided by~~ *If the vehicle is being stored by a motor vehicle wrecking facility,* the sheriff or the city police ~~under this section must be transmitted~~ *shall transmit the release* to the motor vehicle wrecking facility and ~~must be considered by that~~ *the* facility *shall consider the release* to meet the requirements for records under 75-10-512 and 75-10-513. *If the vehicle is being stored by a qualified tow truck operator, as defined in 61-8-903, the sheriff or the city police shall transmit the release to the operator.* Vehicles described in this section may be submitted for disposal without notice and without a required holding period.

(b) A licensed vehicle that otherwise meets the definition of a junk vehicle, as defined in 75-10-501, and that has a value of $500 or less may be directly submitted for disposal as provided in subsection (7)(a)."

Section 2. Section 61-12-404, MCA, is amended to read:

"61-12-404. Sale*or release* of vehicle if not reclaimed. (1) If a vehicle is not reclaimed, as provided in 61-12-403, within 30 days after notification by certified mail or prescribed publication, the sheriff of the county or the city police of the city in which the vehicle is being stored ~~shall~~ *may* sell it at public auction in the manner provided in 25-13-701 through 25-13-709.

(2) If the sheriff or city police elect not to sell a vehicle under subsection (1) and the vehicle is being stored by a qualified tow truck operator, as defined in 61-8-903, the sheriff or city police shall release the vehicle to the qualified tow truck operator.

~~(2)~~*(3)* After a vehicle has been sold pursuant to subsection (1) *or released pursuant to subsection (2),* the former owner or person entitled to possession has no further right, title, claim, or interest in or to the vehicle."

Section 3. Section 61-12-405, MCA, is amended to read:

"61-12-405. Certificate of sale *or release.* (1) *(a)* ~~When any~~ *If a* vehicle is ~~so~~ sold *as provided in 61-12-404(1),* the sheriff or the city police at the time of the payment of the purchase price shall execute a certificate of sale in duplicate and shall deliver the original certificate to the purchaser and retain the copy.

~~(2)~~*(b)* The certificate of sale ~~shall~~ *must* contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle, and a stipulation that no warranty is made as to the condition or title of the vehicle.

(2) (a) If a vehicle is released as provided in 61-12-404(2), the sheriff or city police shall execute a certificate of release to the qualified tow truck operator in

duplicate and shall deliver the original certificate to the operator and retain the copy.

(b) The certificate of release must contain the name and address of the operator, the date of release, a description of the vehicle, including year, make, model, serial number, and license number if available, and a stipulation that no warranty is made as to the condition or title of the vehicle."

Section 4. Section 61-12-406, MCA, is amended to read:

"61-12-406. Issuing certificate of ownership. The department shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale *or upon presentation by the operator of a certificate of release* and payment of the fees required by law."

Section 5. Notice to owner — payment of removal and storage costs — request for reissuance of certificate of ownership. (1) Within 15 days after the date that a wrecked or disabled vehicle is removed from a public roadway by a qualified tow truck operator at the request of a law enforcement officer under 61-8-908, the qualified tow truck operator shall send a certified letter to the vehicle owner or lienholder, as shown in the department's records, notifying the owner or lienholder that the vehicle has been towed and is being stored by the qualified tow truck operator. The certified letter must be sent return receipt requested and postage prepaid to the owner or lienholder at the latest address shown in the department's records.

(2) The owner or lienholder of the vehicle may not reclaim the vehicle until the owner, the lienholder, or the owner's or lienholder's insurance provider has paid the costs incurred by the qualified tow truck operator in removing and storing the vehicle.

(3) If the removal and storage costs have not been paid within 60 days after the date that the notice provided for in subsection (1) was postmarked, the qualified tow truck operator may request, on a form provided by the department, that the department cancel the vehicle's certificate of ownership, remove any perfected security interest, and reissue the certificate of ownership to the qualified tow truck operator. In the request, the qualified tow truck operator shall certify that the notice required in subsection (1) was sent and that the owner or lienholder has not made payment as required in subsection (2). A copy of the notice required in subsection (1) must be attached to the request.

(4) Upon receipt of a valid request as provided in subsection (3), the department shall cancel the certificate of ownership to the vehicle and reissue the certificate of ownership to the qualified tow truck operator. The qualified tow truck operator shall pay all required fees on the vehicle. After the department has reissued the certificate of ownership, the former owner or lienholder has no further right, title, claim, or interest in or to the vehicle.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 5].

Ap proved March 31, 2003

CHAPTER NO. 177

[SB 23]

AN ACT PROVIDING THAT COMMODITY PRODUCERS HOLDING BAILMENT CONTRACTS HAVE A FIRST PRIORITY LIEN; AMENDING SECTION 80-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-420, MCA, is amended to read:

"80-4-420. Producer's lien. (1) Agricultural commodities contained on the premises of a public warehouse operator or commodity dealer, including agricultural commodities owned by the warehouse operator or commodity dealer, are subject to a first priority lien in favor of holders of outstanding warehouse receipts, purchase contracts, scale weight tickets, *bailment contracts,* or any other evidence of storage or sale.

(2) The lien must be preferred to a lien or security interest in favor of a creditor of the warehouse operator or commodity dealer regardless of the time when the creditor's lien or security interest attached to the agricultural commodities. Notice of the lien need not be filed in order to perfect the lien.

(3) The lien is discharged as to agricultural commodities sold by the warehouse operator or commodity dealer to a buyer in the ordinary course of business. The sale does not discharge the lien in favor of an individual holder of outstanding warehouse receipts, purchase contracts, scale weight tickets, *bailment contracts,* or other evidence of storage or sale~~,~~ on the remaining agricultural commodities on the premises."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 178

[SB 26]

AN ACT GENERALLY REVISING TITLE LOAN LAWS; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; ESTABLISHING A SPECIAL REVENUE ACCOUNT UNDER THE MONTANA TITLE LOAN ACT TO BE USED BY THE DEPARTMENT OF ADMINISTRATION IN ITS SUPERVISORY CAPACITY; DEFINING "TITLE LOAN"; CREATING A CIVIL PENALTY FOR CERTAIN ACTIONS BY TITLE LENDERS; ALLOWING TITLE LENDERS TO IMPOSE A SERVICE CHARGE FOR INSUFFICIENT FUNDS CHECKS; PROHIBITING A TITLE LENDER FROM HOLDING A TITLE FOR MORE THAN 30 CALENDAR DAYS WITHOUT PERFECTING THE TITLE LENDER'S SECURITY INTEREST; LIMITING CRIMINAL AND CIVIL REMEDIES OF TITLE LENDERS TO THOSE REMEDIES AVAILABLE UNDER THE MONTANA TITLE LOAN ACT; EXCLUDING TITLE LOANS FROM THE DEFINITION OF "CONSUMER LOANS"; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-802, 31-1-803, 31-1-811, 31-1-817, 31-1-825, 31-1-826, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-802, MCA, is amended to read:

"31-1-802. Purpose — rules — scope — *fees.* (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) This part does not apply to ~~banks, savings and loan associations, credit unions, other state or federally regulated~~ financial institutions, *as defined in 32-8-502,* or pawnbrokers.

(4) This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

(5) Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part."

Section 2. Section 31-1-803, MCA, is amended to read:

"31-1-803. Definitions. For the purposes of this part, the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

(2) "Capital assets" means the assets of a person less the liabilities of that person. Assets and liabilities must be measured according to generally accepted accounting principles.

(3) "Certificate of title" means a state-issued certificate of title or certificate of ownership for personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

(4) "Department" means the department of administration provided for in 2-15-1001.

(5) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

(6) "Pledged property" means personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(7) "Title lender" means a person who has qualified to engage in the business of making title loans pursuant to this part and maintains at least one title loan office in this state.

(8) "Title loan" means a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days.

~~(8)~~*(9)* "Title loan agreement" means a written agreement between a borrower and a title lender in a form that complies with the requirements of this part.

~~(9)~~*(10)* "Title loan office" means the location or premises where a title lender regularly conducts business.

~~(10)~~*(11)* "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title."

Section 3. Section 31-1-811, MCA, is amended to read:

"31-1-811. License revocation or suspension — *penalty*. (1) If the department finds, after notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that ~~a~~ *any person*, licensee, or ~~an~~ officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may *impose a civil penalty not to exceed $1,000 for each violation and may* issue an order revoking or suspending the right of the *person or* licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license."

Section 4. Section 31-1-817, MCA, is amended to read:

"31-1-817. Interest rates — fees charged. (1) The maximum rate of interest that a title lender shall contract for and must receive for making and carrying any title loan authorized by this part may not exceed:

(a) 25% for each 30-day period for the portion of a loan that does not exceed $2,000;

(b) 18% for each 30-day period for the portion of a loan exceeding $2,000 but not exceeding $4,000; and

(c) a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds $4,000.

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

(3) Title lenders may charge a service charge, as provided in 27-1-717, if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under 27-1-717(3) based upon the presentment of an insufficient funds check."

Section 5. Section 31-1-825, MCA, is amended to read:

"31-1-825. Prohibited acts. (1) A title lender may not:

(a) accept a pledge from a person under 18 years of age;

(b) make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under this part;

(c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to this part;

(d) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;

(e) purchase titled personal property for personal use that was repossessed from the borrower by the title lender;

(f) enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made and the title is retained in the physical possession of the title lender;

(g) hold a title for more than 30 calendar days without perfecting the title lender's security interest;

~~(g)~~*(h)* threaten to use or use a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of titled loans not ~~generally~~ available to ~~creditors to collect on loans in default~~ *title lenders under this part*;

~~(h)~~*(i)* use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part;

~~(i)~~*(j)* engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;

~~(j)~~*(k)* knowingly violate any provision of or rule promulgated pursuant to this part; or

~~(k)~~*(l)* include any of the following provisions in the title loan agreement:

(i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the certificate of title;

(ii) a confession of judgment clause;

(iii) any assignment of or order for payment of wages or other compensation for services;

(iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(v) a waiver of any provision of this part.

(2) If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void."

Section 6. Section 31-1-826, MCA, is amended to read:

"31-1-826. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any *intentional* violation of this part constitutes an unfair or deceptive trade practice.

(3) A person found to have *intentionally* violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of $1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part."

Section 7. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include*:*

(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a*; or*

(ii) title loans provided for in Title 31, chapter 1, part 8.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

Section 8. Effective date. [This act] is effective July 1, 2003.

Ap proved March 31, 2003

CHAPTER NO. 179

[SB 36]

AN ACT REQUIRING A DISTRICT COURT TO REQUIRE A WATER COMMISSIONER, UPON APPOINTMENT, TO OBTAIN WORKERS' COMPENSATION INSURANCE; CLARIFYING THAT THE OWNERS AND USERS OF DISTRIBUTED WATER, INCLUDING PERMITTEES AND CERTIFICATE HOLDERS, ARE RESPONSIBLE FOR PAYING A PROPORTIONATE SHARE OF WORKERS' COMPENSATION INSURANCE PURCHASED BY A WATER COMMISSIONER; PROVIDING THAT A WATER COMMISSIONER APPOINTED BY A DISTRICT COURT IS NOT AN EMPLOYEE OF THE JUDICIAL BRANCH, A LOCAL GOVERNMENT, OR A WATER USER; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of ~~his~~ *the judge's* discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by

any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may~~, in his discretion,~~ appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may ~~make an~~ order ~~requiring~~ the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, *require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves,* and *require* the owners and users of the distributed waters, including permittees and certificate holders, ~~shall~~ *to* pay their proportionate share of fees and compensation, *including the cost of workers' compensation insurance purchased by a water commissioner or commissioners*. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir ~~which~~ *that* is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district ~~wherein~~ *where* the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. ~~His~~ *A commissioner's* compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71 or 72, as a result of the performance of duties as a water commissioner."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to water commissioner appointments made on or after [the effective date of this act].

Ap proved March 31, 2003

CHAPTER NO. 180

[SB 70]

AN ACT REQUIRING THAT UNIVERSAL SYSTEM BENEFITS PROGRAMS MONEY DEPOSITED IN STATE SPECIAL REVENUE ACCOUNTS BE EXPENDED IN THE UTILITY SERVICE TERRITORY FROM WHICH THE MONEY WAS RECEIVED; REQUIRING THAT, IN ASSESSING UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING NEEDS, THE DEPARTMENTS OF ENVIRONMENTAL QUALITY AND PUBLIC HEALTH AND HUMAN SERVICES SOLICIT UTILITY AND PUBLIC COMMENT FROM THE UTILITY SERVICE TERRITORY FROM WHICH THE MONEY WAS RECEIVED; AMENDING SECTION 69-8-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-412, MCA, is amended to read:

"69-8-412. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f) or (5)(b), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services shall expend the money in each representative fund on universal system benefits programs in the utility service territory from which the money was received.

~~(3)~~*(4)* The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual ~~statewide funding assessment that identifies funding needs in universal system benefits programs~~ *assessment of identified funding needs in the utility service territory from which the money was received. In assessing the funding needs, the departments shall solicit utility and public comment from the utility service territory from which the money was received.* The annual assessment must *also* take into account existing utility and large customer universal system benefits programs expenditures."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 181

[SB 117]

AN ACT PROVIDING THAT EXECUTIVE BRANCH AGENCY POLICIES, REGULATIONS, STANDARDS, AND STATEMENTS CONCERNING THE INTERNAL MANAGEMENT OF STATE GOVERNMENT AND NOT AFFECTING PRIVATE RIGHTS OR PROCEDURES AVAILABLE TO THE PUBLIC DO NOT CONSTITUTE RULES FOR PURPOSES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 2-4-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) *(a)* "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) *(a)* "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) ~~but~~ *The term* does not include:

~~(a)~~*(i)* statements concerning only the internal management of an agency *or state government* and not affecting private rights or procedures available to the public*, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system*;

~~(b)~~*(ii)* formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

~~(c)~~*(iii)* rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

~~(d)~~*(iv)* seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;*or*

~~(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;~~

~~(f)~~*(v)* uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) *(a)* "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Ap proved March 31, 2003

CHAPTER NO. 182

[SB 128]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO ESTABLISH FEES FOR THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; PROVIDING FOR THE DEPOSIT AND USE OF THE FEES; CREATING AN EXCEPTION TO BUDGET AMENDMENT REQUIREMENTS TO ALLOW THE DEPARTMENT OF JUSTICE TO INCUR PERSONAL SERVICES COSTS AND OPERATIONAL COSTS IN CONNECTION WITH THE DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION; AMENDING SECTION 17-7-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Criminal history record information account. (1) There is a criminal history record information account in the state special revenue fund. Money collected pursuant to [section 2] must be deposited in the account.

(2) The account must be used by the department of justice for the dissemination of criminal history record information.

Section 2. Use of criminal history record information account — staffing — funding. (1) The department of justice may establish fees for the dissemination of criminal history record information. Revenue from the fees must be deposited in the account provided for in [section 1].

(2) The money in the account provided for in [section 1] must be used by the department of justice to pay for the costs associated with the dissemination of criminal history record information.

(3) The costs associated with the dissemination of criminal history record information include adequate staffing to provide for the dissemination service. The department of justice may add staff or incur operational costs, or both, pursuant to 17-7-402. The authority to add staff or incur operational costs must be based on the following:

(a) an additional 5,000 criminal history record information requests, above the number received in 2001, must be received and must involve fingerprint processing; or

(b) an additional 7,500 criminal history record information requests, above the number received in 2001, must be received and must involve screening.

Section 3. Section 17-7-402, MCA, is amended to read:

"17-7-402. Budget amendment requirements. (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections;~~or~~

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7; *or*

(viii) revenue generated from fees collected by the department of justice for dissemination of criminal history record information pursuant to Title 44, chapter 5, part 3;

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless*:*

(i) an emergency justifies the expenditure*;*

(ii) the expenditure is authorized under subsection (1)(a); or

(iii) the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium, except that budget amendments for federal funds may extend to the end of the federal fiscal year.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) Subject to subsection (1)(f), all budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation for a nonrecurring item that would usually be the subject of a budget amendment must be submitted to the legislature for approval during a legislative session between January 1 and the senate hearing on the budget amendment bill. The bill may include authority to spend money in the current fiscal year and in both fiscal years of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 44, chapter 5, part 3, and the provisions of Title 44, chapter 5, part 3, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 183

[SB 131]

AN ACT CREATING AN INTERMEDIARY RELENDING PROGRAM WITHIN THE BOARD OF INVESTMENTS; REQUIRING THAT LOAN PROCEEDS BE USED AS MATCHING FUNDS FOR UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT LOAN PROGRAMS AND OTHER FEDERAL PROGRAMS; PROVIDING TERMS FOR INTEREST RATES AND REPAYMENT; ALLOWING THE BOARD TO PURCHASE A PORTION OF SEASONED LOANS FROM A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION'S REVOLVING LOAN PROGRAM; AMENDING SECTION 17-6-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Intermediary relending program. (1) The board may set aside an amount, not to exceed $5 million, from the in-state investment percentage provided for in 17-6-305 for the purpose of creating an intermediary relending program.

(2) Intermediary loans may be made to board-approved local economic development organizations with revolving loan programs.

(3) Each intermediary loan made pursuant to subsection (2) may not exceed $500,000.

(4) An intermediary loan made under this section may be offered only to an applicant that will pledge and use the loan funds as matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

Section 2. Interest rates and repayment of intermediary loan — terms. (1) The interest rate on an intermediary loan made pursuant to [section 1] may not exceed 2% a year for a period of 30 years.

(2) For the first 3 years, repayment on the intermediary loan is of the interest only, and for the remainder of the term of the intermediary loan, the repayment is principal and interest.

Section 3. Purchase of seasoned or mature loans by board. The board may purchase a portion of a seasoned or mature loan from a local economic development organization's revolving loan program.

Section 4. Section 17-6-302, MCA, is amended to read:

"17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(7) "Intermediary loan" means a loan provided to a local economic development organization with a revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

~~(7)~~*(8)* "Loan participation" means loans or portions of loans bought from a financial institution and does not include the purchase of debentures issued by a capital company.

(9) "Local economic development organization" means:

(a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(ii) an entity certified by the department under 90-1-116; or

(iii) an entity established by a local government; and

(b) an entity actively engaged in economic development and business assistance work in the area.

~~(8)~~*(10)* "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.

~~(9)~~*(11)* "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.

~~(10)~~*(12)* "Montana economy" means any business ~~activity~~ *activities* in the state of Montana, including those that continue existing jobs or create new jobs in Montana.

~~(11)~~*(13)* "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2003.

Ap proved March 31, 2003

CHAPTER NO. 184

[SB 132]

AN ACT PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION TO IMPLEMENT THE 9-1-1 STATEWIDE EMERGENCY TELEPHONE SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rulemaking authority. The department may adopt rules to implement the provisions of this chapter. The rules may include but are not limited to:

(1) establishing procedures to evaluate and make determinations on requests for a variation of the basic or enhanced 9-1-1 service;

(2) establishing evaluation criteria for basic and enhanced 9-1-1 systems plans;

(3) establishing requirements for program participation by public and private safety agencies;

(4) establishing guidelines for the distribution of funds; and

(5) specifying reporting requirements.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 4, part 1, and the provisions of Title 10, chapter 4, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 185

[SB 160]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP STRATEGIC PLANS; REQUIRING THE STRATEGIC PLAN TO CONTAIN PERFORMANCE MEASURES; DESCRIBING CRITERIA FOR PERFORMANCE MEASURES; DESCRIBING REQUIREMENTS FOR DATA COLLECTION AND REPORTING; ALLOWING THE LEGISLATIVE AUDIT DIVISION TO PROVIDE CERTAIN INFORMATION; OUTLINING LEGISLATIVE AND AGENCY USE OF PERFORMANCE MEASURES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Agency" means a division of the department of public health and human services.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Outcome measure" means a quantifiable indicator of the public and customer benefits derived from actions by the department and its agencies.

(4) "Output measure" means a quantifiable indicator of the number of goods or services that the department or an agency produces.

(5) "Performance measures" means monitoring tools included in the department's or an agency's strategic plan that are intended to help guide government and make it accountable.

(6) "Strategic plan" means a planning document, covering up to 5 years, that contains the mission, goals, and objectives that the department or an agency intends to accomplish and the performance measures that will track success in meeting missions, goals, and objectives.

Section 2. Policy — performance measures. (1) It is the policy of the legislature that the department shall adopt comprehensive accountability systems. As part of the accountability systems, the department shall develop strategic plans.

(2) The performance measures included in a strategic plan must indicate how progress toward the department's or an agency's goals and objectives is succeeding. Performance measures are intended to focus department or agency efforts in implementing legislative intent, prioritizing goals and objectives, and allocating resources. Performance measures must focus on key processes. Each measure must be central to the success of the process being measured. The performance measures must be designed to provide information that is meaningful and that is useful to decisionmakers.

Section 3. Criteria for measurement system. (1) The department's system of performance measures must satisfy the following criteria:

(a) The system must be result-oriented, focusing on outcome measures and output measures.

(b) The system must be selective, concentrating on the most important indicators of performance.

(c) The system must be useful, providing information that is of value to the department, the agency, and decisionmakers.

(d) The system must be accessible and must provide periodic information concerning results.

(e) The system must be reliable, providing accurate and consistent information.

(2) Unless otherwise provided by law, performance measures must be developed and revised as part of the strategic planning process in even-numbered years. The performance measures should not be designed to report every department or agency activity but must measure key processes and activities.

Section 4. System requirements — input from legislative audit division. All systems described in [section 3(1)] that support performance measure data collection must have effective controls that provide reasonable assurance that the information is properly collected and accurately reported. If directed by the legislative audit committee, the legislative audit division may provide information concerning the accuracy of data collection and reporting.

Section 5. Legislative use of performance measures. (1) During an interim, the department shall report performance data to the appropriate interim committee as provided for in Title 5, chapter 5, part 2, and to the office of budget and program planning. Interim committees shall use performance data in reviewing the department's strategic planning documents as they relate to prospective legislation.

(2) When reviewing the strategies of department or agency management in implementing programs authorized by the legislature, the committees may provide input on:

(a) the direct effects of each strategy on department and agency customers;

(b) the information that management needs to track progress toward achieving key goals and objectives;

(c) the performance measures that best reflect the expenditure of the department and the agencies' budgets; and

(d) whether the performance measures clearly relate to the department's and the agencies' missions, goals, objectives, and strategic plan.

Section 6. Department and agency use of performance measures. Department and agency managers shall use performance measures as an integral part of their strategic and operational management for the department or an agency. Performance measures must be derived from the department's or an agency's mission, goals, objectives, and strategies with an emphasis on serving the department's or an agency's customers. In the review in even-numbered years, the department and its agencies shall assess and propose changes needed to make certain that existing performance measures relate logically to other elements of the strategic plan and provide a focus on serving customers.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [sections 1 through 6].

Section 8. Effective date. [This act] is effective July 1, 2003.

Ap proved March 31, 2003

CHAPTER NO. 186

[SB 172]

AN ACT PROVIDING THAT A FINANCIAL INSTITUTION THAT ENTERS INTO AN AGREEMENT TO SHARE OR OPERATE ELECTRONIC TERMINALS DOES NOT FORFEIT ITS RIGHTS UNDER FEDERAL OR STATE LAW TO CHARGE CUSTOMERS FEES OR WAIVE ITS OTHER RIGHTS OR OBLIGATIONS THAT EXIST UNDER STATE LAW; AMENDING SECTION 32-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-6-104, MCA, is amended to read:

"32-6-104. Consumer information — *charge for use of electronic terminal.* (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer with an itemized statement clearly setting forth, without limitation:

(a) the specific transactions that may be performed through satellite terminals;

(b) the charges, if any, for individual transactions made through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes a personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of an error that the customer believes has been made in the customer's account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall ~~then~~ sign a statement acknowledging acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, must be provided to the customer. In addition, the information set forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify acknowledgement by signing the customer's initials immediately adjacent to the information provided.

(3) *(a)* The owner of an electronic terminal may impose a surcharge for the use of its electronic terminal. The owner of an electronic terminal that elects to impose a surcharge for the use of its electronic terminal shall clearly advise the user of the electronic terminal, by a conspicuous disclosure on the terminal or

through a message displayed on the electronic terminal screen, of the exact amount of the surcharge. The user must then be provided the option either to cancel the transaction, without incurring the surcharge, or to complete the transaction subject to the surcharge.

(b) An agreement by a financial institution to share or operate electronic terminals may not prohibit, limit, or restrict the right of the financial institution to charge a customer any fees allowed by state or federal law or to require a financial institution to waive any other rights or obligations it has under the laws of this state.

(4) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the disclosure requirements of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 187

[SB 173]

AN ACT MODIFYING THE PROCESS FOR DETERMINING THE DEFINITION OF "SERVICE AREA" FOR FEDERAL UNIVERSAL SERVICE SUPPORT FOR RURAL TELEPHONE COMPANIES; AMENDING SECTION 69-3-840, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-840, MCA, is amended to read:

"69-3-840. Determination of eligible carrier status — universal service support. (1) The commission is authorized to designate telecommunications carriers as eligible for federal universal service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any Montana universal service funds. This authorization applies to all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the commission.

(2) Upon the petition of a telecommunications carrier~~,~~ or upon its own motion, the commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the commission. In the case of an area served by a rural telephone company, the term "service area" means the company's "study area" for federal universal service support unless the federal communications commission *and the commission, after taking into account recommendations of a federal-state joint board instituted under 47 U.S.C. 410(c),* ~~establishes~~ *establish* a different definition of service area for the company. The term "service area" for all other telecommunications carriers means a geographic area, such as a census block or grid block, as established by the commission for the purpose of determining federal universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests service, the commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible *telecommunications* carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the commission approves relinquishment under this section, within which the purchase or construction must be completed."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 188

[SB 238]

AN ACT CLARIFYING THAT A YOUTH WHO HAS COMMITTED A STATUS OFFENSE MAY NOT BE PLACED IN SECURE DETENTION BY BECOMING A DELINQUENT YOUTH BY VIRTUE OF A PROBATION VIOLATION IN ORDER TO COMPLY WITH FEDERAL LAW; AMENDING SECTION 41-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) "Cost containment funds" means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131.

(8) "Court", when used without further qualification, means the youth court of the district court.

(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth ~~or a youth in need of intervention~~ and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(20) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(21) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(22) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(23) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(24) "Judge", when used without further qualification, means the judge of the youth court.

(25) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(26) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(27) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(28) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(29) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory detention. The term does not include shelter care or emergency placement of less than 45 days.

(30) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(31) "Probable cause hearing" means the hearing provided for in 41-5-332.

(32) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(33) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(34) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(35) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(36) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(37) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(38) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(39) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(40) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(41) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(42) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (42)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(43) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(44) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(45) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(46) "Youth care facility" has the meaning provided in 52-2-602.

(47) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(48) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(49) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

~~(a)~~*(i)* violates any Montana municipal or state law regarding alcoholic beverages; *or*

~~(b)~~*(ii)* continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

~~(c)~~*(b)* has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved March 31, 2003

CHAPTER NO. 189

[SB 257]

AN ACT REQUIRING ADDITIONAL NOTICE OF TIME DEADLINES TO THE COURT IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AND AMENDING SECTIONS 41-3-422 AND 41-3-432, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) termination of the parent-child legal relationship, as provided in 41-3-607;

(v) appointment of a guardian pursuant to 41-3-444;

(vi) a determination that preservation or reunification services need not be provided; or

(vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition*; and*

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody; or

(iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of all petitions at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the

petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 2. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing — order. (1) (a) A show cause hearing must be conducted within 10 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. *A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.*

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Ap proved March 31, 2003

CHAPTER NO. 190

[HB 182]

AN ACT GENERALLY REVISING OUTDATED REFERENCES PERTAINING TO THE DEPARTMENT OF COMMERCE FOLLOWING ITS 2001 REORGANIZATION; CHANGING THE RESPONSIBILITY FOR MONUMENTATION AND RELATED SURVEY REQUIREMENTS TO THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REVISING RULEMAKING AUTHORITY FOR THE OFFICE OF ECONOMIC DEVELOPMENT; AMENDING SECTIONS 2-15-150, 23-5-631, 30-16-303, 50-60-313, 53-2-1203, 76-3-403, AND 90-1-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-150, MCA, is amended to read:

"2-15-150. (Temporary) Lewis and Clark bicentennial commission — membership — purpose — account. (1) There is a Lewis and Clark bicentennial commission.

(2) The commission consists of 12 members, as follows:

(a) nine members who must be appointed by the governor, at least three of whom must be enrolled members of a Montana Indian tribe and live on a

Montana Indian reservation, who shall serve 3-year staggered terms, who shall represent Montana's different geographical areas, and who must have an interest in the history of the Lewis and Clark expedition;

(b) the director of the Montana historical society, established in 22-3-101;

(c) the administrator of the parks division within the department of fish, wildlife, and parks, established in 2-15-3401; and

(d) the ~~director of travel Montana~~ *administrator of the Montana promotions division within the department of commerce, established in 2-15-1801.*

(3) The commission is responsible for coordinating and promoting observance of Montana's bicentennial commemoration of the Lewis and Clark expedition and the importance of the roles played by Montana's Indian people to the Lewis and Clark expedition. The commission may:

(a) cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) plan and coordinate or assist in planning and coordinating bicentennial events;

(c) engage in fundraising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations;

(d) promote public education concerning the Lewis and Clark expedition and the history and culture of Montana's Indian people at the time of the Lewis and Clark expedition; and

(e) perform other related duties.

(4) (a) The Lewis and Clark bicentennial commission is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $3 million, payable over a term not to exceed 6 years, for the purposes identified in subsection (3).

(b) The Lewis and Clark bicentennial commission shall pledge to the repayment of any indebtedness the proceeds from the sale of Lewis and Clark bicentennial license plates as provided in 2-15-151.

(c) The proceeds of any loan from the board of investments to the Lewis and Clark bicentennial commission must be deposited in the account established in subsection (5).

(5) There is a Montana Lewis and Clark bicentennial account. Money in the account may include money from revenue-earning enterprises, grants, gifts, or donations, money appropriated by the legislature, and interest earned on the account. Account funds must be used for the purposes described in this section.

(6) The commission is attached to the Montana historical society for administrative purposes only as provided in 2-15-121. (Subsections (1) through (3), (5), and (6) terminate December 31, 2007—sec. 2, Ch. 428, L. 1997; subsection (4) terminates December 31, 2006—sec. 17, Ch. 414, L. 2001.)"

Section 2. Section 23-5-631, MCA, is amended to read:

"23-5-631. Examination and approval of new video gambling machines and associated equipment — fee. (1) The department shall examine and may approve a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment that is manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used. A licensed

manufacturer or distributor may bring a video gambling machine or associated equipment authorized by this chapter into the state for research and development on behalf of a licensed manufacturer prior to submission of the machine or equipment to the department for approval.

(2) A video gambling machine or associated equipment or a modification to an approved machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer is licensed as required in 23-5-625.

(3) All video gambling machines or associated equipment approved by the ~~department of commerce~~ *state* prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer seeking the examination and approval of a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and modifications to approved machines and associated equipment and to issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine or associated equipment or a modification to an approved machine or associated equipment prior to its distribution and placement for play by the public. A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department."

Section 3. Section 30-16-303, MCA, is amended to read:

"30-16-303. Participation of state agencies. (1) The legislature directs full participation in the implementation of this chapter by:

(a) the departments of agriculture, ~~commerce,~~ environmental quality, revenue, justice, labor and industry, and public health and human services;

(b) the secretary of state;

(c) the public service commission; and

(d) other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

(a) the agency administering the license requests that the license be included in the plan;

(b) the board of review approves including the license by a majority vote of a quorum of the board of review; and

(c) licensees affected by the license's inclusion in the plan are given 60 days' notice of the plan's implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

(a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan's criteria;

(b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan's implementation; and

(c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) (a) In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies in an amount equal to no more than one-half of the total cost of processing and issuing a license.

(b) The amount remaining of the total cost of processing and issuing a license may be charged to the license applicant.

(c) The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued under the streamlined registration and licensing plan."

Section 4. Section 50-60-313, MCA, is amended to read:

"50-60-313. Petition for designation of county jurisdictional area and adoption of building code. (1) A county jurisdictional area and a building code applicable to that area may be adopted by petition as provided in this section.

(2) A petition may be circulated by the record owner of real property to which the county jurisdictional area will be applied or extended for the purpose of gathering signatures on the petition. Only a record owner of real estate within the proposed county jurisdictional area is qualified to sign a petition.

(3) A petition to designate a county jurisdictional area may also be circulated by the board of county commissioners. A petition circulated by the board of county commissioners is not subject to the requirements of 50-60-310.

(4) Before a petition may be circulated for signatures, the language of the proposed building code must be approved by the department of labor and industry and the form of the petition must be approved by the election administrator of the county in which the real property is located. A building code proposed pursuant to this section must be approved by the department of ~~commerce~~ *labor and industry* if it meets the criteria provided in 50-60-302 for the approval of a code within a code enforcement program. The election administrator shall approve the form of the petition if the petition meets~~, and the election administrator shall comply with,~~ the requirements of 7-5-134, 7-5-135, and this section, *and the election administrator shall comply with those requirements,* except that:

(a) the number of valid signatures required for the creation or extension of the county jurisdictional area is a majority of the record owners of real property located within the proposed jurisdictional area; and

(b) a petition containing the number of valid signatures required by this section is not submitted to a vote by electors.

(5) An individual circulating a petition for signatures ~~must~~ *shall* make available to individuals who may sign the petition a copy of the building code approved by the department of labor and industry and a map showing the county jurisdictional area within which the code will apply. The petition must clearly indicate that the individual signing the petition read and understood the provisions of the code and understood the geographic area in which the code would be applied.

(6) The county jurisdictional area and the building code applicable to that area become effective 60 days after the determination by the county election administrator that the petition has been signed by the number of record owners of real property required by this section.

(7) (a) Except as provided in this subsection, once adopted by petition as provided in this section, a county building code may not be amended except by petition in accordance with this section or by submitting the modification to the electors as provided in 50-60-312.

(b) A county building code adopted by petition may be modified without petition or election if:

(i) the modification consists of a provision taken from a uniform or model building code; and

(ii) the provision does not regulate a wholly new component of a structure, such as wiring, plumbing, or concrete foundation, that was previously unregulated."

Section 5. Section 53-2-1203, MCA, is amended to read:

"53-2-1203. State workforce investment board — membership — duties. (1) There is a state workforce investment board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) two members of the house of representatives, each from a different political party, and two members of the senate, each from a different political party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:

~~(A) the department of commerce;~~

~~(B)~~*(A)* the department of labor and industry;

~~(C)~~*(B)* the department of public health and human services;

~~(D)~~*(C)* the office of the commissioner of higher education; and

~~(E)~~*(D)* the office of public instruction; and

(vii) other representatives that the governor may designate.

(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act (29 U.S.C. 2821).

(4) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.

(5) The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.

(6) The state board shall perform the functions described in section 111 of the Act (29 U.S.C. 2821)."

Section 6. Section 76-3-403, MCA, is amended to read:

"76-3-403. Monumentation. (1) The ~~department of labor and industry~~ *board of professional engineers and professional land surveyors* shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 7. Section 90-1-114, MCA, is amended to read:

"90-1-114. Rulemaking authority. (1) The office of economic development ~~shall~~ *may* adopt rules to implement the provisions of 2-15-218, 2-15-219, 90-1-112, 90-1-113, and this section. The rules must include but are not limited to:

(a) criteria for providing assistance to communities; and

(b) coordinating economic development efforts among other state agencies, Montana tribal governments, private enterprise, federal agencies, and local governments.

(2) The office may adopt rules necessary to administer the duties and responsibilities of the office."

Section 8. Effective date. [This act] is effective on passage and approval.

Ap proved April 1, 2003

CHAPTER NO. 191

[HB 252]

AN ACT CLARIFYING THE APPLICATION OF CAMPAIGN LAWS TO SCHOOL DISTRICTS AND SPECIAL DISTRICTS; EXPANDING THE DEFINITION OF "SPECIAL DISTRICT"; AND AMENDING SECTION 13-37-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-206, MCA, is amended to read:

"13-37-206. Exception for certain school districts and certain special districts. (1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political ~~committees~~ *campaigns*, and political committees organized to support or oppose a school district issue when the school district is:

(a) a first-class district located in a county having a population of less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment of less than 2,000.

(2) The provisions of this part, except 13-37-217, do not apply to candidates for certain special district offices, their political ~~committees~~ *campaigns*, and political committees organized to support or oppose a special district issue. ~~when the special district~~

(3) As used in this section, "special district" means a unit of local government authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to ~~is~~ a conservation district, *a weed management district,* a fire district, *a community college district,* a hospital district, an irrigation district, a sewer district, a transportation district, or a water district. *The term also includes any district or other entity formed by interlocal agreement.*"

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Ap proved April 1, 2003

CHAPTER NO. 192

[SB 83]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH A DESIGN-BUILD CONTRACTING PILOT PROGRAM; SETTING A CAP ON THE TOTAL COST OF PROJECTS THAT MAY BE AUTHORIZED UNDER THE PROGRAM; REQUIRING THE DEPARTMENT TO REPORT ON THE PROGRAM TO THE GOVERNOR AND THE 2009 LEGISLATURE; CREATING A DESIGN-BUILD CONTRACTING BOARD; PROVIDING THE PROCEDURE FOR PROSPECTIVE CONTRACTORS TO SUBMIT A PROPOSAL; AMENDING SECTIONS 18-8-204, 18-8-205,

60-2-111, AND 60-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, nationally, the concept of a single contract incorporating both the design and construction elements of highway construction has produced numerous examples of time savings in development of projects and delivery of completed projects without sacrificing quality; and

WHEREAS, the Legislature recognizes the impact that highway construction activities have on the state's economy and recognizes design-build contracting on a limited basis as a viable adjunct to, not a replacement for, the existing highway contracting process; and

WHEREAS, a pilot program to allow the Department of Transportation and the Transportation Commission the opportunity to use a design-build concept in highway contracting in select instances is an appropriate way to test the concept's efficiency in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of 18-8-204, 18-8-205, 60-2-111, 60-2-112, and [sections 1 through 4], the following definitions apply:

(1) "Design-build contracting" means the process of entering into a single contract between the commission and a design-build contractor in which the design-build contractor agrees to design and build a highway, structure, or facility or any other items required in a request for proposals.

(2) "Design-build contractor" means an individual, partnership, corporation, joint venture, or other legally recognized entity that is appropriately licensed in Montana and that provides the necessary design and construction services, including contract administration.

(3) "Design-build criteria package" means the document provided by the department that contains the information necessary to guide a prospective design-build contractor in the preparation and submission of a proposal for a design-build project.

(4) "Request for proposals" means a part of the design-build criteria package that contains a detailed scope of work, including design concepts, technical requirements and specifications, the time allowed for design and construction, the department's estimated cost of the project, the deadline for submitting a proposal, the selection criteria, and a copy of the contract.

(5) "Request for qualifications" means a part of the design-build criteria package that contains the desired minimum qualifications of the design-build contractor, a scope of work statement, the project requirements, the amount of reimbursement that the commission has determined will be paid to prospective design-build contractors who qualify for the short list but are not awarded a contract, and the selection criteria that the department will use in compiling the short list of prospective design-build contractors to consider.

Section 2. Design-build contracting authorized — limit on projects — reporting requirement. (1) Beginning on [the effective date of this act] through December 31, 2008, the commission and the department are authorized to establish and implement a design-build contracting pilot program for highway construction.

(2) The total cost of projects that the commission and the department authorize under the design-build contracting pilot program may not exceed $20 million.

(3) The department shall provide a report to the governor and the 61st legislature. The report must contain a benefit analysis of design-build contracting in comparison to the contracting process authorized in 60-2-111. The department shall also report to the governor and the revenue and transportation interim committee, upon request, to provide updates on the design-build contracting pilot program.

Section 3. Design-build contracting board — duties. (1) The director shall appoint a design-build contracting board. The duties of the board include but are not limited to:

(a) establishing the criteria by which eligible projects are selected for a design-build contract;

(b) assisting the department in making recommendations to the commission regarding the terms, conditions, and processes by which a design-build contract is advertised, proposals are evaluated and selected, and contracts are entered into and executed; and

(c) providing a review of the costs and benefits of design-build contracting that will be included in a report to the 2009 legislature.

(2) The design-build contracting board consists of the following members:

(a) two representatives of the highway construction industry in Montana;

(b) two representatives of the highway design and engineering industry doing business in Montana;

(c) a representative of the Montana office of the federal highway administration;

(d) two representatives of the department;

(e) a representative of the bonding and surety industry authorized to operate in Montana; and

(f) the director, who serves as presiding officer of the board.

Section 4. Design-build contracting process — submission of proposals — department's duties. (1) In accordance with recommendations of the design-build contracting board, once the department has identified a project for which the design-build contracting process will be used, the department shall prepare and advertise a request for qualifications.

(2) From the responders to the request for qualifications, the department shall prepare a short list of the responders that it believes are most qualified, not to exceed five responders on any single project.

(3) (a) The department shall announce the short list and issue a request for proposals to each of the prospective design-build contractors on the short list, who may then submit a technical proposal to the department.

(b) A technical proposal submitted in response to a request for proposals must contain detailed descriptions of the prospective design-build contractor's approach to designing, constructing, and managing the project in accordance with the design-build criteria package. The technical proposal must also include the prospective design-build contractor's conceptual design and construction sequence and schedule.

(4) The department shall evaluate the technical proposals and make a written recommendation to the commission regarding the department's selection of the design-build contractor to be awarded the contract.

(5) The prospective design-build contractors who appeared on the department's short list but are not awarded the contract may be paid a stipend, in an amount determined by the commission, for costs incurred in submitting the response to the department's request for proposals.

Section 5. Section 18-8-204, MCA, is amended to read:

"18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(i) the qualifications of professional personnel to be assigned to the project;

(ii) capability to meet time and project budget requirements;

(iii) location;

(iv) present and projected workloads;

(v) related experience on similar projects; and

(vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in [sections 2 through 4]."

Section 6. Section 18-8-205, MCA, is amended to read:

"18-8-205. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price ~~which~~ *that* the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature ~~thereof~~ *of the services*.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting pilot program authorized in [sections 2 through 4]."

Section 7. Section 60-2-111, MCA, is amended to read:

"60-2-111. Letting of contracts on state and federal-aid highways. (1) Except as provided in subsection (2), all contracts for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns, and all contracts entered into under 7-14-4108 must be let by the commission. Except as otherwise specifically provided, the commission may enter the types of contracts and upon terms ~~as~~ *that* it may decide. All contracts must meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

(3) The commission may award contracts for projects that the department has determined are part of the design-build contracting pilot program authorized in [sections 2 through 4]."

Section 8. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding — reciprocity. (1) Except as provided in subsections (2) through ~~(5)~~ *(6)*, if the estimated cost of any work exceeds $50,000, the commission shall award the contract by competitive bidding to the lowest responsible and responsive bidder. The award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102.

(2) The commission may award a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission may award a design-build contract under the design-build contracting pilot program if the provisions of [sections 2 through 4] have been met.

~~(5)~~*(6)* The commission or the department may not enter into a contract for a state-funded highway project or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country, or province or other political subdivision of that country, in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country, or province or other political subdivision of that country; and

(b) the department has entered into a reciprocity agreement with or has exchanged letters of information with the foreign country, or province or other political subdivision of that country, that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country, or province or other political subdivision of that country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country, or province or other political subdivision of that country, that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country, or province or other political subdivision of that country, are notified of highway projects and construction projects available for bid; and

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country, or province or other political subdivision of that country, for projects located in either the United States or the foreign country, or province or other political subdivision of that country.

~~(6)~~*(7)* For the purposes of subsection ~~(5)~~ *(6)*, "construction" has the meaning provided in 18-2-101."

Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [sections 1 through 4].

Section 10. Effective date. [This act] is effective on passage and approval.

Ap proved April 1, 2003

CHAPTER NO. 193

[SB 108]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; CLARIFYING THAT INSURANCE REQUIREMENTS APPLY ONLY TO WORKERS IN THIS STATE; REDUCING THE LENGTH OF THE INDEPENDENT CONTRACTOR EXEMPTION FROM 3 YEARS TO 2 YEARS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO MAINTAIN A 3-MONTH ADMINISTRATIVE COST BALANCE IN THE UNINSURED EMPLOYERS' FUND; PROVIDING A $200 PENALTY FOR UNINSURED EMPLOYERS WHO FAIL TO OBTAIN INSURANCE WITHIN 30 DAYS AFTER NOTICE OF THE REQUIREMENT TO OBTAIN WORKERS' COMPENSATION INSURANCE; PROVIDING FOR LATE FEES AND INTEREST WHEN AN EMPLOYER FAILS TO MAKE TIMELY PENALTY AND CLAIM REIMBURSEMENT PAYMENTS; ADDING LATE FEES AND INTEREST TO THE LIEN CREATED FOR AN EMPLOYER'S FAILURE TO PAY PENALTIES OR BENEFIT CLAIMS; PROVIDING A TIME LIMIT FOR PETITIONING THE WORKERS' COMPENSATION COURT AFTER THE MEDIATOR'S REPORT IS MAILED; PROVIDING FOR RECOVERY OF COLLECTION FEES AND COSTS; CLARIFYING THE DEFINITION OF "PERSON WITH A DISABILITY"; CHANGING THE NOTICE DATE OF YEARLY INSURANCE PLAN ASSESSMENTS FROM APRIL 30 TO MAY 31 OF EACH YEAR; PROVIDING THAT FAILURE TO RECEIVE THE CONCURRENCE OF A REPRESENTATIVE OF THE SUBSEQUENT

INJURY FUND FOR COMPROMISE SETTLEMENTS RELIEVES THE FUND OF LIABILITY; REQUIRING THE BOARD OF INVESTMENTS TO INVEST THE MONEY IN THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT; AMENDING SECTIONS 39-71-401, 39-71-503, 39-71-504, 39-71-506, 39-71-520, 39-71-901, 39-71-911, 39-71-915, AND 39-71-1004, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order*;*

(u) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a ~~$25~~ *$17* fee for the initial application. Any subsequent application renewal must be accompanied by a ~~$25~~ *$17* application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for ~~3~~ *2* years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall ~~every 3 years~~ submit a renewal application *every 2 years*. ~~A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995.~~ The renewal application and the ~~$25~~ *$17* renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund — purpose and administration of fund —*maintaining balance for administrative costs* — appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) *(a)* ~~Surpluses~~ *Except as provided in subsection (3)(b), surpluses* and reserves may not be kept for the fund. The department shall make payments

that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(4) The amounts necessary *for the administration of the fund and* for the payment of benefits from ~~this~~ *the* fund are statutorily appropriated, as provided in 17-7-502, from ~~this~~ *the* fund."

Section 3. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund — option for agreement between department and injured employee. The fund is funded in the following manner:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

(c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a penalty of $200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days of notice of the requirement.

(2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments required under this part must be assessed a late fee of $50 for each late payment.

(b) Any unpaid balance owed to the fund under this part for penalties or claim reimbursement must accrue interest at 12% a year or 1% a month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.

(c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for payment of administrative expenses and benefits.

~~(2)~~*(3)* The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department from the uninsured employer pursuant to subsection (1)(b)."

Section 4. Section 39-71-506, MCA, is amended to read:

"39-71-506. Lien for payment of unpaid penalties, *fees, interest,* and claims — levy and execution. (1) If, upon demand of the department, an

uninsured employer refuses to make the payments to the fund that are provided for in ~~subsections (1) and (2) of~~ 39-71-504, the unpaid penalties*, fees, interest*, and claims have the effect of a judgment against the employer at the time the payments become due. After the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.

(2) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504."

Section 5. Section 39-71-520, MCA, is amended to read:

"39-71-520. Time limit to appeal *to mediation — petitioning workers' compensation court — failure to settle or petition.* *(1)* A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the *date that the* determination is considered final.

(2) (a) If the parties fail to reach a settlement through the mediation process, any party may file a petition before the workers' compensation court.

(b) A party's petition must be filed within 60 days of the mailing of the mediator's report provided for in 39-71-2411 unless the parties stipulate in writing to a longer time period for filing the petition.

(c) If a settlement is not reached through mediation and a petition is not filed within 60 days of the mailing of the mediator's report, the determination by the department is final."

Section 6. Collection of penalties, claim costs, late fees, and interest — liability for payment of collection costs. (1) If the department is unable to collect penalties, claim costs, late fees, or interest assessed pursuant to the provisions of this part, the department may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department, or assistance costs charged the department by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

Section 7. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Certificate" means documentation issued by the department to an individual who is a person with a disability.

(2) "Fund" means the subsequent injury fund in the proprietary fund category.

(3) "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the ~~employee~~ *person* should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection."

Section 8. Section 39-71-911, MCA, is amended to read:

"39-71-911. Obligation to make payments on behalf of fund not ~~an~~ independent liability. ~~The~~ *Except as provided in 39-71-909 and [section 10], the* obligation imposed by this part on the insurer to make payments on behalf of the fund does not impose an independent liability on the insurer."

Section 9. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before ~~April 30~~ *May 31* each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge."

Section 10. Concurrence of fund in settlements. (1) Petitions for compromise settlements that potentially involve payments from the fund must have written concurrence by an authorized representative of the fund prior to submission for department approval.

(2) The failure to receive written concurrence from the fund's representative relieves the fund of any liability for payment of benefits for a compromise settlement, and the obligation to pay remains with the insurer.

Section 11. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made each year upon an assessment by the department as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding calendar year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding calendar year;

(c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the compensation paid by the state fund to injured employees in Montana during the preceding calendar year.

(2) Separate accounts of the amounts that were collected and disbursements that were made from the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the amount of payments for employees of the employers under the plan, the assessment against the employers under the plan for the following year must be reduced.

(3) The payments provided for in this section must be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements from the account must be made after approval by the department.

(4) The board of investments shall invest the money of the industrial accident rehabilitation account, and the investment income must be deposited in the industrial accident rehabilitation account.

~~(4)~~*(5)* The funds allocated or contributed as provided in this section may not be used for payment of administrative expenses of the department.

~~(5)~~*(6)* The methods and processes used to disburse rehabilitation expense payments to eligible disabled workers are procedural and do not affect the substantive rights of those disabled workers."

Section 12. Codification instruction. (1) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section 6].

(2) [Section 10] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 10].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Effective date. [This act] is effective July 1, 2003.

Ap proved April 1, 2003

CHAPTER NO. 194

[SB 139]

AN ACT REPLACING THE EXISTING INTERSTATE COMPACT ON JUVENILES WITH THE NEW INTERSTATE COMPACT ON JUVENILES; AMENDING SECTION 41-6-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-6-101, MCA, is amended to read:

"41-6-101. Enactment — provisions. The Interstate Compact on Juveniles ~~as contained herein~~ is ~~hereby~~ enacted into law and entered into by this state with all other jurisdictions legally joining ~~therein~~ *in the compact* in the form substantially as follows:

The contracting states solemnly agree that:

~~Article I. Findings and Purposes~~

~~(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:~~

~~(a) cooperative supervision of delinquent juveniles on probation or parole;~~

~~(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;~~

~~(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and~~

~~(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.~~

~~(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide~~

~~their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.~~

~~Article II. Existing Rights and Remedies~~

~~All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.~~

~~Article III. Definitions~~

~~For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.~~

~~Article IV. Return of Runaways~~

~~(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent,~~

~~neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.~~

~~(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.~~

~~Article V. Return of Escapees and Absconders~~

~~(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.~~

~~(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the~~

~~delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.~~

~~(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.~~

~~Article VI. Voluntary Return Procedure~~

~~Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.~~

~~Article VII. Cooperative Supervision of Probationers and Parolees~~

~~(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.~~

~~(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.~~

~~(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.~~

~~(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.~~

~~Article VIII. Responsibility for Costs~~

~~(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of cost or responsibilities therefor.~~

~~(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.~~

~~Article IX. Detention Practices~~

~~To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.~~

~~Article X. Supplementary Agreements~~

~~The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:~~

~~(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;~~

~~(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;~~

~~(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;~~

~~(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;~~

~~(5) provide for reasonable inspection of such institutions by the sending state;~~

~~(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and~~

~~(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.~~

~~Article XI. Acceptance of Federal and Other Aid~~

~~Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.~~

~~Article XII. Compact Administrators~~

~~The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.~~

~~Article XIII. Execution of Compact~~

~~This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.~~

~~Article XIV. Renunciation~~

~~This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.~~

~~Article XV. Severability~~

~~The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.~~

~~Article XVI. Rendition~~

~~(1) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.~~

~~(2) All provisions and procedures of Articles V and VI of this compact shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of this compact shall be forwarded by the judge of the court in which the petition has been filed.~~

Article I. Purpose

(1) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in doing so have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting 4 U.S.C. 112, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(2) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to:

(a) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(b) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(c) return juveniles who have run away, absconded, or escaped from supervision or control or who have been accused of an offense to the state requesting their return;

(d) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(e) provide for the effective tracking and supervision of juveniles;

(f) equitably allocate the costs, benefits, and obligations of the compacting states;

(g) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or other criminal or juvenile justice agencies that have jurisdiction over juvenile offenders;

(h) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(i) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(j) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials and establish regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(k) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(l) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in that activity; and

(m) coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles, particularly in those cases in which concurrent or overlapping supervision issues arise.

(3) It is the policy of the compacting states that the activities conducted by the interstate commission created in this section are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact must be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction, the following definitions apply:

(1) "Bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.

(2) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact and responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Department" means the department of corrections provided for in 2-15-2301.

(7) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator, pursuant to the terms of this compact, and responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(8) "Interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(9) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(a) an accused delinquent, who is a person charged with an offense that, if committed by an adult, would be a criminal offense;

(b) an accused status offender, who is a person charged with an offense that, if committed by an adult, would not be a criminal offense;

(c) an adjudicated delinquent, who is a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(d) an adjudicated status offender, who is a person found to have committed an offense that, if committed by an adult, would not be a criminal offense; and

(e) a nonoffender, who is a person in need of supervision who has not been accused or adjudicated a delinquent or status offender.

(10) "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

(11) "Probation" or "parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(12) "Rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that:

(a) is of general applicability;

(b) implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the interstate commission;

(c) has the force and effect of statutory law in a compacting state, if adopted in the state; and

(d) includes the amendment, repeal, or suspension of an existing rule.

(13) "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III. Interstate Commission for Juveniles

(1) The compacting states hereby create the "Interstate Commission for Juveniles". The interstate commission is a body corporate and joint agency of the compacting states. The interstate commission has all the responsibilities, powers, and duties set forth in this section and additional powers that may be

conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(2) The interstate commission consists of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created under this section. The commissioner is the compact administrator, deputy compact administrator, or designee from that state who shall serve on the interstate commission in that capacity under or pursuant to the applicable law of the compacting state.

(3) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. The noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for the placement of children, interstate compact for adult offender supervision, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission must be ex officio, nonvoting members. The interstate commission may provide in its bylaws for additional ex officio, nonvoting members, including members of other national organizations, in numbers determined by the interstate commission.

(4) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business unless a larger quorum is required by the bylaws of the interstate commission.

(5) The interstate commission shall meet at least once each calendar year. The presiding officer may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice must be given of all meetings, and meetings must be open to the public.

(6) The interstate commission shall establish an executive committee, which must include interstate commission officers, members, and others as determined by the bylaws. The executive committee has the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff, administer enforcement and compliance with the provisions of the compact, its bylaws, and its rules, and perform other duties as directed by the interstate commission or set forth in the bylaws.

(7) Each member of the interstate commission has the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and may not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(8) The interstate commission's bylaws must establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official

records to the extent that they would adversely affect personal privacy rights or proprietary interests.

(9) Public notice must be given of all meetings, and all meetings must be open to the public except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to:

(a) relate solely to the interstate commission's internal personnel practices and procedures;

(b) disclose matters specifically exempted from disclosure by statute;

(c) disclose trade secrets or commercial or financial information that is privileged or confidential;

(d) involve accusing any person of a crime or formally censuring any person;

(e) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) disclose investigative records compiled for law enforcement purposes;

(g) disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(h) disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; and

(i) specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

(10) For every meeting closed pursuant to this provision, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that must fully and clearly describe all matters discussed in any meeting and must provide a full and accurate summary of any actions taken and the reasons for the actions, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the question. All documents considered in connection with any action must be identified in the minutes.

(11) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules, which must specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting must in so far as is reasonably possible conform to up-to-date technology and coordinate the interstate commission's information functions with the appropriate repository of records.

Article IV. Powers and Duties of the Interstate Commission

(1) The interstate commission has the powers and duties to:

(a) provide for dispute resolution among compacting states;

(b) promulgate rules to effect the purposes and obligations as enumerated in this compact. A rule proposed or adopted by the interstate commission is not binding on this state unless adopted by the department.

(c) oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

(d) enforce compliance with the compact provisions and bylaws adopted and the rules promulgated by the interstate commission, using all necessary and proper means, including but not limited to the use of the judicial process;

(e) establish and maintain offices that must be located within one or more of the compacting states;

(f) purchase and maintain insurance and bonds;

(g) borrow, accept, hire, or contract for services of personnel;

(h) establish and appoint committees and hire staff that it considers necessary for the carrying out of its functions, including but not limited to an executive committee, as required by Article III, which has the power to act on behalf of the interstate commission in carrying out its powers and duties under this section;

(i) elect or appoint officers, attorneys, employees, agents, or consultants; to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(j) accept, receive, use, and dispose of donations and grants of money, equipment, supplies, materials, and services;

(k) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, real, personal, or mixed;

(l) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(m) establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;

(n) sue and be sued;

(o) adopt a seal and bylaws governing the management and operation of the interstate commission;

(p) perform functions that may be necessary or appropriate to achieve the purposes of this compact;

(q) report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports must include any recommendations that may have been adopted by the interstate commission.

(r) coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in that activity; and

(s) establish uniform standards of the reporting, collecting, and exchanging of data.

(2) The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Article V. Organization and Operation of the Interstate Commission

(1) The interstate commission shall, by a majority of the members present and voting, within 12 months after the first interstate commission meeting,

adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

(a) establishing the fiscal year of the interstate commission;

(b) establishing an executive committee and other committees that may be necessary;

(c) providing for the establishment of committees and governing any general or specific delegation of any authority or function of the interstate commission;

(d) providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting;

(e) establishing the titles and responsibilities of the officers of the interstate commission;

(f) providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;

(g) providing startup rules for initial administration of the compact; and

(h) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(2) (a) The interstate commission shall, by a majority of the members, elect annually from among its members a presiding officer and a vice presiding officer, each of whom has the authority and duties that may be specified in the bylaws. The presiding officer or, in the presiding officer's absence or disability, the vice presiding officer shall preside at all meetings of the interstate commission. The elected officers shall serve without compensation or remuneration from the interstate commission. However, subject to the availability of budgeted funds, the officers must be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(b) The interstate commission shall, through its executive committee, appoint or retain an executive director for the period, upon the terms and conditions and for the compensation that the interstate commission may consider appropriate. The executive director shall serve as secretary to the interstate commission, but may not be a member, and shall hire and supervise other staff as may be authorized by the interstate commission.

(3) (a) Expect for a claim arising from intentional conduct or gross negligence, the interstate commission's members, officers, executive director, and employees are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred within the course and scope of interstate commission employment, duties, or responsibilities.

(b) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of the person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents.

(c) The interstate commission shall defend an individual referred to in subsection (3)(a) in any civil action for which the individual is granted immunity under subsection (3)(a).

(d) The interstate commission shall indemnify an individual referred to in subsection (3)(a) in the amount of any settlement obtained against the individual arising out of a civil action for which the individual is granted immunity under subsection (3)(a).

Article VI. Rulemaking Functions of the Interstate Commission

(1) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(2) Rulemaking must occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rulemaking must substantially conform to the principles of the "Model State Administrative Procedures Act", 1981, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or other administrative procedures act that the interstate commission considers appropriate, consistent with due process requirements under the United States constitution as now or later interpreted by the United States supreme court. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the interstate commission.

(3) When promulgating a rule, the interstate commission shall, at a minimum:

(a) publish the proposed rule's entire text stating the reasons for that proposed rule;

(b) allow and invite all persons to submit written data, facts, opinions, and arguments, which information must be added to the record and be made publicly available;

(c) provide an opportunity for an informal hearing if petitioned by 10 or more persons; and

(d) promulgate a final rule and its effective date, if appropriate, based on input from state or local officials or interested persons.

(4) The interstate commission shall allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of a rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(5) If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that rule to have no further effect in any compacting state.

(6) The existing rules governing the operation of the interstate compact on juveniles superseded by this act are void 12 months after the first meeting of the interstate commission created in Article III of this compact.

(7) Upon determination by the interstate commission that a state of emergency exists, it may promulgate an emergency rule that must become

effective immediately upon adoption. However, the usual rulemaking procedures provided under this section must be retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

Article VII. Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

(1) (a) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor the activities being administered in noncompacting states that may significantly affect compacting states.

(b) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact must be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission is entitled to receive all service of process in that proceeding and must have standing to intervene in the proceeding for all purposes.

(2) (a) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact, as well as issues and activities pertaining to compliance with the provisions of the compact and its rules and bylaws.

(b) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any means set forth in Article XI of this compact.

Article VIII. Finance

(1) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The interstate commission shall promulgate a rule binding upon all compacting states that governs the assessment.

(3) The interstate commission may not incur any obligations of any kind prior to securing the funds adequate to meet the obligations. The interstate

commission may not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(4) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission must be subject to the audit and accounting procedures established under its bylaws and as provided under 5-13-304. However, all receipts and disbursements of funds handled by the interstate commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the interstate commission.

Article IX. The State Council

Each member state shall create a state council for interstate juvenile supervision. Although each state may determine the membership of its own state council, its membership must include at least one representative from the executive, judicial, and legislative branches of government and victims groups and the compact administrator, deputy compact administrator, or a designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council shall advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

Article X. Compacting States, Effective Date, and Amendment

(1) Any state is eligible to become a compacting state.

(2) The compact becomes effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date is the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter, it becomes effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees must be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(3) The interstate commission may propose amendments to the compact for enactment by the compacting states. An amendment may not become effective and binding upon the interstate commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

Article XI. Withdrawal, Default, Termination, and Judicial Enforcement

(1) (a) Once effective, the compact must continue in force and remain binding upon each compacting state. However, a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) The withdrawing state shall immediately notify the presiding officer of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notice.

(d) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any

obligations, the performance of which extends beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state must occur upon the withdrawing state reenacting the compact or upon a later date as determined by the interstate commission.

(2) (a) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact or the bylaws or promulgated rules, the interstate commission may impose any of the following penalties:

(i) remedial training and technical assistance as directed by the interstate commission;

(ii) alternative dispute resolution;

(iii) fines, fees, and costs in amounts that are considered to be reasonable as fixed by the interstate commission; and

(iv) suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension must be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include but are not limited to failure of a compacting state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws, or promulgated rules and any other grounds designated in interstate commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges and benefits conferred by this compact must be terminated from the effective date of termination.

(b) Within 60 days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of the termination.

(c) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination.

(d) The interstate commission may not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(e) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(3) The interstate commission may, by majority vote of the members, initiate legal action in the United State district court for the District of Columbia or, at

the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact and its bylaws and promulgated rules against any compacting state in default. In the event that judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.

(4) (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact is void and is of no further effect, the business and affairs of the interstate commission are concluded, and any surplus funds must be distributed in accordance with the bylaws.

Article XII. Severability and Construction

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is unenforceable, the remaining provisions of the compact remain enforceable.

(2) The provisions of this compact must be liberally constructed to effectuate its purposes.

Article XIII. Binding Effect of Compact and Other Laws

(1) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) (a) All lawful actions of the interstate commission, including all bylaws and rules promulgated by the interstate commission, are binding upon the compacting states if adopted by the department.

(b) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding the meaning or interpretation.

(d) In the event that any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the interstate commission is ineffective and the obligations, duties, powers, or jurisdiction remains in the compacting state and must be exercised by the agency to which the obligations, duties, powers, or jurisdiction is delegated by law in effect at the time that this compact becomes effective."

Section 2. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Contingent effective date. [This act] is effective upon receipt of written notification by the secretary of state from the director of the department of corrections that the compact has been legislatively enacted into law by the 35th compacting state.

Ap proved April 1, 2003

CHAPTER NO. 195

[SB 151]

AN ACT GENERALLY REVISING THE MONTANA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; CLARIFYING THAT THE ACT APPLIES TO INSOLVENT INSURERS AS WELL AS IMPAIRED INSURERS; ESTABLISHING PROCEDURES FOR AN ASSOCIATION TO ELECT TO CONTINUE REINSURANCE; PROVIDING FOR THE DISTRIBUTION OF DEPOSITS PAID TO AN ASSOCIATION; CLARIFYING THE SCOPE OF COVERAGE OF THE ACT; REVISING DEFINITIONS; DEFINING "BENEFIT PLAN", "INSOLVENT INSURER", "MOODY'S CORPORATE BOND YIELD AVERAGE", "PLAN SPONSOR", "PRINCIPAL PLACE OF BUSINESS", "RECEIVERSHIP COURT", "STRUCTURED SETTLEMENT ANNUITY", AND "SUPPLEMENTAL CONTRACT"; REVISING REQUIREMENTS FOR ACCOUNTS MAINTAINED BY AN ASSOCIATION; CLARIFYING THE STANDING AND GENERAL POWERS OF AN ASSOCIATION; CLARIFYING MEETING AND NEGOTIATION REQUIREMENTS; CLARIFYING THE DUTIES AND POWERS OF THE INSURANCE COMMISSIONER; REVISING AN ASSOCIATION'S POWERS PRIOR TO AND DURING THE LIQUIDATION OF A MEMBER INSURER; REVISING ASSIGNMENT AND SUBROGATION PROVISIONS; REVISING BENEFIT LIABILITY OF AN ASSOCIATION; AMENDING SECTIONS 33-10-201, 33-10-202, 33-10-203, 33-10-205, 33-10-206, 33-10-207, 33-10-210, 33-10-215, 33-10-217, 33-10-219, 33-10-220, 33-10-221, 33-10-222, 33-10-223, 33-10-224, 33-10-226, AND 33-10-227, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Association election to continue reinsurance. (1) Within 1 year after the coverage date, which is the date that the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of a member insurer that accrued on or after the coverage date under an indemnity reinsurance agreement entered into by the member insurer as the ceding insurer. The association may not exercise an election with respect to a reinsurance agreement if the rehabilitator or liquidator of the member insurer has previously expressly disaffirmed the agreement.

(2) The election to succeed to the rights and obligations of the member insurer must be accomplished through notice to the supervisor, rehabilitator, or liquidator and to the affected reinsurers.

(3) If the association makes an election, the association:

(a) is responsible for all unpaid premiums due under the agreements for the periods before and after the coverage date and is responsible for the performance of all obligations to be performed after the coverage date in each contract covered, either in whole or in part, by the association. The association may charge contracts covered in part by the association the costs for reinsurance in excess of the obligations of the association, using reasonable allocation methods.

(b) is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or

in part. In order to receive these amounts, the association must be obligated to pay the beneficiary of the underlying policy or contract a portion of the amount equal to the excess of the amount received by the association minus:

(i) the benefits paid by the association under the policy or contract; and

(ii) any amount properly retained by the impaired or insolvent insurer for the loss or event.

(c) shall calculate, within 30 days of the election, the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid to either the member insurer, its rehabilitator or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or the indemnity insurer shall pay the net balance due the other within 5 days of completion of the calculation. If the rehabilitator or liquidator has received any amount under this section, the rehabilitator or liquidator shall remit it to the association as soon as practicable.

(4) If, within 60 days of the election, the association pays the premiums due for the periods before and after the coverage date that relate to the contracts covered by the association, either in whole or in part, the reinsurer may not terminate the reinsurance agreement insofar as the agreement relates to contracts covered by the association, in whole or in part, and is not entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.

(5) The association may transfer any rights or obligations under this section to a third-party insurer under terms agreed upon by the association and the third-party insurer.

(6) Except as otherwise expressly stated in this section, this section may not be construed to alter or modify the terms and conditions of the reinsurance agreement of an insolvent member insurer. This section is not intended to:

(a) abrogate or limit any rights of a reinsurer to claim that it is entitled to rescind a reinsurance agreement; or

(b) give a policyowner or beneficiary an independent cause of action against an insurer that is not otherwise provided for in the reinsurance agreement.

Section 2. Deposits paid to association. (1) A deposit in this state that is held pursuant to law or required by the commissioner to be held for the benefit of creditors, including policyowners, and that is not turned over to the liquidator upon entry of the final order of liquidation or upon entry of the order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state pursuant to 33-2-1381 must be promptly paid to the association.

(2) The association is entitled to retain a portion of any amount paid under this section equal to the percentage determined by dividing the aggregate amount of policyowner claims related to the insolvency for which the association has provided statutory benefits by the aggregate amount of all policyowner claims in this state related to the insolvency. The association shall remit to the domiciliary receiver the amount paid to the association and not retained under this section.

Section 3. Section 33-10-201, MCA, is amended to read:

"33-10-201. Short title, purpose, scope, and construction. (1) This part may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment *or insolvency* of the insurer issuing the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments *or insolvencies*.

(4) This part applies to direct, nongroup life, health, *and* annuity *policies and contracts*~~,~~ and *their* supplemental ~~policies or~~ contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement ~~agreements~~ *annuities*, lottery ~~contracts~~ *annuities issued in connection with government lotteries*, and any immediate or deferred annuity contracts.

(5) This part provides coverage for policies and contracts specified in subsection ~~(6)~~ *(4)*:

(a) to persons who are owners of or certificate holders under covered policies or *contracts, other than unallocated annuity contracts and structured settlement annuities that are provided for in subsections (6) and (7)*, ~~in the case of unallocated annuity contracts, to the persons who are contract holders~~ if the persons:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that association; and

(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).

(6) With respect to unallocated annuity contracts, this part provides coverage to:

(a) persons who are the owners of unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(b) persons who are owners of unallocated annuity contracts issued in connection with government lotteries if the owners are residents.

(7) (a) With respect to structured settlement annuities, this part provides coverage to a person who is:

(i) a payee under a structured settlement annuity;

(ii) a beneficiary of a payee if the payee is deceased; or

(iii) a resident payee, regardless of where the contract owner resides.

(b) This part also applies to a payee of a structured settlement annuity contract who is not a resident if:

(i) the contract owner of the structured settlement annuity is a resident, the insurer that issued the structured settlement annuity is domiciled in this state, or the state in which the contract owner resides has an association similar to the association created by this part; and

(ii) the payee, beneficiary, or contract owner is not eligible for coverage by the association in the state in which the payee or contract owner resides.

(8) This part does not provide coverage to:

(a) a person who is a payee or a beneficiary of a contract owner who is the resident of another state if the payee or beneficiary is afforded any coverage by the association of another state; or

(b) a person described in subsection (5) if the person is afforded any coverage by the association of another state.

(9) (a) This part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this part is provided coverage under the laws of any other state, the person may not be provided coverage under this part.

(b) In determining the application of this subsection (9) to situations in which a person, such as an owner, payee, beneficiary, or assignee, could be covered by the associations of more than one state, this part must be construed in conjunction with other state laws to result in coverage by only one association.

~~(6)~~*(10)* ~~This part covers persons specified in subsection (5)(a) for direct, nongroup life, health, annuity, and supplemental policies and contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, allocated and unallocated funding agreements, structured settlement agreements, lottery contracts, and immediate or deferred annuity contracts.~~ This part does not ~~apply to~~ *provide coverage for*:

(a) policies or contracts or any part of the policies or contracts *not guaranteed by the member insurer or* under which the risk is borne by the ~~policyholder~~ *policyowner*;

(b) a policy or contract or part of the policy or contract assumed by the impaired *member* insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(c) any portion of a policy or contract to the extent that the rate of interest on which it is based *or the interest rate, crediting rate, or similar factor determined*

by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees, ~~or~~ members, *or others* to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or ~~similar entity~~ *other person* under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(e) any portion of a policy or contract to the extent that it provides dividends, ~~or~~ experience rating credits, *or voting rights* or provides that any fees or allowances be paid to any person, including the ~~policy~~ *policyowner* or contract ~~holder~~ *owner*, in connection with the service to or administration of the policy or contract;

(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(g) any unallocated annuity contract issued to *or in connection with* an employee benefit plan that is protected under the federal pension benefit guaranty corporation *regardless of whether the federal pension benefit guaranty corporation is liable to make any payments with respect to the employee benefit plan*; ~~and~~

(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.~~;~~

(i) an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the policyowner or contract owner, including without limitation:

(i) claims based on marketing materials;

(ii) claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable requirements for filing policy forms or for policy approval;

(iii) misrepresentations of or regarding policy benefits;

(iv) extracontractual claims; or

(v) a claim for penalties or consequential or incidental damages;

(j) a contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; or

(k) a portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policyowner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or changes in value determined by using the procedures defined in the policy or contract must be credited as if the contractual date of crediting interest or changes in value was the date of impairment or insolvency and the interest or changes in value are not subject to forfeiture.

~~(7)~~*(11)* This part must be liberally construed to effect the purpose under subsections (2) and (3), which constitute an aid and guide to interpretation.

~~(8)~~*(12)* This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired *or insolvent* insurer operating under a plan with assessment liability."

Section 4. Section 33-10-202, MCA, is amended to read:

"33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means either of the two accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

~~(3)~~*(4)* "Contractual obligation" means any obligation under covered policies.

~~(4)~~*(5)* "Covered policy" means any policy or contract within the scope of this part under 33-10-201(4) through ~~(6)~~ *(10)*.

~~(5)~~*(6)* "Impaired insurer" means~~:~~

~~(a) an insurer that becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or~~

~~(b) an insurer considered by the commissioner to be unable or potentially unable to fulfill its contractual obligations~~ *a member insurer that is not an insolvent insurer and that is placed under an order of rehabilitation or supervision by a court of competent jurisdiction.*

(7) "Insolvent insurer" means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction upon a finding of insolvency.

~~(6)~~*(8)* (a) "Member insurer" means an insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under 33-10-201 and 33-10-224 and includes any insurer

whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory state pooling plan;

(v) a mutual assessment company or any entity that operates on an assessment basis;

(vi) an insurance exchange; ~~or~~

(vii) an organization that has a certificate or license limited to the issuance of charitable gift annuities; or

~~(vii)~~*(viii)* an entity similar to any of the entities listed in subsections ~~(6)(b)(i) through (6)(b)(vi)~~ *(8)(b)(i) through (8)(b)(vii)*.

(9) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or its successor.

(10) "Owner", "contract owner", and "policyowner" mean the person who is identified as the legal owner under the terms of a policy or contract or who is vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and who is properly recorded as the owner on the books of the insurer.

~~(7)~~*(11)* "Person" means any individual, corporation, *limited liability company,* partnership, association, *governmental body or entity,* or voluntary organization.

(12) "Plan sponsor" means:

(a) the employer in the case of a benefit plan established or maintained by a single employer;

(b) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(c) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

~~(8)~~*(13)* (a) "Premiums" means ~~direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business.~~

~~(b) The term does not include premiums and considerations on contracts between insurers and reinsurers.~~

~~(c) As used in 33-10-227, premiums are those for the calendar year preceding the determination of impairment~~ *the amount or consideration received on covered policies or contracts less return premiums, considerations, and deposits, and less dividends and experience credits.*

(b) The term does not include:

(i) amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided pursuant to 33-10-201(10), except that an assessable premium may not be reduced based on 33-10-201(10)(c) relating to interest limitations and 33-10-224 relating to one individual, one participant, and one contract owner;

(ii) premiums in excess of $5 million on an unallocated annuity contract not issued under a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code; or

(iii) premiums in excess of $5 million with respect to multiple nongroup policies of life insurance owned by one owner, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons.

(14) "Principal place of business" of a plan sponsor means:

(a) the state in which more than 50% of the participants in the benefit plan are employed;

(b) with respect to a plan sponsor as defined in 33-10-202(12)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan, or, in lieu of specific or clear designation of a principal place of business, the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question; or

(c) if 50% of the participants are not employed in a single state, the single state in which the individuals who establish policies for the direction, control, and coordination of the operations of the plan sponsor as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(i) the state in which the primary executive and administrative headquarters of the plan sponsor is located;

(ii) the state in which the principal office of the chief executive officer of the plan sponsor is located;

(iii) the state in which the board of directors or similar governing person or persons of the plan sponsor conduct its meetings;

(iv) the state in which the executive or management committee of the board of directors or similar governing person or persons of the plan sponsor conduct the majority of its meetings;

(v) the state from which the management of the overall operations of the plan sponsor is directed; and

(vi) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

(15) "Receivership court" means the court in the insolvent or impaired insurer's state that has jurisdiction over the supervision, rehabilitation, or liquidation of the insurer.

~~(9)~~*(16)* "Resident" means a person who resides in this state at the time that the impairment is determined and to whom contractual obligations are owed. *A person may be a resident of only one state, and in the case of a person other than an individual, the person is a resident of the state where its principal place of*

business is located. Citizens of the United States who are either residents of foreign countries or residents of the possessions, territories, or protectorates of the United States and who do not have an association similar to the association created by this part must be considered residents of the state of domicile of the insurer that issued the policies or contracts.

(17) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(18) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

~~(10)~~*(19)* "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 5. Section 33-10-203, MCA, is amended to read:

"33-10-203. Creation of the association — accounts — supervision by commissioner. (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers ~~shall~~ *must* be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain two accounts:

(a) the health insurance account; and

(b) the life insurance and annuity account that includes the following subaccounts:

(i) the life insurance account;

(ii) the annuity account *that includes contracts owned by a governmental retirement plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code, but does not otherwise include unallocated annuities*; and

(iii) the unallocated annuity account that must include unallocated annuity contracts ~~qualified~~ *owned by a governmental retirement benefit plan or the plan's trustee established* under section *401,* 403(b)*, or 457* of the Internal Revenue Code.

(3) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. ~~Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.~~"

Section 6. Section 33-10-205, MCA, is amended to read:

"33-10-205. General powers of association — standing. (1) *In addition to other rights provided by law, the* ~~The~~ association may:

(a) enter into ~~such~~ contracts ~~as~~ *that* are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under 33-10-228 *and to settle claims or potential claims against it*;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default ~~shall~~ *must* be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain ~~such~~ persons ~~as~~ *who* are necessary to handle the financial transactions of the association and to perform ~~such~~ other functions ~~as~~ *that* become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take ~~such~~ legal action ~~as~~ *that* may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but ~~in no case may~~ the association *may not in any case* issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired *or insolvent* insurer*;*

(h) request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this part with respect to the person. The person shall promptly comply with the request.

(i) take other necessary or appropriate action to discharge its duties and obligations under this part or to exercise its powers under this part.

(2) The association may render assistance and advice to the commissioner, upon ~~his~~ request, concerning rehabilitation, *liquidation,* payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired *or insolvent* insurer.

(3) The association ~~shall have~~ *has* standing to appear *or intervene* before any court in this state with jurisdiction over an impaired *or insolvent* insurer concerning which the association is or may become obligated under this part *or before any court with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise*. ~~Such~~ *The association's* standing ~~shall extend~~ *extends* to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring*, modifying,* or guaranteeing the covered policies of the impaired *or insolvent* insurer and the determination of the covered policies and contractual obligations. *The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or before a court with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.*

(4) The board of directors of the association may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this part in an economical and efficient manner.

(5) When the association has arranged or offered to provide the benefits of this part to a covered person under a plan or arrangement that fulfills the association's obligations under this part, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(6) Venue in a suit against the association arising under this part is in the first judicial district. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this part."

Section 7. Section 33-10-206, MCA, is amended to read:

"33-10-206. Records of meetings and negotiations. Records ~~shall~~ *must* be kept of all negotiations and meetings ~~in which the association or its representatives are involved~~ *of the board of directors held* to discuss the activities of the association in carrying out its powers and duties under this part. Records of ~~such~~ negotiations or meetings *pertaining to an impaired or insolvent insurer* ~~shall~~ *may* be made public only upon the termination of a liquidation, rehabilitation, or supervision proceeding involving the impaired *or insolvent* insurer, upon the termination of the impairment *or insolvency* of the insurer, or upon the order of a court of competent jurisdiction. ~~Nothing in this~~ *This* section ~~shall~~ *does not* limit the duty of the association to render a report of its activities under 33-10-209."

Section 8. Section 33-10-207, MCA, is amended to read:

"33-10-207. Immunity. There ~~shall~~ *may not* be ~~no~~ *any* liability on the part of and ~~no~~ *there may not be a* cause of action of any nature ~~shall arise~~ against any member insurer or its ~~insurance producers~~ *agents* or employees, the association or ~~its insurance producers~~ *the association's agents* or employees, members of the board of directors, or the commissioner or ~~his~~ *the commissioner's* representatives for any action taken by them in the performance of their powers and duties under this part."

Section 9. Section 33-10-210, MCA, is amended to read:

"33-10-210. Unfair trade practice — notice to ~~policyholders~~ *policyowners*. (1) It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) ~~Within 180 days after October 1, 1993, the~~ *The* association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, an insurer may not deliver a policy or contract described in 33-10-201(4) to a ~~policy~~ *policyowner* or contract ~~holder~~ *owner* unless the document is delivered to the ~~policy~~ *policyowner* or contract ~~holder~~ *owner* prior to or at the time of delivery of the policy or contract, unless subsection (4) *of this section* applies. The document must be available upon request by a ~~policyholder~~ *policyowner*. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the ~~holder~~ *owner* of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the ~~policyholder~~ *policyowner*, contract ~~holder~~ *owner*, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the ~~policy~~ *policyowner* or contract ~~holder~~ *owner* that the life and health insurance guaranty association may not cover the policy or, if

coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the ~~policy~~ *policyowner* or contract ~~holder~~ *owner* should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or insurance producer may not deliver a policy or contract described in 33-10-201(4) and excluded under 33-10-201~~(6)(a)~~*(10)* from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the ~~policy~~ *policyowner* or contract ~~holder~~ *owner* a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)."

Section 10. Section 33-10-215, MCA, is amended to read:

"33-10-215. Duties and powers of ~~the~~ commissioner. In addition to the duties and powers enumerated elsewhere in this part, the commissioner shall:

(1) notify the board of directors of the existence of an impaired *or insolvent* insurer not later than 3 days after a determination of impairment *or insolvency* is made or ~~he~~ *the commissioner* receives notice of impairment *or insolvency*;

(2) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(3) when an impairment *or insolvency* is declared and the amount of the impairment *or insolvency* is determined, serve a demand upon the impaired *or insolvent* insurer to make good the impairment *or insolvency* within a reasonable time. Notice to the impaired *or insolvent* insurer ~~shall constitute~~ *constitutes* notice to its shareholders, if any. The failure of the insurer to promptly comply with ~~such~~ *the* demand ~~shall~~ *does* not excuse the association from the performance of its powers and duties under this part.

(4) in any liquidation or rehabilitation proceeding involving a domestic insurer be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner ~~shall~~ *must* be appointed conservator.

(5) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. The fine may not exceed 5% of the unpaid assessment per month, except that the fine may not be less than $100 per month.

(6) A final action of the board of directors may be appealed to the commissioner by a member insurer if the appeal is taken within 60 days of the member insurer's receipt of notice of the final action being appealed. A final

action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

(7) The liquidator or rehabilitator of an impaired or insolvent insurer may notify all affected persons of the effect of this part."

Section 11. Section 33-10-217, MCA, is amended to read:

"33-10-217. Prevention of insolvencies or impairments. (1) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall:

(a) (i) notify the commissioners of all the other states, the territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of ~~policyholders~~ *policyowners* or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until the time it is made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(5) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer *or germane to the solvency of any company seeking to provide life or health insurance in this state*. The reports and recommendations are not considered public documents.

(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments *or insolvencies*.

(7) The board of directors shall, at the conclusion of any insurer impairment *or insolvency* in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of the impairment *or insolvency*, based on the information available to the association, and submit the report to the commissioner. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of *impairment or* insolvency of a particular insurer and may adopt by reference any report prepared by other associations."

Section 12. Section 33-10-219, MCA, is amended to read:

"33-10-219. Impaired insurer — association's powers prior to liquidation. If ~~an~~ *a member* insurer is an impaired insurer, the association may, ~~prior to an order of liquidation or rehabilitation and~~ subject to any conditions imposed by the association other than those ~~which~~ *that* impair the contractual obligations of the impaired insurer and *that are* approved by the ~~impaired insurer and the~~ commissioner:

(1) guarantee, *assume,* or reinsure or cause to be guaranteed, assumed, or reinsured all the covered policies of the impaired insurer; *or*

(2) provide ~~such moneys~~ *money*, pledges, notes, guarantees, or other means ~~as~~ *that* are proper to effectuate this section and ~~assure~~ *ensure* payment of the contractual obligations of the impaired insurer pending action under ~~subsection (1); and~~ *this section*.

~~(3) loan money to the impaired insurer.~~"

Section 13. Section 33-10-220, MCA, is amended to read:

"33-10-220. ~~Impaired~~ *Insolvent* insurer — association's powers during liquidation. (1) If an insurer is an ~~impaired~~ *insolvent* insurer ~~under an order of liquidation or rehabilitation~~, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the ~~impaired~~ *insolvent* insurer;

(b) ~~assure~~ *ensure* payment of the contractual obligations of the ~~impaired~~ *insolvent* insurer~~;~~ and

~~(c)~~ provide ~~such moneys~~ *money*, pledges, notes, guarantees, or other means ~~as~~ *that* are reasonably necessary to discharge ~~such~~ *its* duties*; or*

(c) provide benefits and coverages in accordance with the provisions of subsection (6).

(2) If the association fails to act within a reasonable period of time, the commissioner ~~shall have~~ *has* the powers and duties of the association under this

part with respect to ~~such~~ *a* domestic, foreign, or alien ~~impaired~~ *insolvent* insurer.

(3) In carrying out its duties under subsection (1), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means; and ~~such~~ *the* liens, moratoriums, or similar means may be imposed if the commissioner:

(a) finds that the amounts ~~which~~ *that* can be assessed under this part are less than the amounts needed to ~~assure~~ *ensure* full and prompt performance of the ~~impaired~~ *insolvent* insurer's contractual obligations or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(b) approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(4) Before being obligated under subsection (1), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, and ~~such~~ *the* temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(5) The association ~~shall have no liability~~ *is not liable* under 33-10-219 or this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation for residents of this state protection substantially similar to that provided by this part for residents of other states.

(6) (a) If proceeding under this section, the association may, with respect to life and health insurance policies *and annuities*:

(i) ~~assure~~ *ensure* payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer for claims incurred:

(A) with respect to group policies *or contracts*, not later than the earlier of the next renewal date under the policy or contract or 45 days, but in~~no~~ *any* event *not* less than 30 days, after the date on which the association becomes obligated with respect to the policies *or contracts*;

(B) with respect to individual policies *or contracts*, not later than the earlier of the next renewal date, if any, under the policies *or contracts* or 1 year, but in ~~no~~ *any* event *not* less than 30 days, from the date on which the association becomes obligated with respect to the policies *or contracts*;

(ii) make diligent efforts to provide all known insureds, *annuitants,* or group ~~policyholders~~ *policyowners* with respect to group policies, 30 days' notice of the termination of the benefits provided; and

(iii) make available substitute coverage on an individual basis in accordance with subsection (6)(b) to each known insured *or annuitant*, or owner if other than the insured *or annuitant*, of an individual policy *or contract* and to any individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insured *or annuitant* had a right under law or the terminated policy *or contract* to convert coverage to individual coverage or to continue an individual policy *or annuity* in force until a specified age or for a specified time during which the insurer had no right unilaterally to make

changes in any provision of the policy or had a right only to make changes in premium by class.

(b) (i) In providing the substitute coverage required under subsection (6)(a)(iii), the association may offer to reissue the terminated coverage or issue an alternative policy.

(ii) Reissued or alternative policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure any reissued or alternative policy.

(c) (i) Alternative policies adopted by the association are subject to the approval of the commissioner. The association may adopt *alternative* policies of various types for future ~~reissuance~~ *issuance* without regard to any particular impairment or insolvency.

(ii) Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Alternative policies issued by the association shall provide coverage of a type similar to that of the policy issued by the ~~impaired or~~ insolvent insurer, as determined by the association.

(d) If the association elects to reissue terminated coverage at a premium different from that charged under the terminated policy, the premium must be set by:

(i) the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner; or

(ii) a court of competent jurisdiction.

(e) The association's obligation with respect to coverage under any policy *or contract* of the ~~impaired or~~ insolvent insurer or under any reissued or alternative policy ceases on the date the coverage or policy is replaced by another similar policy by the ~~policyholder~~ *policyowner*, insured, or association.

(f) When proceeding under this section with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall ensure the payment or crediting of a rate of interest consistent with 33-10-201(10).

(7) In carrying out its duties under this section, the association may, subject to the approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(a) in lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for:

(i) a fixed interest rate;

(ii) payment of dividends with minimum guarantees; or

(iii) a different method for calculating interest or changes in value;

(b) there is not a requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(c) the alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

(8) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this part with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with the provisions of this part.

(9) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable only for unearned premiums due to policyowners or contract owners arising after the entry of the order of liquidation.

(10) The protection provided by this part does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the insolvent insurer that is other than this state."

Section 14. Section 33-10-221, MCA, is amended to read:

"33-10-221. Nomination of liquidator by association — notification given by liquidator. (1) The association may recommend ~~a natural person~~ *an individual* to serve as a special deputy to act for the commissioner and under ~~his~~ *the commissioner's* supervision in the liquidation, rehabilitation, or supervision of any member insurer.

(2) The liquidator, rehabilitator, or supervisor of any impaired *or insolvent* insurer may notify all interested persons of the effect of this part."

Section 15. Section 33-10-222, MCA, is amended to read:

"33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the impaired *or insolvent* insurer is a party in any court in this state ~~shall~~ *must* be stayed 60 days from the date an order of liquidation, rehabilitation, or supervision is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have ~~such~~ *the* judgment set aside by the same court that made ~~such~~ *the* judgment and ~~shall~~ *must* be permitted to defend against ~~such~~ *the* suit on the merits."

Section 16. Section 33-10-223, MCA, is amended to read:

"33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part ~~shall~~ *must* be ~~deemed~~ *considered* to have assigned ~~his~~ *the person's* rights under the covered policy *or contract, pertaining to any causes of action against the person for losses resulting from or otherwise relating to the covered policy or contract,* to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage *or provision of substitute or alternative coverage*. The association may require an assignment to it of ~~such~~ *the* rights by any payee, ~~policy~~ *policyowner* or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon ~~such~~ *the* person. The association

~~shall~~ *must* be subrogated to these rights against the assets of any impaired insurer.

(2) The subrogation rights of the association under this section ~~shall~~ have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this part.

(3) In addition to the rights detailed in this section, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this part, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity, except for any person responsible solely by reason of serving as an assignee with respect to a qualified assignment under section 130 of the Internal Revenue Code.

(4) If subsections (1) through (3) are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policy or a portion of the policy covered by the association.

(5) If the association has provided benefits with respect to a covered obligation and a person recovers any amount to which the association has rights as described in this section, the person shall pay to the association the portion of the recovery attributable to the policy or a portion of the policy covered by the association."

Section 17. Section 33-10-224, MCA, is amended to read:

"33-10-224. Extent of liability. *(1)* The benefits for which the association may become liable may not exceed the lesser of:

~~(1)~~*(a)* the contractual obligations of the impaired *or insolvent* insurer for which the insurer becomes or would have become liable if it were not an impaired or insolvent insurer; or

~~(2) (a)~~*(b) (i) except as provided in subsection (2),* with respect to any one life, regardless of the number of policies or contracts:

~~(i)~~*(A)* $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

~~(ii)~~*(B)* ~~$100,000~~ in health insurance benefits~~,~~*:*

(I) $500,000 for basic hospital, medical, and surgical insurance or major medical insurance as defined in the covered policy or contract;

(II) $300,000 for disability insurance as defined in the covered policy or contract;

(III) $100,000, including any net cash surrender and net cash withdrawal values*, for coverages not included in (1)(b)(i)(B)(I) and (1)(b)(i)(B)(II)*;

~~(iii)~~*(C)* $100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

~~(b)~~*(ii)* with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, $100,000 in

present value annuity benefits, including net cash surrender and net cash withdrawal values~~.~~*;* ~~However, the association is not liable to expend more than $300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection.~~

~~(c)~~*(iii)* with respect to any one contract ~~holder~~ *owner* covered by any unallocated annuity contract not included in subsection ~~(2)(b)~~ *(1)(b)(ii)*, $5 million in benefits, irrespective of the number of contracts held by that contract ~~holder.~~ *owner;*

(iv) with respect to each payee of a structured settlement annuity or beneficiary of the payee if the payee is deceased, $100,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(v) with respect to either one contract owner provided coverage under 33-10-201(6) or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in subsection (1)(b)(ii), $5 million in benefits, irrespective of the number of contracts held by the contract owner or plan sponsor. If one or more unallocated annuity contracts are covered contracts under this part and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, and in any event, the association is not obligated to cover more than $5 million in benefits with respect to all these unallocated contracts.

(2) The association is not obligated to cover more than:

(a) an aggregate of $300,000 in benefits with respect to any one life under subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii), except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under subsection (1)(b)(i), in which case the aggregate liability of the association may not exceed $500,000 with respect to any one individual; and

(b) with respect to one owner of multiple nongroup policies of life insurance, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, $5 million in benefits, regardless of the number of policies and contracts held by the owner.

(3) The limitations set forth in this section are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this part may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under this part, the association is not required to guarantee, assume, reinsure, or perform or cause to be guaranteed, assumed, reinsured, or performed the contractual obligations of the impaired or insolvent insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract."

Section 18. Section 33-10-226, MCA, is amended to read:

"33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or

supervision proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the impaired *or insolvent* insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of ~~such~~ *the* impaired *or insolvent* insurer. In ~~such a~~ *the* determination, consideration ~~shall~~ *must* be given to the welfare of the ~~policyholders~~ *policyowners* of the continuing or successor insurer.

(2) ~~No~~ *A* distribution to stockholders, if any, of an impaired *or insolvent* insurer ~~shall~~ *may not* be made until and unless the total amount of assessments levied by the association with respect to ~~such~~ *the* insurer have been fully recovered by the association."

Section 19. Section 33-10-227, MCA, is amended to read:

"33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the times and for the amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There are two classes of assessments, as follows:

(a) Class A assessments must be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired *or insolvent* insurer.

(b) Class B assessments must be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220~~(1)~~ with regard to an impaired *or insolvent* insurer.

(3) (a) The amount of any Class A assessment for each account must be determined by the board. The amount of any Class B assessment must be divided among the accounts in the proportion that the premiums received by the impaired *or insolvent* insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies.

(b) Class B assessments against member insurers for each account must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to the premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired *or insolvent* insurer may not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account may not in any ~~one~~ *1* calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which the assessment is abated or deferred must be assessed

against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any ~~one~~ *1* year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon ~~thereafter~~ *after that year* as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(8) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in that form and for the amount, if any, and period of time that the commissioner may approve."

Section 20. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 10, part 2, and the provisions of Title 33, chapter 10, part 2, apply to [sections 1 and 2].

Section 21. Effective date. [This act] is effective July 1, 2003.

Ap proved April 1, 2003

CHAPTER NO. 196

[HB 174]

AN ACT GENERALLY REVISING PROFESSIONAL OCCUPATION AND LICENSING LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY, WITH RESPECT TO CERTAIN LICENSING EXAMINATIONS, ALLOW THIRD PARTIES TO PROVIDE EXAMINATION AND GRADING SERVICES; REVISING EXAMINATION AND CERTIFICATE REQUIREMENTS FOR SANITARIANS; REVISING OUTFITTER LICENSES FOR CORPORATIONS, PROPRIETORSHIPS, AND PARTNERSHIPS; REVISING EDUCATION, CERTIFICATION, AND EXAMINATION REQUIREMENTS FOR PUBLIC ACCOUNTANTS;

REVISING EXAMINATION REQUIREMENTS FOR REAL ESTATE BROKERS AND SALESPERSONS; REVISING APPLICATION, EXAMINATION, AND CERTIFICATION REQUIREMENTS FOR REAL ESTATE APPRAISERS; REVISING EXAMINATION REQUIREMENTS FOR ARCHITECTS; REVISING APPLICATION, FEE, AND EXAMINATION REQUIREMENTS FOR ENGINEERS AND LAND SURVEYORS; REVISING FEE AND EXAMINATION REQUIREMENTS FOR ELECTRICIANS; REVISING FEE AND EXAMINATION REQUIREMENTS FOR PLUMBERS; REVISING APPLICATION, FEE, AND LICENSE REQUIREMENTS FOR CONSTRUCTION BLASTERS; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING BOILERS AND STEAM ENGINES; REVISING EXAMINATION AND FEE REQUIREMENTS FOR PERSONS OPERATING HOISTING ENGINES; AMENDING SECTIONS 37-40-302, 37-47-304, 37-50-204, 37-50-305, 37-50-308, 37-50-309, 37-51-303, 37-54-105, 37-54-201, 37-54-302, 37-54-305, 37-65-303, 37-67-303, 37-67-311, 37-68-304, 37-68-305, 37-68-307, 37-68-311, 37-69-304, 37-69-305, 37-69-307, 37-72-303, 37-72-304, 37-72-305, 50-74-312, AND 50-76-104, MCA; AND REPEALING SECTIONS 37-54-304 AND 50-74-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-40-302, MCA, is amended to read:

"37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must ~~possess~~ *have* a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and ~~must~~ *shall* pass ~~a written~~ *an* examination given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration ~~upon payment of the required fee~~.

(4) Holders of current certificates are entitled to append to their name the initials "R.S."."

Section 2. Section 37-47-304, MCA, is amended to read:

"37-47-304. Application. (1) Each applicant for an outfitter's, guide's, or professional guide's license shall ~~make application~~ *apply* for *a* license on a form prescribed and furnished by the board.

(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including*:*

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant will provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) Applications for an outfitter's license must be in the name of an individual person only. Applications involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. ~~The license must specifically state that the license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved.~~ Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 3. Section 37-50-204, MCA, is amended to read:

"37-50-204. Rulemaking powers relating to ~~reexaminations~~ *examinations.* The board ~~shall have power to prescribe by uniform rule~~ *may adopt rules* for the following:

(1) the terms and conditions under which a candidate ~~who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed~~ *shall obtain credit for passing the required examination or portions of the examination*;

(2) ~~a reasonable waiting period for a candidate's reexamination in a subject he has failed~~ *the period of time that candidates are allowed to apply for reexamination*; *and*

~~(3) the maximum number of reexaminations for which a candidate may apply;~~

~~(4)~~*(3)* the fees to be charged each candidate for ~~initial~~ examinations and special examinations, which ~~shall~~ *must* be commensurate with costs. ~~With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined.~~"

Section 4. Section 37-50-305, MCA, is amended to read:

"37-50-305. Education requirements. (1) ~~Prior to July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:~~

~~(a) with a concentration in accounting; or~~

~~(b) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.~~

~~(2) Beginning July 1, 1997, a~~ *A* candidate for *initial* certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

(2) For the purposes of this section, "initial certification" means that the candidate has never been certified as a certified public accountant or licensed as a licensed public accountant by any jurisdiction."

Section 5. Section 37-50-308, MCA, is amended to read:

"37-50-308. Examination. Except as provided in 37-1-101(4), the department shall ~~administer~~ *provide for* an examination in accounting, auditing, and related subjects as the board ~~determines~~ *considers* appropriate. The grade determination of the board is final in each case. The *department on behalf of the* board may ~~use the examination and grading services of the American institute of certified public accountants or other~~ *contract with* third parties to ~~perform~~ *provide the* examination *and* administrative services *related to the examination*. ~~The examination must be held at least annually and at other times as applications warrant.~~ The board may ~~determine the time and place of examination and may~~ adopt rules necessary for the orderly conduct of the examination."

Section 6. Section 37-50-309, MCA, is amended to read:

"37-50-309. Credit for examinations taken in other ~~states~~ *jurisdictions*. The board may by rule provide for granting credit to a candidate for ~~his~~ *the* satisfactory completion of ~~a written~~ *an* examination in any one or more of the subjects of examination given by the licensing authority in another ~~state~~ *jurisdiction*. ~~These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the~~

~~judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination.~~"

Section 7. Section 37-51-303, MCA, is amended to read:

"37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is ~~then~~ pending shall satisfactorily pass ~~a written~~ *an* examination ~~prepared~~ *prescribed* by or under the supervision of the board. The examination ~~shall~~ *must* be given at least once each 6 months and at places within the state *that* the board prescribes.

(2) (a) The examination for a salesperson's license ~~shall~~ *must* include~~:~~ *subject portions that the board determines by rule to be appropriate.*

~~(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;~~

~~(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.~~

(b) If the applicant passes one subject portion of the examination, ~~(2)(a)(i) or (2)(a)(ii), he shall not be~~ *the applicant is not* required to repeat that portion of the examination if ~~he~~ *the applicant* passes the remaining portion within 12 months.

(3) The examination for a broker's license ~~shall~~ *must* be of a more exacting nature and scope and more stringent than the examination for a salesperson's license."

Section 8. Section 37-54-105, MCA, is amended to read:

"37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of *processing an application for* licensure and certification and renewal of a license or certificate;

(3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(4) ~~receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants~~ *prescribe the examinations for licensure or certification*~~,~~ and determine the acceptable level of performance on examinations;

(5) receive and review applications for licensure and certification and issue licenses and certificates;

(6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(7) retain all applications and other records submitted to it;

(8) adopt by rule standards of professional appraisal practice in this state;

(9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers; and

(10) perform other duties necessary to implement this chapter."

Section 9. Section 37-54-201, MCA, is amended to read:

"37-54-201. Real estate appraiser license — scope and display of license. (1) Upon proof that an applicant meets the qualifications set out in 37-54-202 ~~and upon payment of license fees adopted under 37-54-105~~, the board shall issue to the applicant a real estate appraiser license.

(2) The term "licensed real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.

(3) This chapter does not preclude a person who is not a licensed or certified real estate appraiser from appraising real property for transactions not related to a federal agency or project for compensation~~, provided that~~ *if* the person does not purport to be a licensed or certified real estate appraiser. A person who purports that the person or the person's company is licensed under this section or certified under 37-54-302 ~~through 37-54-304~~ *and 37-54-303* without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which the person is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the federal financial institutions examination council agencies.

(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in the appraiser's principal place of business."

Section 10. Section 37-54-302, MCA, is amended to read:

"37-54-302. Certification process — fees. (1) An application ~~for examination~~ for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge to comply with the standards of professional appraisal practice established for certified real estate appraisers under 37-54-403 and affirm that the applicant understands the types of misconduct for which disciplinary action may be initiated under 37-1-308.

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that the applicant has the education required for the class or classes of certification for which application is made; and

(b) pass an examination prescribed by the board.

(5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board."

Section 11. Section 37-54-305, MCA, is amended to read:

"37-54-305. Issuance and display of certificate. (1) The board shall issue a certificate and a pocket card to a person who meets the requirements of 37-54-302 ~~through 37-54-304~~ *and 37-54-303*.

(2) The certificate must include the dates of issuance and renewal of certification.

(3) A certified real estate appraiser shall conspicuously display the certificate in the appraiser's principal place of business.

(4) A certified real estate appraiser shall designate the class for which the appraiser is certified and place the certificate number on each appraisal report, contract, or other instrument that the appraiser uses in conducting real estate appraisal activities."

Section 12. Section 37-65-303, MCA, is amended to read:

"37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license. A person applying must have successfully completed the requirement of prerequisites in education and practical experience and ~~a written~~ *an* examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination, the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state~~, which may be granted only on the consent of not less than two members of the board~~."

Section 13. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application — contents — fees. (1) Applications for licensure must be on forms prescribed by the board and furnished by the department, must contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical work, and must contain the required references.

(2) The *application* fee for an engineer intern is as prescribed by the board~~,~~ *and* must accompany the application~~, and must include the cost of one examination~~. An additional fee is not required for the issuance of a certificate.

(3) The application fee for licensure as a professional engineer is as prescribed by the board for those holding an engineer intern certificate validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes the cost of verification of engineer intern certification or licensure ~~and one examination~~. Upon approval of an application for licensure *and passage of the required examination* as a professional engineer, ~~an additional fee equal to the existing renewal fee must be paid before the issuance of~~ *the department shall issue* a license as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application~~,~~ *and* payment of ~~a~~ *an application* fee as prescribed by the board, ~~and payment of an additional fee equal to the appropriate renewal fee,~~ issue a license as a professional engineer to a person who holds a certificate of qualification or licensure issued to the person by the committee on national engineering certification of the national council of examiners for engineering

and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The *application* fee for a land surveyor intern is as prescribed by the board~~, which~~ *and* must accompany the application ~~and must include the cost of one examination~~. An additional fee is not required for issuance of a certificate.

(6) The application fee for licensure as a professional land surveyor is as prescribed by the board for those holding a land surveyor intern certificate validated in Montana. For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of an application for licensure as a professional land surveyor *and passage of the required examination*, ~~an additional fee equal to the existing renewal fee must be paid before the issuance of~~ *the department shall issue* a license as a professional land surveyor.

(7) The application fee for licensure as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer intern and land surveyor intern certificates validated in Montana. For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board. The fee must accompany the application. Upon approval of an application for licensure as a professional engineer and professional land surveyor *and passage of the required examinations*, ~~an additional fee equal to the existing renewal fee must be paid before the issuance of~~ *the department shall issue* a license.

(8) If the board denies the issuance of a license to any applicant, the initial fee deposited must be retained as an application fee."

Section 14. Section 37-67-311, MCA, is amended to read:

"37-67-311. Examinations — *fees — third-party services.* Examination requirements are as follows:

(1) The examinations must be held at times and places that the board directs. The board shall determine the acceptable grade on examinations.

(2) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(3) The board may use a third party to provide examination and grading services.

~~(2)~~*(4)* ~~Written examinations~~ *Examinations* may be taken only after the applicant has met the other minimum requirements as provided in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for licensure as a professional engineer if the examinee has met the other requirements for licensure required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate if the examinee has met all other requirements for certification required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for licensure as a professional land surveyor if the examinee has met the other requirements for licensure required by this chapter.

~~(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee shall wait 1 year before a third examination.~~

~~(4) A candidate failing three examinations may not be allowed readmission to the examination. The candidate may apply for a special circumstance waiver from the board to be readmitted to the examination.~~"

Section 15. Section 37-68-304, MCA, is amended to read:

"37-68-304. Master electricians — application — qualifications — contents of examination — *fees*. (1) An applicant for a master electrician's license shall furnish written evidence ~~that he is~~ *of being* a graduate electrical engineer of an accredited college or university and ~~has~~ *of having* 1 year of practical electrical experience or that ~~he~~ *the applicant* is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or ~~that he~~ has had at least 5~~years'~~ *years of* practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department~~, together with the examination fee~~. The board shall, not less than 30 days prior to a scheduled ~~written~~ examination, notify each applicant that the evidence submitted with ~~his~~ *the applicant's* application is sufficient to qualify ~~him~~ to take the ~~written~~ examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant~~and shall authorize the department to return the applicant's examination fee~~. The place of examinations ~~shall~~ *must* be designated by the board, and examinations ~~shall~~ *must* be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The ~~written~~ examination ~~shall~~ *must* consist of at least 30 questions designed to fairly test the applicant's knowledge and ~~his~~ *the applicant's* technical application in ~~the following subjects:~~ *the following subjects:*

(a) the national electric code;

(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading blueprints for electrical work;

(e) drafting and layout of electrical circuits; and

(f) knowledge of practical electrical theory.

~~(a) the national electrical code;~~

~~(b) cost estimating for electrical installments;~~

~~(c) procurement and handling of materials needed for electrical installations and repair;~~

~~(d) reading of blueprints for electrical work;~~

~~(e) drafting and layout of electrical circuits;~~

~~(f) knowledge of practical electrical theory.~~

(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs."

Section 16. Section 37-68-305, MCA, is amended to read:

"37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence ~~that he has had~~ *of* at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant ~~shall~~ *must* be made and given as in the case of master electricians' licenses. The ~~written~~ examination for a journeyman's license ~~shall~~ *must* consist of at least 30 questions designed to fairly test the applicant's knowledge and the *applicant's* technical application ~~thereof in the following subjects:~~ *in the following subjects:*

(a) the Ohm's law;

(b) the national electric code; and

(c) layout and practical installation of electrical circuits.

~~(a) the Ohm's law;~~

~~(b) the national electrical code;~~

~~(c) layout and practical installation of electrical circuits.~~

(2) An applicant for a residential electrician's license shall furnish written evidence ~~that he has had~~ *of* at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant ~~is~~ *must be* made and given as in the case of master electricians' licenses. The ~~written~~ examination for a residential electrician's license ~~consists~~ *must consist* of at least 30 questions designed to fairly test the applicant's knowledge and the *applicant's* technical application ~~thereof in the following subjects:~~ *in the following subjects:*

(a) the Ohm's law;

(b) the national electric code; and

(c) layout and practical installation of electrical circuits.

~~(a) the Ohm's law;~~

~~(b) the national electrical code;~~

~~(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure.~~"

Section 17. Section 37-68-307, MCA, is amended to read:

"37-68-307. Examination procedure — *third-party services* — issuance of master, journeyman, or residential electrician's license — expiration. (1) To ensure impartiality, the examination for either the residential, master's, or journeyman's license must be ~~by numbers drawn by lot. A paper may not be marked with the name of an applicant, but must be anonymously graded~~ *administered* by the department. *The department may use a third party to provide examination and grading services.* The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department~~, on payment by the applicant of the fee,~~ shall issue to the applicant a license that authorizes the licensee to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) ~~Unless otherwise provided by rules established by the department, each original license expires on a July 15 that~~ *Each original license expires on the renewal date established by the department by rule if it* is not more than 3 years ~~subsequent to~~ *after* the date of issuance."

Section 18. Section 37-68-311, MCA, is amended to read:

"37-68-311. ~~Examination~~ *Application* fee — license fee — specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by ~~this~~ *electric* current shall ~~make application~~ *apply* for a license to the department. The application must be on a form furnished by the department and must be accompanied by an ~~examination~~ *application* fee set by the board. The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, ~~the applicant shall pay to the department a license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee~~ the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

(3) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion and in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date."

Section 19. Section 37-69-304, MCA, is amended to read:

"37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority — *fees — third-party services*. (1) The following requirements must be met by applicants for a journeyman plumber's license:

(a) a specific record of 5 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing ~~and establishing by practical demonstration his competence in the special skills required in the field of plumbing~~ *and establishing by practical demonstration competence in the special skills required in the field of plumbing*.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

(3) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs.

(4) The department may use a third party to provide examination and grading services."

Section 20. Section 37-69-305, MCA, is amended to read:

"37-69-305. Qualifications of applicants for master plumber's license — restriction on authority — *fees — third-party services*. (1) The following requirements must be met by an applicant for a master plumber's license:

(a) evidence of 4 years' experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 years' experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination for master plumbers testing ~~his~~ *the applicant's* knowledge of the field of plumbing and demonstrating ~~his~~ skill and ability in the field of plumbing.

(2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow ~~his~~ *the master plumber's* license to be used by any person or firm, corporation, or business other than ~~his~~ *the master plumber's* own for the purpose of obtaining permits or for doing plumbing work under ~~his~~ *the* license.

(4) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(5) The department may use a third party to provide examination and grading services."

Section 21. Section 37-69-307, MCA, is amended to read:

"37-69-307. ~~Examination fee and renewal fee~~ *Renewal fees.* ~~(1) An applicant for a master plumber's license may not submit to the examinations prescribed by the board until the applicant has deposited with the department an examination fee prescribed by the board, and an applicant for a journeyman plumber's license may not submit to the examination prescribed by the board until the applicant has deposited with the department an examination fee as prescribed by the board.~~

~~(2)~~ A license ~~when issued~~ expires on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period established by the department by rule.

~~(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.~~"

Section 22. Section 37-72-303, MCA, is amended to read:

"37-72-303. Licensure by examination — fee — *third parties.* (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of 37-72-301 and 37-72-302 and the rules adopted by the department. The department shall determine the subjects, scope, and acceptable level of performance for all examinations. The examination may be written, oral, or both. The examination ~~shall~~ *must* at a minimum test the applicant's knowledge of the rules of the department governing construction blasting.

(2) ~~An applicant for licensure by examination shall pay an examination fee to the department.~~ *The department shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.*

(3) The department may use a third party to perform examination and grading services.

~~(3)~~*(4)* An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with 37-72-302~~, upon payment to the department of a reexamination fee~~."

Section 23. Section 37-72-304, MCA, is amended to read:

"37-72-304. Issuance of license ~~— fee~~. ~~Upon receipt of a license fee, the~~ *The* department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number. ~~It must be signed by the department.~~"

Section 24. Section 37-72-305, MCA, is amended to read:

"37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of ~~a license~~ *an application and application* fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing ~~him~~ *the person* to supervise or engage in the practice of construction blasting if the department finds that the

certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 through 37-72-303."

Section 25. Examinations — fees — third parties. (1) The department shall administer the engineer examinations at least once every 3 months at places within the state as determined by the department.

(2) The department shall determine the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(3) The department may use a third party to provide examination and grading services.

Section 26. Section 50-74-312, MCA, is amended to read:

"50-74-312. Review of license rejection. (1) An applicant for a license under the provisions of this chapter whose application has been rejected may, within 45 days after the date of the rejection, set forth in writing any arguments opposing the rejection and request a review by the department. The request must be addressed to the department and must be signed by the applicant.

(2) Within 2 days after receiving the request, the department shall notify the applicant in writing that on a certain day, not less than 5 days or more than 30 days after receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review. At least 2 days before the day set for the review, the applicant may designate in writing to the department of labor and industry the name of an engineer holding a valid license of equal or higher grade than the one applied for, and the engineer may testify on behalf of the applicant at the review.

(4) After the review, if the department of labor and industry determines that the applicant is entitled to the license, the department shall issue the license. If the department affirms the decision to not issue the license, the applicant is required to reapply to take the license examination, as provided in 50-74-309 ~~through~~ *and* 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license."

Section 27. Section 50-76-104, MCA, is amended to read:

"50-76-104. Application, *examination,* and fee for license. *(1)* Application for licenses must be made to the department and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department.

(2) The department shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(3) The department may use a third party to perform examination and grading services."

Section 28. Repealer. Sections 37-54-304 and 50-74-310, MCA, are repealed.

Section 29. Codification instruction. [Section 25] is intended to be codified as an integral part of Title 50, chapter 74, and the provisions of Title 50, chapter 74, apply to [section 25].

Ap proved April 1, 2003

CHAPTER NO. 197

[HB 312]

AN ACT EXCLUDING SERVICES PERFORMED BY AN INDIVIDUAL AS AN OFFICIAL AT ALL AMATEUR ATHLETIC EVENTS FROM THE DEFINITION OF "EMPLOYMENT" FOR PURPOSES OF THE STATE'S UNEMPLOYMENT COMPENSATION INSURANCE LAWS; AMENDING SECTION 39-51-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) *(A)* "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles.

(B) The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; ~~or~~

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873*; or*

(y) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 1, 2003

CHAPTER NO. 198

[HB 416]

AN ACT EXTENDING THE PROTEST PERIOD FOR THE CREATION OR EXTENSION OF A RURAL IMPROVEMENT DISTRICT FROM 15 DAYS TO 30 DAYS; AND AMENDING SECTION 7-12-2109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2109, MCA, is amended to read:

"7-12-2109. Right to protest creation or extension of district. At any time within ~~15~~ *30* days after the date of the first publication of the notice of the

passage of the resolution of intention, any owner of property liable to be assessed for ~~said~~ work *proposed in the resolution* may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. ~~Such~~ *The* protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse ~~thereon~~ *on the protest* the date of its receipt by ~~him~~ *the clerk*."

Ap proved April 1, 2003

CHAPTER NO. 199

[SB 103]

AN ACT PROVIDING FOR CONTINGENT FUND TRANSFERS FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR THE REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;

(b) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(c) to the extent funds are available after the appropriations in subsections (3)(a) and (3)(b), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(c), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. ~~Unused~~ *Except as provided in subsection (6), unused* balances remain in the account until appropriated by the legislature for the purposes specified in this section.

(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to 75-10-743(10), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.

(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to 75-10-743(10).

(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."

Section 2. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is

authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) ~~The~~ *Except as provided in subsection (9), the* fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature;

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(e) funds received from the interest income of the fund;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all

donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to 75-10-743(10), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.

(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to 75-10-743(10).”

Section 3. Section 75-10-743, MCA, is amended to read:

"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and, *except as provided in subsection (10),* to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) unencumbered funds remaining in the abandoned mines state special revenue account;

(e) interest income on the account;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of *a* petition provided *for* in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, ~~the orphan share fund must pay~~ the department's costs incurred in defending the orphan share *must be paid from the orphan share fund* in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in

defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) (a) ~~On August 21, 2002, $1,000 is transferred from the orphan share fund to the general fund.~~ If sufficient money remains in the orphan share fund on June 29, 2003, $999,000 must be transferred to the general fund.

(b) If any money remains in the orphan share fund after June 30, 2005, *after the transfer of any funds is made pursuant to subsection (10)* and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(10) For the biennium beginning July 1, 2003, and subject to the provisions of [section 4], the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed $600,000. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)"

Section 4. Contingent appropriation of orphan share funds. (1) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the environmental quality protection fund established in 75-10-704 an amount not to exceed $600,000 during the biennium beginning July 1, 2003, if the expenditures from the environmental quality fund exceed revenue available to the fund. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the environmental quality protection fund in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(2) Subject to the limitation in subsection (3), there is transferred from the orphan share account established in 75-10-743 to the hazardous waste/CERCLA special revenue account established in 75-10-621 an amount not to exceed $600,000 during the biennium beginning July 1, 2003, if the expenditures from the hazardous waste/CERCLA account exceed revenue available to the account. The money transferred pursuant to this subsection may be appropriated to the department of environmental quality subject to the appropriation from the hazardous waste/CERCLA account in [House Bill No. 2]. The total expenditures in each fiscal year of the biennium may not exceed the appropriation made in [House Bill No. 2].

(3) The total of the amounts transferred and appropriated pursuant to subsections (1) and (2) may not exceed $600,000.

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Contingent termination. If 75-10-743 terminates June 30, 2005, then [sections 1 and 2] terminate June 30, 2005.

Ap proved April 1, 2003

CHAPTER NO. 200

[SB 107]

AN ACT INCREASING THE YEARLY PAYMENT TO A COUNTY FOR ITS JUNK VEHICLE COLLECTION AND GRAVEYARD BUDGET FROM $1 TO $1.25 FOR EACH MOTOR VEHICLE UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT; INCREASING THE TOTAL PAYMENT TO COUNTIES WITH FEWER THAN 5,000 MOTOR VEHICLES UNDER 8,001 POUNDS GROSS VEHICLE WEIGHT FROM $5,000 TO $6,250; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-534, MCA, is amended to read:

"75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed ~~$1~~ *$1.25* for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 ~~such~~ motor vehicles *under 8,001 pounds gross vehicle weight*, the department may pay up to ~~$5,000~~ *$6,250*~~, providing~~ *if* the county can justify this payment. Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county's junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved April 1, 2003

CHAPTER NO. 201

[SB 122]

AN ACT AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE LICENSES ENTITLING THE HOLDER OF A CLASS A-5, CLASS A-7, OR CLASS B-10 LICENSE TO TAKE A SECOND ELK, WHICH MUST BE ANTLERLESS; ESTABLISHING A FEE AND ELIGIBILITY REQUIREMENTS FOR A CLASS A-9 RESIDENT ANTLERLESS ELK B TAG AND A CLASS B-12 NONRESIDENT

ANTLERLESS ELK B TAG; AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ESTABLISH A WAITING PERIOD FOR ELIGIBILITY FOR CERTAIN ANTLERED BULL ELK PERMITS; AMENDING SECTIONS 87-2-104, 87-2-501, 87-2-505, 87-2-702, AND 87-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class B-7, Class B-8, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) When authorized by the commission for game management purposes, the department may issue Class A-9, resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. An applicant must have a Class A-5 or Class A-7 license to be eligible for a Class A-9 license. An applicant must have a Class B-10 license to be eligible for a Class B-12 license. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

~~(4)~~*(5)* The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species."

Section 2. Section 87-2-501, MCA, is amended to read:

"87-2-501. Class A-3, A-4, A-5, A-6, A-7, *A-9*—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference — *fees*. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $13;

(b) Class A-4, deer B tag, $8;

(c) Class A-5, elk tag, $16;

(d) Class A-6, black bear tag, $15;

(e) Class A-7, antlerless elk tag, $16~~.~~;

(f) Class A-9, resident antlerless elk B tag, $16.

(2) (a) The holder of a Class A-7 antlerless elk license who is 12 years of age or older is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.

(b) A person may not take more than ~~one~~ *two* elk during any license year, *only one of which may be antlered.* ~~and a~~ *A* person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 3. Section 87-2-505, MCA, is amended to read:

"87-2-505. (Temporary) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of $625 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission.

(3) A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is $270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the

commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999; sec. 9, Ch. 216, L. 2001.)

87-2-505. (Effective March 1, 2006) Class B-10—nonresident big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of $550 and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission.

(3) A holder of a Class B-10 nonresident big game combination license may apply for a Class B-12 nonresident antlerless elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is $270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions determined by the commission."

Section 4. Section 87-2-702, MCA, is amended to read:

"87-2-702. Restrictions on special licenses. (1) A person who has killed or taken any game animal, except a deer*, an elk,* or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

(2) The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

(3) ~~After March 27, 1987, a~~ *A* person may ~~lawfully~~ take only one grizzly bear in Montana with a license authorized by 87-2-701.

(4) (a) A person who receives a moose, mountain goat, or limited mountain sheep license, with the exception of an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection ~~(a)~~ *(4)(a)*, "limited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is restricted.

(b) A person who takes a mountain sheep using an unlimited mountain sheep license, with the exception of a mountain sheep taken pursuant to an adult ewe license, as authorized by 87-2-701, is not eligible to receive another special license for that species for the next 7 years. For the purposes of this subsection ~~(b)~~ *(4)(b)*, "unlimited mountain sheep license" means a license that is valid for an area in which the number of licenses issued is not restricted."

Section 5. Section 87-2-704, MCA, is amended to read:

"87-2-704. Regulation of special elk permits. (1) The department may:

(a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting and set time limits and describe area restrictions; and

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the department.

(2) The department shall provide that a person who is issued a special elk permit to hunt antlerless elk during the regular hunting season is:

(a) limited to the hunting and taking of only an antlerless elk in the hunting district or portion of a hunting district where the permit is valid; and

(b) entitled to the general elk hunting privileges for a holder of a Class A-5 license in all other hunting districts.

(3) The commission may establish a waiting period during which a person who has received a special elk permit that is valid for an antlered bull may not receive another special elk permit that is valid for an antlered bull. The commission may specify which special elk permits are subject to the waiting period, by hunting district or portion of a hunting district.

~~(3)~~*(4)* The fee for a special elk permit is ~~$2 beginning March 1, 1992, and~~ $3 ~~beginning March 1, 1994~~.

~~(4)~~*(5)* The department may adopt rules necessary to implement this section."

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 1, 2003

CHAPTER NO. 202

[SB 125]

AN ACT REVISING SECURITIES LAWS FOR THE PURPOSE OF PROMOTING CAPITAL FORMATION BY CREATING AN ADDITIONAL EXEMPT TRANSACTION FOR MONTANA-BASED BUSINESSES; AND AMENDING SECTION 30-10-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has *not* been *a* ~~no~~ default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has *not* been *a* ~~no~~ default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) ~~any~~ *a* transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the commissioner may allow if:

(i) the offeror has its corporate headquarters or principal place of business in this state;

(ii) the seller reasonably believes that all the buyers are purchasing for investment;

(iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in addition to the offers made pursuant to subsection (8)(a) and pays a filing fee that must accompany the application for approval. The commissioner may deny the application.

~~(c)~~*(d)* For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

(22) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (22) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection (22)."

Ap proved April 1, 2003

CHAPTER NO. 203

[SB 229]

AN ACT PROVIDING THAT, WITH RESPECT TO CERTAIN TYPES OF SURETY BONDS REQUIRED TO BE FURNISHED ON VARIOUS PUBLIC CONTRACTS, THE STATE OR OTHER GOVERNMENTAL AGENCIES MAY NOT REQUIRE THAT THE BONDS BE FURNISHED BY A PARTICULAR SURETY COMPANY OR BY A PARTICULAR INSURANCE PRODUCER FOR

A SURETY COMPANY; AND AMENDING SECTIONS 18-1-203, 18-2-201, 18-2-302, AND 18-4-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-203, MCA, is amended to read:

"18-1-203. Form of security. (1) *(a)* In all cases under 18-1-202(1), the bidder, offeror, or tenderer shall accompany any bid with either:

~~(a)~~*(i)* lawful money of the United States;

~~(b)~~*(ii)* a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a federally chartered or state-chartered bank insured by the federal deposit insurance corporation; or

~~(c)~~*(iii)* a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.

(b) The public authority soliciting or advertising for bids may not require that a bid bond, guaranty bond, or surety bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The money or, in lieu of money, the bank instruments or bid bonds, financial guaranty bonds, or surety bonds must be payable directly to the public authority soliciting or advertising for bids."

Section 2. Section 18-2-201, MCA, is amended to read:

"18-2-201. Security requirements. (1)*(a)* Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the *person or* corporation~~, person, or persons~~ with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a ~~licensed~~ surety company, *licensed in this state,* as surety, conditioned that the *person or* corporation~~, person, or persons~~ shall:

~~(a)~~*(i)* faithfully perform all of the provisions of the contract;

~~(b)~~*(ii)* pay all laborers, mechanics, subcontractors, and material suppliers; and

~~(c)~~*(iii)* pay all persons who supply the*person,* corporation, ~~person or persons,~~ or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) ~~Notwithstanding the provisions of subsection (1), the~~ *The* state or other governmental entity *listed in subsection (1)(a)* may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee

the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(3) ~~Notwithstanding the provisions of subsection (1), any~~ *Any* board, council, commission, trustee, or body acting for any county, municipality, or ~~any~~ public body other than the state may, *subject to the provisions of subsection (1)(b),* in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental ~~body~~ *entity*.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than $50,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than $7,500."

Section 3. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security — waiver — authority to submit. (1) *(a)* Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

~~(a)~~*(i)* drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

~~(b)~~*(ii)* drawn and issued by a credit union insured by the national credit union share insurance fund; or

~~(c)~~*(iii)* a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(b) The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than $25,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification."

Section 4. Section 18-4-312, MCA, is amended to read:

"18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) *(a)* If security is required under subsection (1), the following types of security may be required to be deposited with the state:

~~(a)~~*(i)* a sufficient bond with a licensed surety company as surety;

~~(b)~~*(ii)* an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

~~(c)~~*(iii)* money of the United States;

~~(d)~~*(iv)* a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) The department may not require that a bond required pursuant to subsection (2)(a)(i) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter."

Ap proved April 1, 2003

CHAPTER NO. 204

[HB 373]

AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION LAWS; CLARIFYING THE POLICY AND FINDINGS; CLARIFYING CERTAIN DEFINITIONS AND DEFINING CERTAIN TERMS; REDUCING THE TIME REQUIRED FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO APPROVE OR DISAPPROVE MINOR REVISIONS; MODIFYING PERMIT APPLICATION REQUIREMENTS; CLARIFYING HYDROLOGIC BALANCE RECLAMATION REQUIREMENTS; MODIFYING AREA MINING REQUIREMENTS; MODIFYING THE REQUIREMENTS FOR PLANTING VEGETATION FOLLOWING GRADING OF A DISTURBED AREA; PROVIDING STANDARDS FOR SUCCESSFUL REVEGETATION; CLARIFYING THAT VEGETATION THAT IS PLACED OR SEEDED BECOMES THE PROPERTY OF THE LANDOWNER AFTER THE BOND IS RELEASED; ALLOWING REVISION OF PERMIT AND RECLAMATION PLAN APPLICATIONS IN ORDER TO INCORPORATE THE PROVISIONS OF THIS ACT; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-221, 82-4-222, 82-4-231, 82-4-232, 82-4-233, 82-4-234, 82-4-235, AND 82-4-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-202, MCA, is amended to read:

"82-4-202. Policy — findings. (1) It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards ~~(~~, especially as to reclamation of disturbed lands~~)~~, in order to achieve ~~the aforementioned~~ *those* objectives; and

(g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ *ensure* the wise use of these resources and prevent the failure to conserve coal.

(2) The legislature ~~hereby~~ finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives *enumerated in subsection (1),* promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ *ensure* a long-range dependable tax base, it is reasonably necessary to require~~, after March 16, 1973,~~ that all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted, that ~~no~~ *a* permit *may not* be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, that certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances, all as more particularly appears in the remaining provisions of this part, and that the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part ~~be deemed to be~~ *is* an exercise of the authority granted in the Montana constitution~~, as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ *of the constitution* and ~~also be deemed to be~~ *that this part is also* an exercise of the general police power to provide for the health and welfare of the people~~.~~*;*

(c) coal mining alters the character of soils and overburden materials and that duplication of premining topography, soils, and vegetation composition is not practicable;

(d) the standard for successful reclamation of lands mined for coal is the reestablishment of sustainable land use comparable to premining conditions or to higher or better uses; and

(e) standards for successful reclamation must be well-defined, consistent, and attainable so that mine operators can reclaim lands disturbed by mining with confidence that the release of performance bonds can be achieved."

Section 2. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

~~(2)~~*(3)* (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion~~,~~ *and* deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area,

including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected as necessary to support postmining land uses within the area affected and the adjacent area; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

~~(3)~~*(5)* "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

~~(4)~~*(6)* (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

~~(5)~~*(7)* "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

~~(6)~~*(8)* "Board" means the board of environmental review provided for in 2-15-3502.

~~(7)~~*(9)* "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(8)~~*(10)* (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(9)~~*(11)* "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

~~(10)~~*(12)* "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance~~is~~ *are* made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(11)~~*(14)* "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(12)~~*(15)* "Department" means the department of environmental quality provided for in 2-15-3501.

(16) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(17) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(13)~~*(18)* "Failure to conserve coal" means the nonremoval or ~~nonutilization~~ *nonuse* of minable and marketable coal by an operation. However, the nonremoval or ~~nonutilization~~ *nonuse* of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(14)~~*(19)* "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage as they relate to uses of land and water within the area affected by mining and the adjacent area.

~~(15)~~*(25)* "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(27) "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

(28) "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

~~(16)~~*(29)* "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(30) "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(17)~~*(31)* "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(18)~~*(32)* "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(19)~~*(33)* "Mineral" means coal and uranium.

~~(20)~~*(34)* "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(21)~~*(35)* "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(22)~~*(36)* "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(37) "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(38) "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(23)~~*(39)* "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(24)~~*(40)* "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(25)~~*(41)* "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(26)~~*(42)* "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work ~~to restore an area of land~~ *conducted on lands* affected by strip mining or underground mining ~~under a plan approved by the department~~ *under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.*

(43) "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less-intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

(44) "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(27)~~*(45)* "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(46) "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(47) "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(28)~~*(48)* (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(29)~~*(49)* "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(30)~~*(50)* "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface ~~and whose principal place of residence is on the land~~;

(b) ~~a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or~~ *a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or*

who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface*; or*

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(31)~~*(51)* "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(32)~~*(52)* "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

~~(33)~~*(53)* "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(34)~~*(54)* "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(55) "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(35)~~*(56)* "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 3. Section 82-4-221, MCA, is amended to read:

"82-4-221. Mining permit required. (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation. The designation must include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period. The permit must authorize the operator to engage in strip or underground mining upon the area of land described in the application and designated in the permit for a period of 5 years from the date of its issuance. The permit is renewable upon each 5-year anniversary after issuance upon application to the department at least 240 but not more than 300 days prior to the renewal date so long as the operator is in compliance with the requirements of this part, the rules adopted to implement this part, and the reclamation plan provided for in 82-4-231 and agrees to comply with all applicable laws and rules in effect at the time of renewal. The renewal is further

subject to the denial provisions of 82-4-227, 82-4-234, and 82-4-251. On application for renewal, the burden is on the opponents of renewal to demonstrate that the permit should not be renewed. A permit must terminate if the permittee has not commenced strip- or underground-mining operations pursuant to the permit within 3 years of the issuance of the permit. However, the department may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have commenced strip- or underground-mining operations at the time the construction of the synthetic or generating facility is initiated.

(2) As a condition to the issuance of each permit issued under this part, an authorized representative of the department shall, without advance notice, have the right of entry to, upon, or through a strip- or underground-mining operation or any premises in which any records required to be maintained under this part are located and may, at reasonable times and without delay, have access to copy any records and inspect any monitoring equipment or method of operation required under this part. When an inspection results from information provided to the department by any person, the department shall notify that person when the inspection is proposed to be made and that person must be allowed to accompany the inspector during the inspection.

(3) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the department. The department may not approve the application unless it finds that reclamation in accordance with this part would be accomplished. Application for minor revision must be approved or disapproved within a reasonable time, depending on the scope and complexity, but ~~in no case longer than 120 days~~ *within 60 days, which may be extended by an additional 30 days by mutual agreement of the department and the applicant*. Applications for major revisions are subject to all the permit application requirements and procedures."

Section 4. Section 82-4-222, MCA, is amended to read:

"82-4-222. Permit application. (1) An operator desiring a permit shall file an application that must contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. The plan must reflect thorough advance investigation and study by the operator, include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of use, and ~~state~~ *provide*:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the area of land to be affected by the permit and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record and any purchasers under contracts for deed of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether each officer, partner, director, or any individual, owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant, is subject to any of the provisions of 82-4-251. If so, the applicant shall certify the fact.

(ii) whether any of the parties or persons specified in subsection (1)(g)(i) have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond. If so, a detailed explanation of the facts involved in each case must be attached.

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

(i) the names and addresses of any persons who are engaged in strip-mining or underground-mining activities on behalf of the applicant;

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings that the applicant or ~~his~~ *the applicant's* agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of the minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application must contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set must depict subsurface conditions at intervals the department requires across the surface and must run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit must be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections must also include all existing shafts, entries, and haulageways.

(l) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of ~~his~~ *the applicant's* application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected if a permit is granted;

(m) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface water and ground

water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application. *The determination of probable hydrologic consequences must include findings on:*

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials are present that could result in the contamination of ground water or surface water supplies;

(iii) whether the proposed operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas that is used for domestic, agricultural, industrial, or other beneficial use; and

(iv) what impact the operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics required by the department that potentially affect beneficial uses of water in and adjacent to the permit area;

(n) a plan for monitoring ground water and surface water, based upon the determination of probable hydrologic consequences required under subsection (1)(m). The plan must provide for the monitoring of parameters that relate to the availability and suitability of ground water and surface water for current and approved postmining land uses and the objectives for protection of the hydrologic balance.

(o) a map depicting the projected postmining topography, using cross sections, range diagrams, or other methods approved by the department, showing the manner of spoil placement, showing removal of coal volume and overburden swell, and including:

(i) locations and elevations of tie-in points with adjacent unmined drainageways;

(ii) approximate locations of primary or highest order drainageways and associated drainage divides in the reclaimed topography; and

(iii) projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour;

(p) the condition of the land to be covered by the permit prior to any mining, including:

(i) the land uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining;

(ii) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil characteristics, topography, and vegetative cover; and

(iii) the productivity of the land prior to mining, including appropriate classification as prime farm land, as well as the average yield of food, fiber, forage, or wood products from land under high levels of management;

~~(n)~~*(q)* a coal conservation plan; and

~~(o)~~*(r)* other or further information as the department may require.

(2) The application for a permit must be accompanied by two copies of all maps meeting the requirements of subsections (2)(a) through ~~(2)(n)~~ *(2)(q)*. The maps must:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining, the boundaries of surface properties, and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of the area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan must indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections that have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification must be signed and notarized. The department may reject a map as incomplete if its accuracy is not attested.

(n) contain other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip-mining or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic

consequences that the department requires and the statement of result of test borings or core samplings must, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required by this section, each application for a permit must be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, and revegetating, and a reclamation plan for the area affected by the operation, which proposals must meet the requirements of this part and rules adopted under this part. The reclamation plan must address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state, certifying that the applicant has in force for the strip-mining or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy~~,~~ or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip-mining or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee shall maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of ~~his~~ *the applicant's* application for public inspection with the clerk and recorder at the courthouse of the county in which the major portion of mining is proposed to occur."

Section 5. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section

and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the

application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), if the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part ~~no~~ *not* later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the

person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in ~~associated offsite~~ *adjacent* areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation *as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area* by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; ~~and~~

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

~~(vii)~~*(viii)* any other actions that the department may prescribe *to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas*;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area."

Section 6. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required — bond — alternative plan. (1) *(a)* Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. ~~All highwalls must be reduced and the steepest slope of the reduced highwall may be no greater than 20 degrees from the horizontal. Highwall reduction must be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading must eliminate all highwalls and spoil peaks.~~ The area of land affected must be ~~restored~~ *backfilled and graded* to the approximate original contour of the land. *However:*

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff. ~~Additional restoration work may be required by the department according to rules adopted by the board.~~

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the

results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if ~~no~~ *a* public hearing is *not* held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the bond or deposit has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. ~~No~~ *Any* part of the bond or deposit may *not* be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for the hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

~~(7)~~*(8) (a)* An operator may propose *a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:*

(i) There is a reasonable likelihood for achievement of the alternate land use.

(ii) The alternate land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternate land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law. ~~alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans must be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(l).~~

~~(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be used and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation at a minimum to:~~

~~(a) restore the land affected to a condition capable of supporting the use that it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not determined to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and~~

~~(b) prevent soil erosion to the extent achieved prior to mining.~~

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 7. Section 82-4-233, MCA, is amended to read:

"82-4-233. Planting of vegetation following grading of disturbed area. (1) ~~Except as provided in subsection (4), after the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant the legumes, grasses, shrubs, and trees that are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:~~

~~(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;~~

~~(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and~~

~~(c) preventing soil erosion to the extent achieved prior to the operation.~~ *The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:*

(a) diverse, effective, and permanent;

(b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;

(c) at least equal in extent of cover to the natural vegetation of the area; and

(d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.

(2) ~~The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover must be defined by rules of the board.~~ *The reestablished plant species must:*

(a) be compatible with the approved postmining land use;

(b) have the same seasonal growth characteristics as the original vegetation;

(c) be capable of self-regeneration and plant succession;

(d) be compatible with the plant and animal species of the area; and

(e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.

(3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:

(a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;

(b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;

(c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.

~~(3)~~*(4)* All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).

~~(4)~~*(5)* For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department ~~pursuant to subsection (2)~~ and on which the reclaimed vegetation otherwise meets the requirements of ~~subsection~~ *subsections* (1) *and (2)* and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."

Section 8. Section 82-4-234, MCA, is amended to read:

"82-4-234. Commencement of reclamation. The operator shall commence the reclamation of the area of land affected by ~~his~~ *the operator's* operation as soon as possible after the beginning of strip mining or underground mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, subsidence stabilization, topsoiling, and water management practices that are approved in the plans ~~shall~~ *must* be kept current with the operation as defined by rules of the board, and a permit or supplement to a permit may not be issued if, in the discretion of the department, these practices are not current. ~~A permittee may not, without department approval, disturb any area that has been seeded pursuant to 82-4-233.~~"

Section 9. Section 82-4-235, MCA, is amended to read:

"82-4-235. ~~Inspection of vegetation~~ *Determination of successful revegetation* — final bond release. (1) *Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:*

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is diverse if multiple plant species meeting the requirements of 82-4-233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.

(e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(g) plant species comprising the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation ~~for permanent diverse~~ *of reclaimed* vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory ~~permanent diverse~~ vegetative cover

has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

~~(2)~~*(3)* (a) Notwithstanding the provision in subsection ~~(1)~~ *(2)*, on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of ~~82-4-232(8)~~ *82-4-232* and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection ~~(2)(a)~~ *(3)(a)*, interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection ~~(1)~~ *(2)*."

Section 10. Section 82-4-236, MCA, is amended to read:

"82-4-236. Vegetation as property of landowner. All ~~legumes, grasses, shrubs, and trees~~ *vegetation* ~~which are~~ *that is* planted or seeded on the area of land affected as required by this part or rules adopted under this part ~~become~~ *becomes* the property of the landowner after complete release of the bond, unless the operator and the landowner agree otherwise."

Section 11. Permit and reclamation plan application revisions. (1) An applicant may revise an application for a permit, a permit amendment, or a permit revision that is pending on [the effective date of this act], in order to incorporate the provisions of this part.

(2) A permittee may apply to revise and the department may approve an application to incorporate the provisions of this part into a reclamation plan approved before [the effective date of this act]. The reclamation plan may be revised whether or not reclamation has been completed pursuant to the reclamation plan.

Section 12. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 11].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Contingent voidness. (1) If any provision of [this act] is disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then that portion of [this act] is void.

(2) Within 15 days of the effective date of the disapproval under subsection (1), the department of environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1) has occurred.

Section 16. Effective date. [This act] is effective January 1, 2004.

Ap proved April 2, 2003

CHAPTER NO. 205

[HB 616]

AN ACT REVISING THE TAX CHANGES TO CONTRIBUTIONS TO QUALIFIED ENDOWMENTS THAT WERE ENACTED DURING THE AUGUST 2002 SPECIAL SESSION; REPEALING THE INCREASES TO THE CREDITS AND DEDUCTIONS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS FOR FISCAL YEAR 2004; AMENDING SECTION 11, CHAPTER 24, SPECIAL LAWS OF 2002; REPEALING SECTIONS 2, 4, 6, AND 8, CHAPTER 24, SPECIAL LAWS OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11, Chapter 24, Special Laws of August 2002, is amended to read:

"**Section 11. Termination.** ~~(1)~~ [Sections 1, 3, 5, and 7] terminate June 30, 2003.

~~(2) [Sections 2, 4, 6, and 8] terminate April 30, 2004.~~"

Section 2. Repealer. Sections 2, 4, 6, and 8, Chapter 24, Special Laws of August 2002, are repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 2, 2003

CHAPTER NO. 206

[SB 100]

AN ACT ELIMINATING THE REQUIREMENT FOR A HEALTH CARE DATABASE; ELIMINATING THE DEFINITION OF THE TERMINATED "HEALTH CARE ADVISORY COUNCIL"; AMENDING SECTIONS 50-4-312, 50-4-504, AND 50-4-505, MCA; REPEALING SECTION 50-4-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-4-312, MCA, is amended to read:

"50-4-312. Consumer report cards. (1) The Montana health care advisory council shall appoint a task force of consumers, employers, health insurers, hospitals, health care providers, and legislators to design a consumer report card that will enhance consumer responsibility in the use of health care services.

(2) The Montana health care advisory council shall, by October 1, 1996, submit the task force's proposal to the legislature containing the information needed to prepare the consumer report card. The information must include:

(a) uniform data, including charges, that will enable consumers to evaluate the cost of medical procedures;

(b) data about insurance plans, such as benefit and cost provisions; *and*

(c) additional information that may assist consumers in making informed choices about their medical care~~; and~~

~~(d) any further applicable information generated as a result of efforts undertaken pursuant to 50-4-502~~.

(3) The Montana health care advisory council shall also develop standards for uniform data to be provided by health insurers, hospitals, and health care providers and shall take into account the feasibility and cost-effectiveness of the standards.

(4) To the extent possible, data collected for the consumer report card must be provided by data sources that currently exist."

Section 2. Section 50-4-504, MCA, is amended to read:

"50-4-504. Definitions. As used in this part, the following definitions apply:

~~(1) "Database" means the health care database created pursuant to 50-4-502.~~

~~(2)~~*(1)* "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

~~(3)~~*(2)* "Health care" includes both physical health care and mental health care.

~~(4) "Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.~~

~~(5)~~*(3)* "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

~~(6)~~*(4)* "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

~~(7)~~*(5)* "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."

Section 3. Section 50-4-505, MCA, is amended to read:

"50-4-505. Uniform claim forms and procedures. The commissioner of insurance~~, after consultation with the health care advisory council,~~ may adopt by rule uniform health insurance claim forms and uniform standards and procedures for the use of the forms and processing of claims, including the submission of claims by means of an electronic claims processing system."

Section 4. Repealer. Section 50-4-502, MCA, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 2, 2003

CHAPTER NO. 207

[SB 104]

AN ACT CLARIFYING THE LAW GOVERNING PER DIEM CHARGES FOR STATE INSTITUTIONS; CHANGING THE TIME FOR THE ANNUAL REVIEW OF THE PER DIEM CHARGE FOR STATE INSTITUTIONS; AMENDING SECTIONS 53-1-401 AND 53-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-401, MCA, is amended to read:

"53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of another time period for inpatients, that is computed on a per visit basis for outpatients, and that is applicable uniformly to each patient without regard to the extent of the services required by the patient and without regard to a distinction between physician services and hospital services.

(2) "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not limited to:

(a) physicians' services;

(b) x-ray and laboratory services;

(c) dental services;

(d) speech-language pathology and audiology services;

(e) occupational and physical therapy;

(f) medical supplies;

(g) prescribed drugs; and

(h) specialized medical equipment.

(3) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(4) "Cost of care" means the applicable all-inclusive rate charges or per diem charges and ancillary charges for a resident's care that are determined as provided in this part.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(7) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through the legislative appropriation process less the budgeted amount of federal grant revenue for the institution *for a fiscal year*.

(9) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(10) "Per diem charge" means the gross daily budgeted cost of operating an institution or an individual unit of an institution ~~for the state fiscal year~~ (including but not limited to contracted medical services, depreciation, and associated department costs but excluding the cost of educational programs, ancillary charges, and costs not directly identified with patient care) divided by the full-time equivalent resident load for the previous state fiscal year.

(11) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(12) (a) "Third party" means any third-party individual or entity that is or may be liable to pay all or part of the charges for a resident's cost of care, including but not limited to applicable medicare, medicaid, and personal insurance or other similar health care benefits.

(b) Third party does not include:

(i) a managed care organization administering a mental health managed care program under contract with the department; or

(ii) a financially responsible person."

Section 2. Section 53-1-404, MCA, is amended to read:

"53-1-404. Department to ~~compute~~ *review and establish* per diem charge. The per diem charge for the fiscal year must be ~~computed~~ *reviewed* on ~~July~~ *or before October* 1 of each year by the department. If the *review indicates that the* budgeted costs of an institution ~~change~~ *have changed* substantially ~~within the fiscal year~~ *since the last review*, the per diem charge ~~may~~ *must* be adjusted to compensate for those changes."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 2, 2003

CHAPTER NO. 208

[HB 467]

AN ACT PROVIDING THAT NECESSITY MUST BE SHOWN BEFORE CHANGES TO THE EXISTING WATER QUALITY OF CERTAIN WATERS CAN BE PROHIBITED; REQUIRING THE BOARD OF ENVIRONMENTAL

REVIEW TO MAKE A WRITTEN FINDING WHEN ACCEPTING A PETITION TO CLASSIFY WATERS AS OUTSTANDING RESOURCE WATERS; PROVIDING CRITERIA FOR THE BOARD OF ENVIRONMENTAL REVIEW'S WRITTEN FINDING; PROVIDING A HEARING PROCESS WHEN THE BOARD OF ENVIRONMENTAL REVIEW RECEIVES A PETITION FOR RULEMAKING TO CLASSIFY A WATER AS AN OUTSTANDING RESOURCE WATER; PROVIDING THAT THE COSTS OF THE ENVIRONMENTAL IMPACT STATEMENT MUST BE PAID BY THE PETITIONER; AMENDING SECTIONS 75-5-315 AND 75-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-315, MCA, is amended to read:

"75-5-315. Outstanding resource waters — statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, *upon a showing of necessity,* prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, *when necessary,* and to provide guidance to the board in establishing rules to accomplish that level of protection."

Section 2. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification — rules — criteria — limitations — procedure — *definition.* (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify *state* waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and ~~finds~~ *makes a written finding containing the provisions enumerated in subsection (3)(d)* that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the *increased protection under the* classification is necessary to protect the outstanding resource identified under subsection (3)(a) *because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution*; and

(iii) *classification as an outstanding resource water is necessary because of a finding that* there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that the board believes serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) Before accepting a petition, the board shall:

(a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

(b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

(c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

(d) issue a proposed decision, including:

(i) the written finding provided for in subsection (3)(c); and

(ii) the board's acceptance or rejection of the petition;

(e) provide for a 30-day public comment period regarding the board's proposed decision; and

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments that were received by the board, and make copies of this decision available to the public.

~~(5)~~*(6) (a)* After acceptance of a petition, the board shall ~~require the preparation of~~ *direct the department to prepare* an environmental impact statement, as provided under Title 75, chapter 1, part 2, *and this section* ~~when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values~~.

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The board may not grant or deny a petition until full payment for the environmental impact statement has been received by the department.

~~(6)~~*(7)* The board shall consult with other relevant state agencies*and county governments* when reviewing outstanding resource water classification petitions.

~~(7)~~*(8)* (a) ~~In accordance with 2-4-315, the~~ *After completion of an environmental impact statement and consultation with state agencies and local governments, the* board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)*(c)* have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(c) If the board grants the petition, the board shall initiate rulemaking to classify the waters as outstanding resource waters.

~~(8)~~*(9)* A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

~~(9)~~*(10)* The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the board to adopt rules to classify waters as outstanding resource waters."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to petitions for rulemaking to classify waters as outstanding resource waters that are filed after [the effective date of this act].

Ap proved April 3, 2003

CHAPTER NO. 209

[HB 306]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IX OF THE MONTANA CONSTITUTION RECOGNIZING AND PRESERVING THE HERITAGE OF MONTANA CITIZENS' OPPORTUNITY TO HARVEST WILD FISH AND WILD GAME ANIMALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IX of The Constitution of the State of Montana is amended by adding a new section 6 that reads:

Section 6. Preservation of harvest heritage. The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

Section 2. Effective date. This amendment is effective upon approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

- ☐ FOR recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.
- ☐ AGAINST recognizing and preserving the heritage of Montanans' opportunity to harvest wild fish and game.

CHAPTER NO. 210

[HB 122]

AN ACT REVISING THE VIDEO GAMBLING MACHINE LAWS TO TAKE INTO ACCOUNT CONNECTION OF MACHINES TO THE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; PROVIDING FOR DEPARTMENT OF JUSTICE TRAINING OF TECHNICIANS WORKING ON

OR INSTALLING THE MACHINES; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Available connection date" means the date on which the department begins to accept applications for connection of machines to the automated accounting and reporting system.

~~(2)~~*(3) (a)* "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(3)~~*(4) (a)* "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(4)~~*(5)* "Gross income" means money put into a video gambling machine minus credits paid out in cash.

~~(5)~~*(6) (a)* "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(6)~~*(7)* "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

~~(7)~~*(8)* "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department."

Section 2. Section 23-5-610, MCA, is amended to read:

"23-5-610. (Temporary) Video gambling machine gross income tax — credit — records — distribution — quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine ~~during the 12-month period ending December 31, 2001~~ *prior to the available connection date*;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video

gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) Except as provided in subsection (7), the department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund.

(7) Receipts from the taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under 23-5-638 in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under 23-5-638 and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under 23-5-638 unless the board certifies that all other commercially available means of collection on the loan have been exhausted. (Terminates December 31, 2005—sec. 10, Ch. 424, L. 1999.)

23-5-610. (Effective January 1, 2006) Video gambling machine gross income tax — credit — records — distribution — quarterly statement and payment. (1) A licensed machine owner shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine issued a permit under this part. A licensed machine owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine ~~during the 12-month period ending December 31, 2001~~ *prior to the available connection date*;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by 23-5-637; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to January 1, 2005, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by 23-5-637.

(4) A licensed machine owner shall keep a record of the gross income from each video gambling machine issued a permit under this part in the form the

department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(5) (a) For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a licensed machine owner shall, within 15 days after the end of each quarter and in the manner prescribed by the department, complete and deliver to the department a statement showing the total gross income, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

(6) The department shall, in accordance with the provisions of 15-1-501, forward the tax collected under subsection (5) to the general fund."

Section 3. Section 23-5-611, MCA, is amended to read:

"23-5-611. Machine permit qualifications — limitations. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises as provided in 23-5-119 may be granted a permit for the placement of video gambling machines on the person's premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno, ~~or~~ bingo, *or combination poker-keno-bingo* gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines on the person's premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination."

Section 4. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine ~~connected~~ *approved for connection* to the department's automated accounting and reporting system to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet *if*:

(i) after October 1, 2002, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system; or

(ii) after October 1, 2003, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system, but the system is unavailable for connection;

(e) allow, on an individual license basis, licensed machine owners and operators of machines connected to the department's automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected by the department for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of the department's automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and

(g) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that are connected to the department's automated accounting and reporting system.

(2) The department's rules for an automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the automated accounting and reporting system within the limits prescribed by 23-5-115(6) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account; ~~and~~

(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no

circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act.

(e) provide for training by the department of technicians who install, maintain, and repair video gambling machines and components connected to the automated accounting and reporting system and for a department list of technicians who have completed department training."

Section 5. Section 23-5-637, MCA, is amended to read:

"23-5-637. Automated accounting and reporting system. (1) For the purposes of performing its duties under this chapter, minimizing regulatory costs, simplifying the reporting of video gambling machine revenue data, preserving the integrity of video gambling machines within its jurisdiction, lessening administrative and recordkeeping burdens for licensed machine owners and licensed operators and the department, and enhancing the management tools available to the industry and the state, the department may operate and maintain, subject to the restrictions contained in subsections (3) and (4), an automated accounting and reporting system for video gambling machines.

(2) Except as provided in subsection (4), connection of video gambling machines to the department's automated accounting and reporting system is voluntary for licensed machine owners and licensed operators who hold a valid current license ~~on December 31, 2000~~ *prior to the available connection date*.

(3) (a) The department shall issue a request for proposals for the automated accounting and reporting system ~~on or before September 1, 1999~~. The department may not sign a final contract for the purpose of acquiring an automated system unless it has obtained written confirmation from licensed machine owners who volunteer to participate in the automated system and whose commitment to participate covers 70% of the total number of video gambling machines that are capable of being connected to the automated system.

(b) The 70% calculation must be based on video gambling machines that had permits on July 15~~, 1999,~~ *prior to the contract date* and on an analysis by the department of the feasibility of upgrading specific video gambling machine models based on the age of the video gambling machines, technologies employed, numbers of video gambling machines in a model series, and existence or nonexistence of a licensed manufacturer to support upgraded conversions.

(c) A request for proposals for the system must require that the proposal:

(i) provide that communication protocols between connected video gambling machines and the central system and between connected video gambling machines and on-premises site controllers do not favor any one central system vendor or component manufacturer; and

(ii) provide for computer backup and contingency planning to ensure that there will be no video gambling machine operation interruptions because of central system failures.

(4) After ~~December 31, 2000~~ *the available connection date*:

(a) a permit may not be issued for a video gambling machine manufactured after ~~December 31, 2000,~~ *the available connection date* that is not manufactured

in a manner specifically designed to allow the video gambling machine to be connected to the department's automated accounting and reporting system;

(b) if a permitholder voluntarily connects one or more video gambling machines at a premises to the department's automated accounting and reporting system, all connected video gambling machines on the premises, including video gambling machines replacing connected video gambling machines, must remain connected to the automated system as long as video gambling machines are operated on the premises; and

(c) if there is a change in the majority ownership interests of a licensed gambling business, all video gambling machines located on the premises must be connected to the department's automated accounting and reporting system within 5 years after the date on which the majority ownership change is approved by the department, unless there are five or fewer video gambling machines on the premises and:

(i) they are owned by the licensed operator; or

(ii) the premises are located in a city, town, or county with a population of 3,000 or less, according to the last official decennial census."

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 211

[HB 165]

AN ACT AUTHORIZING THE STATE LOTTERY COMMISSION TO ENTER INTO AGREEMENTS WITH OTHER COUNTRIES TO OFFER LOTTERY GAMES AND TO ENTER INTO AGREEMENTS WITH AN ASSOCIATION FOR THE PURPOSE OF PARTICIPATING IN MULTISTATE LOTTERY GAMES OR GAMES OFFERED IN OTHER STATES AND OTHER COUNTRIES; AMENDING SECTION 23-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-202, MCA, is amended to read:

"23-7-202. Powers and duties of commission. The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and the staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) maximize the net revenue paid to the state under 23-7-402 and ensure that all policies and rules adopted further revenue maximization;

(4) subject to 23-7-402(1), determine the percentage of the money paid for tickets or chances to be paid out as prizes;

(5) determine the price of each ticket or chance and the number and size of prizes;

(6) provide for the conduct of drawings of winners of lottery games;

(7) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(8) study and may enter into agreements with*:*

(a) other lottery states *and countries* to offer lottery games; *or*

(b) an association for the purpose of participating in multistate lottery games or games offered in other states and other countries;

(9) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(10) adopt rules relating to lottery staff sales incentives or bonuses and sales agents' commissions and any other rules necessary to carry out this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 212

[HB 262]

AN ACT CLARIFYING THE POLICY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND PROVIDING LEGISLATIVE INTENT WITH REGARD TO THE MANAGEMENT OF LARGE PREDATORS; ESTABLISHING THAT LARGE PREDATORS MUST BE MANAGED PRIMARILY TO PRESERVE HUNTABLE SPECIES OF LARGE GAME AND TO PROTECT LIVESTOCK, PETS, AND PEOPLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department must be to:

(a) preserve citizens' opportunities to hunt large game species;

(b) protect humans, livestock, and pets; and

(c) preserve and enhance the safety of the public during outdoor recreational and livelihood activities.

(2) As used in this section:

(a) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(b) "large predators" means bears, mountain lions, and wolves.

(3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 213

[HB 284]

AN ACT PROVIDING THAT A PEACE OFFICER DOES NOT NEED PROBABLE CAUSE TO BELIEVE THAT A PERSON WAS DRIVING UNDER THE INFLUENCE IN ORDER TO REQUEST A TEST OF A PERSON'S BLOOD OR BREATH FOR THE PURPOSE OF DETERMINING ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL OR DRUGS IN THE PERSON'S BODY WHEN THE PERSON HAS BEEN INVOLVED IN A MOTOR VEHICLE ACCIDENT OR COLLISION RESULTING IN SERIOUS BODILY INJURY OR DEATH; AND AMENDING SECTION 61-8-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle*:*

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage~~, bodily injury, or death~~*; or*

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

(6) The following suspension and revocation periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Ap proved April 3, 2003

CHAPTER NO. 214

[HB 333]

AN ACT ALLOWING LOCAL GOVERNMENTS TO RETURN INTEREST FROM INVESTMENTS AND DEPOSITS TO A SPECIFIED FUND IN PROPORTION TO THAT FUND'S PARTICIPATION IN AN INVESTMENT OR DEPOSIT RATHER THAN DEPOSITING THE INTEREST IN THE GENERAL FUND; AMENDING SECTION 7-6-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-204, MCA, is amended to read:

"7-6-204. Crediting of interest — *exceptions*. (1) ~~Unless otherwise provided by law or by the terms of a gift, grant, or donation, interest~~ *Interest* paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited *unless otherwise provided:*

(a) by law;

(b) by terms of a gift, grant, or donation; or

(c) by subsections (2) and (3).

(2) ~~Interest~~ *Subject to subsection (1), interest* paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, must be credited to the account of that fire district or department.

(3) ~~Interest~~ *Subject to subsection (1), interest* paid and collected on the deposits or investments of *any fund separately created and accounted for by a county, city, or town* ~~the county road fund or county bridge fund~~ may be credited to the ~~county road fund or county bridge~~ *separately created* fund *proportionately to each fund's participation in the deposit or investment*."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved April 3, 2003

CHAPTER NO. 215

[HB 350]

AN ACT EXPANDING THE ABILITY OF HIGHWAY PATROL OFFICERS TO MAKE ARRESTS OF PERSONS IN THE POSSESSION OF DANGEROUS DRUGS OR DRUG PARAPHERNALIA; SUBSTITUTING THE TERM "DANGEROUS DRUGS" FOR "NARCOTICS"; AND AMENDING SECTION 44-1-1001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1001, MCA, is amended to read:

"44-1-1001. Offenses for which patrol officers may make arrests. (1) The highway patrol chief and all patrol officers may make arrests for the offenses listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrol officer;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;

(g) kidnapping;

~~(h) illegal transportation of narcotics; or~~

(h) possession of dangerous drugs;

(i) possession of drug paraphernalia; or

~~(i)~~*(j)* violation of the Dyer Act regarding the transportation of stolen automobiles."

Ap proved April 3, 2003

CHAPTER NO. 216

[HB 420]

AN ACT DECREASING THE FEE PAID BY COMMERCIAL APPLICATORS, PESTICIDE DEALERS, AND GOVERNMENT AGENCIES FOR THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; REPEALING THE TERMINATION OF THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM, THE ASSESSMENT OF FEES FOR FUNDING THE PROGRAM, AND THE DEPOSIT AND USE OF FEES BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTIONS 80-8-203, 80-8-207, AND 80-8-213, MCA; REPEALING SECTION 14, CHAPTER 465, LAWS OF 1993, AND CHAPTER 362, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-203, MCA, is amended to read:

"80-8-203. Commercial applicator. (1) It is unlawful for a person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. An application for a pesticide applicator's license must be accompanied by a fee of $45. The provisions of this subsection do not apply to a person employed only to operate equipment used for the application of a pesticide if the person has no financial interest or other control over the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided in 80-8-205.

(3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of ~~$30~~ *$10* on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year.* Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112. ~~(Subsection (5) terminates December 31, 2003 - sec. 1, Ch. 362, L. 1999.)~~"

Section 2. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for a person to sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of its field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of $45. Dealers applying for renewal of a license shall do so on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a $25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(4) The department shall assess an additional annual license fee of ~~$30~~ *$10* on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year.* Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians shall meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules. ~~(Subsection (4) terminates December 31, 2003—sec. 1, Ch. 362, L. 1999.)~~"

Section 3. Section 80-8-213, MCA, is amended to read:

"80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of $50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay for each of its first four employee applicators:

(i) an annual applicator's fee of $50; and

(ii) an additional fee of ~~$25~~ *$10* to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year.*

(b) A governmental agency shall pay for each additional employee applicator:

(i) an annual applicator's fee of $5; and

(ii) an additional fee of ~~$15~~ *$10* to fund the waste pesticide and pesticide container collection, disposal, and recycling program. *The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year.*

(c) A government agency may not be required to pay more than $600 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to 80-8-112.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing the courses. Government operators are subject to rules

adopted pursuant to 80-8-205, including the license fee. ~~(Subsections (3)(a)(ii), (3)(b)(ii), and (3)(d) terminate December 31, 2003 -- sec. 1, Ch. 362, L. 1999.)~~"

Section 4. Repealer. Section 14, Chapter 465, Laws of 1993, and Chapter 362, Laws of 1999, are repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 217

[HB 443]

AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; MODIFYING THE DEFINITION OF "CERTIFICATE"; MODIFYING THE INFORMATION REQUIREMENTS FOR APPLICATIONS; ELIMINATING THE REQUIREMENT THAT A COPY OF AN APPLICATION BE SENT TO OTHER LOCAL, STATE, AND FEDERAL GOVERNMENTAL ENTITIES; MODIFYING PUBLIC NOTICE REQUIREMENTS; REVISING THE FILING FEE SCALE; REDUCING CERTAIN TIME REQUIREMENTS OF THE SITING LAWS; QUALIFYING THE USE OF MONTANA ENVIRONMENTAL POLICY ACT DOCUMENTS; INCLUDING ECONOMIC IMPORTANCE AND BENEFITS IN DETERMINING THE SIGNIFICANCE OF A FACILITY'S IMPACT; REVISING THE DEPARTMENT'S APPROVAL CRITERIA FOR CERTAIN FACILITIES; CLARIFYING REQUIREMENTS FOR COMMENCEMENT OF CONSTRUCTION; AMENDING SECTIONS 7-1-111, 69-3-1205, 75-20-102, 75-20-104, 75-20-201, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-223, 75-20-231, 75-20-232, 75-20-301, 75-20-303, 85-2-124, 85-2-607, 85-15-107, AND 90-6-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of ~~environmental compatibility and public need~~ *compliance*;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); and

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction."

Section 2. Section 69-3-1205, MCA, is amended to read:

"69-3-1205. Public comment. (1) The commission shall conduct a public meeting for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(2) The department of environmental quality:

(a) shall review a plan and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of ~~environmental compatibility and public need~~ *compliance* is submitted under Title 75, chapter 20.

(3) The consumer counsel shall review and may comment on a plan."

Section 3. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and

degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(2) It is also constitutionally declared in the state of Montana that the inalienable rights of the citizens of this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire, possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

~~(2)~~*(3)* The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products ~~and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state~~. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities ~~will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing~~ *are in compliance with state law and* that ~~a~~ *an* electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of ~~environmental compatibility~~ *compliance* acquired pursuant to this chapter.

~~(3)~~*(4)* The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

Section 4. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of ~~environmental compatibility~~ *compliance* issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 5. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of ~~environmental compatibility~~ *compliance* issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction."

Section 6. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any *preexisting* studies that have been made of the ~~environmental~~ impact of the facility;

(iii) for facilities defined in 75-20-104(8)(a) and (8)(b), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each

location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) (A) for facilities as defined in 75-20-104(8)(a) and (8)(b), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(8)(c), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) ~~A~~ *If a* copy or copies of the studies referred to in subsection (1)(a)(ii) ~~must be~~ *are* filed with the department, ~~if ordered, and~~ *the copy or copies* must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

~~(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:~~

~~(a) environmental quality council;~~

~~(b) department of public service regulation;~~

~~(c) department of fish, wildlife, and parks;~~

~~(d) department of natural resources and conservation;~~

~~(e) department of transportation.~~

~~(4)~~*(3)* The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

~~(5)~~*(4)* An application must also be accompanied by proof that public notice of the application was given to persons residing in the ~~area~~ *county* in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 7. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate must be in the form and contain the information that the department by rule or by order prescribes. Notice of an application must be given as set forth in 75-20-211(3) ~~through (5)~~ *and (4)*.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department or the agencies listed in 75-20-216(6) from carrying out their duties and responsibilities under this chapter, the department may require additional filing fees *and additional amendment application review time. The total review time may not exceed 9 months from the date the*

department accepts a completed application for amendment. ~~as the department determines necessary, or the department may require a new application and filing fee.~~

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive."

Section 8. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) ~~4%~~ *6%* of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to ~~$20~~ *$5* million; plus

(iii) ~~0.5%~~ *0.8%* of any estimated cost over ~~$20~~ *$5* million and up to ~~$100~~ *$10* million; plus

~~(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus~~

~~(v) 0.125% of any amount of estimated cost over $300 million and up to $1 billion; plus~~

(iv) 0.5% of any estimated cost over $10 million and up to $20 million; plus

(v) 0.25% of any estimated cost over $20 million and up to $100 million; plus

(vi) 0.125% of any estimated cost over $100 million and up to $500 million; plus

(vii) 0.05% of any estimated cost over $500 million and up to $1 billion; plus

~~(vi)~~*(viii)* ~~0.05%~~ *0.025%* of any ~~amount of~~ estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement or assessment under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be

sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 9. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an ~~intensive study and~~ evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided in 75-1-208(4)(b) and 75-20-231, the department shall issue within 9 months following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the board

and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-208(4)(b) and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation~~, and an~~. *An* environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act~~, if any~~ *may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility*. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 10. Section 75-20-223, MCA, is amended to read:

"75-20-223. Board review of department decisions. (1) A person aggrieved by the final decision of the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(2) A person aggrieved by the final decision of the department on an application for amendment of a certificate may within 15 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(3) A person aggrieved by the department's decision not to include an environmental impact statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6."

Section 11. Section 75-20-231, MCA, is amended to read:

"75-20-231. Expedited review. (1) Except as provided in 75-1-208(4)(b), the department shall issue a certification decision within ~~120~~ *90* days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201."

Section 12. Section 75-20-232, MCA, is amended to read:

"75-20-232. Criteria for identifying proposed facilities that qualify for expedited review. (1) In order for a facility to qualify for expedited review under 75-20-231, the department shall make a significance determination of the impacts associated with a proposed facility. This determination is the basis of the department's decision concerning whether the proposed facility qualifies for expedited review.

(2) The department shall consider the following criteria in determining the significance of each impact that the proposed facility has on the quality of the human environment:

(a) the severity, duration, geographic extent, and frequency of occurrence of the impact;

(b) (i) the probability that the impact will occur if the proposed action occurs; or

(ii) reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;

(c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

(e) the importance to the state and to society of each environmental resource or value that would be affected;

(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or to a decision in principle about future actions;

(g) potential conflict with local, state, or federal laws, requirements, or formal plans; ~~and~~

(h) the degree to which the impacts on the human environment are likely to create a high level of public concern*; and*

(i) the economic importance and benefits to the state and the local community of the proposed facility.

(3) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, expedited review is required."

Section 13. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of department — findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest, convenience, and necessity;

(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; ~~or~~ *and*

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, ~~do not pose any threat of serious injury or damage to~~ *will not result in*:

(i) *a violation of a law or standard that protects* the environment; or

~~(ii) the social and economic conditions of inhabitants of the affected area; or~~

~~(iii)~~*(ii) a violation of a law or standard that protects* the *public* health~~,~~ *and* safety~~, or welfare of area inhabitants~~.

(4) For facilities defined in ~~77-20-104(8)~~ *75-20-104*, if the department cannot make the findings required in ~~75-20-301~~ *this section*, it shall deny the certificate."

Section 14. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility."

Section 15. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application~~(~~or a combination of applications~~)~~ for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the

Montana Environmental Policy Act and the application ~~(~~or combination of applications~~)~~ involves the use of 4,000 or more acre-feet per year and 5.5 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within 90 days of receipt of a correct and complete application ~~(~~or a combination of applications~~)~~ if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as ~~herein~~ provided *in this section*. The maximum fee that ~~shall~~ *must* be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to $1 million; plus 1% of the estimated cost over $1 million and up to $20 million; plus 1/2 of 1% of the estimated cost over $20 million and up to $100 million; plus 1/4 of 1% of the estimated cost over $100 million and up to $300 million; plus 1/8 of 1% of the estimated cost over $300 million. The fee ~~shall~~ *must* be deposited in the state special revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the ~~application(s)~~ *application or applications*. Any amounts paid by the applicant but not actually expended by the department ~~shall~~ *must* be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any ~~such~~ contract ~~or contracts~~;

(c) the use or nonuse of a fee or any part ~~thereof~~ *of a fee* paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any ~~such~~ contract ~~or contracts shall~~ *must* be credited against any fee *that* the applicant ~~must~~ *is required to* pay ~~hereunder~~ *under this section*. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) ~~No~~ *A* fee as prescribed by this section may *not* be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of ~~environmental compatibility or public need~~ *compliance* pursuant to the Montana Major Facility Siting Act and the appropriation or use of water involved in the ~~application(s)~~ *application or applications* for permit or approval has been or will be studied by the department pursuant to that act.

(6) This section ~~shall apply~~ *applies* to all applications, pending or ~~hereinafter~~ filed, for which the department has not~~, as of April 9, 1975,~~ commenced writing an environmental impact statement. This section ~~shall~~ *does* not apply to any application~~,~~ *if* the fee for ~~which~~ *the application* would not exceed $2,500.

(7) Failure to submit the fee as required by this section ~~shall void~~ *voids* the ~~application(s)~~ *application or applications*.

(8) The department may in its discretion rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

Section 16. Section 85-2-607, MCA, is amended to read:

"85-2-607. Utility facilities. This part does not apply to applications to appropriate water for use by a utility facility for which a certificate of ~~environmental compatibility and public need~~ *compliance* is granted pursuant to the Montana Major Facility Siting Act."

Section 17. Section 85-15-107, MCA, is amended to read:

"85-15-107. Exemptions. (1) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-502, and 85-15-503 do not apply to:

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit;

(b) federal dams and reservoirs;

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission; or

(d) dams that are required to obtain a certificate of ~~environmental compatibility and public need~~ *compliance* pursuant to 75-20-201 for the period during which the dam is subject to the certificate.

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and 85-15-503 do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency.

(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510."

Section 18. Section 90-6-207, MCA, is amended to read:

"90-6-207. Priorities for impact grants. (1) The department of commerce shall biennially designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase or decrease in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of environmental quality for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase or decrease by at least 1 million tons a year and that

the new, expanded, or reduced production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) ~~a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of environmental review~~ *an air quality permit has been issued by the department of environmental quality* for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under ~~a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act~~ *an air quality permit issued by the department of environmental quality* and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) Except as provided in 90-6-205(4)(b), the board may not award more than 50% of the funds appropriated to it each year for grants to governmental units and state agencies for meeting the needs caused by an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth or decline problems.

(6) All funds appropriated under this part are for use related to local impact.

(7) All designations based on an increase in coal development or in the consumption of coal by a coal-using energy complex made under subsection (1)(a), (1)(b), or (1)(c) must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated governmental unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants of not more than 50% of the funds appropriated to the board for grants in circumstances in which an impact exists in a community or area directly affected by:

(a) the operation of a coal mine or a coal-using energy complex; or

(b) the cessation or reduction of coal mining activity or of the operation of a coal-using energy complex."

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 218

[HB 548]

AN ACT ESTABLISHING A FEDERAL SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE SECRETARY OF STATE FOR MONEY RECEIVED UNDER THE FEDERAL HELP AMERICA VOTE ACT OF 2002; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special account for federal Help America Vote Act. (1) There is a federal special revenue account in the state treasury to the credit of the office of the secretary of state.

(2) Money provided to the state for the purposes of implementing provisions of Public Law 107-252, the Help America Vote Act of 2002, must be deposited in the account.

(3) Money in the account may be used only for the purposes specified by the federal law under which the money was provided.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 2, and the provisions of Title 13, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 219

[HB 583]

AN ACT AUTHORIZING A COUNTY AND A MUNICIPALITY TO ESTABLISH A TRANSPORTATION IMPROVEMENT AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of a transportation improvement authority is to blend the interests of local, state, and federal governments with the interests of the general public and the business community to build, modify, or improve transportation facilities and systems within its jurisdiction.

Section 2. Transportation improvement authority. (1) A county and a municipality within a county may, by joint resolution, create a transportation improvement authority authorized to exercise its functions upon the appointment and qualification of the first commissioners.

(2) (a) Except as provided in subsection (3), the resolution creating the transportation improvement authority must create a board of nine commissioners appointed as follows:

(i) two county officials appointed by the county commissioners;

(ii) two public members appointed by the county commissioners;

(iii) two municipal officials appointed by the governing body of the municipality;

(iv) two public members appointed by the governing body of the municipality; and

(v) one member appointed by the governor.

(b) The public members must be knowledgeable about transportation issues.

(c) The resolution must state the terms of the commissioners and their compensation, if any.

(3) A transportation improvement authority may be increased to serve one or more additional counties or municipalities if each additional county or municipality, each county and municipality included in the authority, and the commissioners of the authority adopt a joint resolution consenting to the increase. The number of additional commissioners to be appointed must be provided for in the joint resolution.

(4) A transportation improvement authority may be dissolved if each municipality and county included in the authority and the commissioners of the authority consent to the dissolution. Provisions must be made for the retention or disposition of the authority's assets and liabilities.

(5) A county or municipality may not adopt a resolution authorized by this section without a public hearing. Notice must be given as provided in 7-1-2121 or 7-1-4127.

Section 3. Commissioners. (1) The powers of each transportation improvement authority are vested in the commissioners. A majority of the commissioners of an authority constitute a quorum for the purpose of conducting the business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of the majority of the commissioners present.

(2) There must be elected a presiding officer and vice presiding officer from among the commissioners. An authority shall employ an executive director and may employ other personnel as necessary. An authority shall determine the qualifications, duties, and compensation of its employees.

(3) Each commissioner shall hold office until a successor is appointed and has qualified. The certificate of the appointment or reappointment of a commissioner must be filed with the authority.

Section 4. Cooperation of county and municipality. For the purpose of cooperating in the planning, construction, or operation of transportation facilities, a county and a municipality for which a transportation improvement authority has been created may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or required by law to be used by the county or municipality for transportation purposes be transferred to the authority as the funds become available;

(3) furnish facilities or improvements that the county or municipality is empowered to provide in connection with the transportation facilities;

(4) dedicate, sell, convey, or lease an interest in property or grant easements, licenses, or other rights and privileges to the authority;

(5) do all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, construction, or operation of transportation facilities; and

(6) enter into agreements with the authority respecting action to be taken by the county and the municipality pursuant to the provisions of this section.

Section 5. General powers of the authority. A transportation improvement authority has all the powers necessary to carry out the purposes of [sections 1 through 7], including the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take other action as may be necessary to carry out the purposes of [sections 1 through 7];

(3) receive and disburse federal, state, and other public or private funds made available by grant, loan, contribution, or other source to accomplish the purposes of [sections 1 through 7]. Federal money must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

(4) acquire by purchase, gift, devise, lease, or other means real or personal property or any interest in property; and

(5) sell, lease, or otherwise dispose of real or personal property acquired pursuant to [sections 1 through 7]. The disposal must be in accordance with the laws of this state governing the disposition of public property.

Section 6. Rules. (1) A transportation improvement authority may adopt, amend, and repeal reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance, as well as for the management, governance, and use of a transportation facility owned by the authority or under its control.

(2) A rule, order, or standard prescribed by the authority may not be inconsistent with or contrary to an act of the congress of the United States or a regulation promulgated or standard established pursuant to an act of congress.

(3) The authority shall keep a copy of its rules on file for public inspection at the principal office of the authority.

Section 7. Tax exemption. Property in this state acquired for a transportation improvement authority for transportation purposes pursuant to the provisions of [sections 1 through 7] and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 7, chapter 14, and the provisions of Title 7, chapter 14, apply to [sections 1 through 7].

Ap proved April 3, 2003

CHAPTER NO. 220

[HB 639]

AN ACT PROVIDING THAT FINES FOR VIOLATIONS OF MOTOR VEHICLE OR PARKING REGULATIONS ON A UNIVERSITY SYSTEM CAMPUS BE ASSESSED IN ACCORDANCE WITH A SCHEDULE THAT IS APPROVED BY THE BOARD OF REGENTS; REMOVING THE $10 PER OFFENSE CAP ON FINES; AND AMENDING SECTION 20-25-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-312, MCA, is amended to read:

"20-25-312. Motor vehicle regulation — enforcement of regulations — appeals. (1) The regents may authorize the president of each unit to:

(a) assess fees for parking on campus subject to the approval of the regents after the regents' consultation with the respective student governing body of the unit;

(b) assess fines in accordance with a published schedule *approved by the regents* for violations of motor vehicle or parking regulations of each unit ~~in an amount not to exceed $10 per offense~~;

(c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;

(d) establish a system of appeals at each unit concerning parking violations;

(e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the provisions of 17-4-105;

(f) prohibit a student from registering if ~~said~~ *the* student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected ~~shall~~ *must* be remitted to the unit at which collections are made ~~to~~ *and must* be used for appropriate maintenance and construction of parking facilities and for traffic control."

Ap proved April 3, 2003

CHAPTER NO. 221

[SB 28]

AN ACT GENERALLY REVISING THE LAWS RELATING TO DEFERRED DEPOSIT LOANS; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; PROVIDING FOR CIVIL PENALTIES FOR CERTAIN VIOLATIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; REQUIRING THE NAME, ADDRESS, AND PHONE NUMBER OF A CONSUMER TO BE INCLUDED ON THE WRITTEN AGREEMENT BETWEEN THE LICENSEE AND CONSUMER WITH RESPECT TO A DEFERRED DEPOSIT LOAN; ESTABLISHING THAT CERTAIN DAMAGES ARE NOT AVAILABLE TO A LICENSEE FOR INSUFFICIENT FUNDS CHECKS OR ELECTRONIC DEDUCTIONS FOR WHICH THERE ARE INSUFFICIENT FUNDS; PROVIDING THAT THE DEFINITION OF "CONSUMER LOAN" DOES NOT INCLUDE A DEFERRED DEPOSIT LOAN; INCREASING THE INSUFFICIENT FUNDS FEE FROM $15 TO $30; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-704, 31-1-712, 31-1-721, 31-1-722, 31-1-724, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) ~~banks, savings and loan associations, credit unions, or other state or federally regulated~~ financial institutions *as defined in 32-8-502*;

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than $2 ~~per~~ *a* check for the service; or

(c) a collection agency licensed to do business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender."

Section 2. Section 31-1-712, MCA, is amended to read:

"31-1-712. License revocation — *penalty*. (1) If the department finds, after due notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that ~~a~~ *any person*, licensee, or ~~an~~ officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to

make required reports to the department, or has furnished false information to the department, the department may *impose a civil penalty not to exceed $1,000 for each violation and may* issue an order revoking or suspending the right of the *person or* licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license."

Section 3. Section 31-1-721, MCA, is amended to read:

"31-1-721. Required disclosures — loan agreement. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

~~(b)~~*(c)* an itemization of the fees and interest charges to be paid by the consumer;

~~(c)~~*(d)* a clear description of the consumer's payment obligations under the loan; and

~~(d)~~*(e)* in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer."

Section 4. Section 31-1-722, MCA, is amended to read:

"31-1-722. Prohibited and permitted fees — attorney fees and costs. (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed ~~$15~~ *$30*. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this

subsection is a licensee's exclusive charge for late payment. *A licensee may not collect damages under 27-1-717(3) for an insufficient funds check.*

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed ~~$15~~ *$30*. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. *A licensee may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.*

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."

Section 5. Section 31-1-724, MCA, is amended to read:

"31-1-724. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any *intentional* violation of this part constitutes an unfair or deceptive trade practice.

(3) Any person found to have *intentionally* violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of $1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part."

Section 6. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include*:*

(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a*; or*

(ii) deferred deposit loans provided for in Title 31, chapter 1, part 7.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved April 3, 2003

CHAPTER NO. 222

[SB 75]

AN ACT PROVIDING FOR THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; DEFINING TERMS; AUTHORIZING COURTS TO PROVIDE CERTAIN NATIONAL GUARD SERVICE MEMBERS RELIEF FROM CERTAIN CIVIL ACTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana National Guard Civil Relief Act".

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Active duty" means at least 30 consecutive days of full-time state active duty ordered by the governor pursuant to Article VI, section 13, of the Montana constitution or of full-time national guard duty, as defined in 32 U.S.C. 101.

(2) "Dependent" means the spouse or minor child of a service member or any other person legally dependent on the service member for support.

(3) "Military service" means active duty with a Montana army or air national guard military unit.

(4) "Service member" means any member of the Montana army or air national guard serving on active duty.

Section 3. Relief from actions related to mortgage, lease, or rental payments. (1) A civil action, as described in Title 25, chapter 1, part 1, against a service member or a service member's dependent with respect to the member's or dependent's primary residence for nonpayment on a mortgage, lease, or rental agreement may be stayed by a court, or the payments due may be adjusted.

(2) With respect to an action described in subsection (1), upon application or by its own action, a court may do one or more of the following:

(a) stay the action for up to 3 months unless, in the opinion of the court, the ability of the service member or the service member's dependent to make the required payments is not materially affected by the service member's active duty; or

(b) adjust the mortgage, lease, or rental payment to be made by an amount the court determines to be reasonable, taking into consideration the service member's active duty status; or

(c) order the service member or the service member's dependent to pay an amount specified by the court over the time period specified by the court upon the service member's release from active duty.

Section 4. General relief from court actions. If a plaintiff or a defendant in any civil action, as described in Title 25, chapter 1, part 1, is a service member, the court may stay the proceedings if the service member or other person on the service member's behalf makes a request in writing to the court, unless the court determines on the record that the ability of the service member to pursue an action as a plaintiff or to conduct the defense as a defendant is not materially affected by the service member's military service.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 4].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 223

[SB 84]

AN ACT ELIMINATING THE REQUIREMENT THAT THE BOARD OF OIL AND GAS CONSERVATION REPORT TO THE REVENUE OVERSIGHT COMMITTEE REGARDING ENHANCED RECOVERY PROJECTS, NUMBERS OF HORIZONTALLY COMPLETED WELLS, AND METHODOLOGY FOR DETERMINING OIL PRODUCTION DECLINE RATES; AND REPEALING SECTION 21, CHAPTER 9, SPECIAL LAWS OF NOVEMBER 1993.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 21, Chapter 9, Special Laws of November 1993, is repealed.

Ap proved April 3, 2003

CHAPTER NO. 224

[SB 109]

AN ACT GENERALLY REVISING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; ADDING A PHARMACY TECHNICIAN TO THE BOARD OF PHARMACY; DEFINING "PHYSICIAN"; PROVIDING LICENSING AND OTHER REQUIREMENTS FOR DOCTORS OF OSTEOPATHY AND RECOGNIZING THEIR STATUS AS PHYSICIANS; MODIFYING REQUIREMENTS FOR PHYSICIAN RENEWAL FEES; MODIFYING REQUIREMENTS FOR LICENSE APPLICATIONS FOR DENTISTS; PROVIDING THAT LICENSEES UNDER THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF DENTISTRY MAY BE REFERRED TO AN IMPAIRMENT PROGRAM; PROVIDING THAT CERTAIN MEDICAL LICENSES THAT ARE NOT TIMELY RENEWED MAY BE CONSIDERED LAPSED RATHER THAN REVOKED; MODIFYING CHIROPRACTIC LICENSING AND EXAMINATION REQUIREMENTS; MODIFYING

LICENSE RENEWAL REQUIREMENTS FOR ACUPUNCTURISTS; REMOVING THE LIMITATION ON THE REEXAMINATION ELIGIBILITY PERIOD FOR HEARING AID DISPENSERS; REMOVING THE REQUIREMENT THAT AN INTERNSHIP REQUIREMENT FOR MORTICIANS BE FULFILLED WITHIN THE STATE OF MONTANA; REMOVING A DATE REQUIREMENT FOR MORTICIAN EXAMINATIONS; MAKING THE ADOPTION OF CERTAIN RULES PERTAINING TO MIDWIFERY DISCRETIONARY; ALLOWING MIDWIFERY EXAMINATIONS TO BE PREPARED BY A NATIONAL TESTING ENTITY; MODIFYING OUTDATED LANGUAGE PERTAINING TO DENTURISTS; AMENDING SECTIONS 2-15-1733, 15-6-217, 37-3-102, 37-3-103, 37-3-203, 37-3-303, 37-3-304, 37-3-307, 37-3-313, 37-3-315, 37-3-345, 37-4-301, 37-4-311, 37-4-312, 37-4-402, 37-6-304, 37-12-102, 37-12-302, 37-12-304, 37-13-306, 37-16-403, 37-19-302, 37-19-303, 37-20-302, 37-20-303, 37-26-301, 37-27-105, 37-27-202, 37-29-304, 39-71-116, AND 50-5-105,MCA; REPEALING SECTIONS 37-5-101, 37-5-102, 37-5-301, 37-5-302, 37-5-305, 37-5-307, AND 37-5-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1733, MCA, is amended to read:

"2-15-1733. Board of pharmacy. (1) There is a board of pharmacy.

(2) The board consists of ~~five~~ *six* members appointed by the governor with the consent of the senate. Three members must be licensed pharmacists, *one member must be a registered pharmacy technician,* and two members must be from the general public.

(a) Each licensed *pharmacist* member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed *pharmacist* member must have at least 5 consecutive years of practical experience as a pharmacist immediately before appointment to the board. A licensed *pharmacist* member who, during the member's term of office, ceases to be actively engaged in the practice of pharmacy in this state must be automatically disqualified from membership on the board.

(b) A registered pharmacy technician member must have at least 5 consecutive years of practical experience as a pharmacy technician immediately before appointment to the board. A registered pharmacy technician member who, during the member's term of office, ceases to be actively engaged as a pharmacy technician in this state must be automatically disqualified from membership on the board.

~~(b)~~*(c)* Each public member of the board must be a resident of the state and may not be or ever have been:

(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;

(ii) a person having any material financial interest in the providing of pharmacy services; or

(iii) a person who has engaged in any activity directly related to the practice of pharmacy.

(3) Members shall serve staggered 5-year terms. A member may not serve more than two consecutive full terms. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(4) A member must be removed from office by the governor:

(a) upon proof of malfeasance or misfeasance in office, after reasonable notice of charges against the member and after a hearing; or

(b) upon refusal or inability to perform the duties of a board member in an efficient, responsible, and professional manner.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 15-6-217, MCA, is amended to read:

"15-6-217. Exemption for vehicle of certain health care professionals. A motor vehicle that is brought, driven, or coming into this state is exempt from the registration fees imposed in 15-24-301 if the motor vehicle is registered in another state or country by a nonresident person who is a licensed health care professional, as provided in Title 37, chapter 3, ~~5,~~ 8, 11, 14, 20, 21, 25, 28, or 34, and who is employed in Montana by a rural health care facility that is located in an area that has been:

(1) designated by the secretary of the federal department of health and human services as a health professional shortage area, as provided in 42 U.S.C. 254(e); or

(2) determined to have a critical shortage of nurses, as provided in 42 U.S.C. 297n(a)(3)."

Section 3. Section 37-3-102, MCA, is amended to read:

"37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Approved internship" means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

(2) "Approved medical school" means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) "Approved residency" means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board may upon investigation approve any other residency.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

~~(6)~~*(7)* "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter."

Section 4. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

~~(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;~~

~~(g)~~*(f)* the practice of chiropractic under the conditions and limitations defined by the laws of this state;

~~(h)~~*(g)* the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

~~(i)~~*(h)* the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;

~~(j)~~*(i)* the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

~~(k)~~*(j)* the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

~~(l)~~*(k)* the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

~~(m)~~*(l)* the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

~~(n)~~*(m)* the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

~~(o)~~*(n)* the execution of a death sentence pursuant to 46-19-103;

~~(p)~~*(o)* the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

~~(q)~~*(p)* the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", *"D.O."*, or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 5. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate ~~licensed physicians~~ *licensees subject to the jurisdiction of the board* who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; and

(6) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary."

Section 6. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's certificate. ~~The~~ *A* physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102~~(6)~~*(7)* in a manner reasonably consistent with ~~his~~ *the holder's* training, skill, and experience."

Section 7. Section 37-3-304, MCA, is amended to read:

"37-3-304. Practice authorized by temporary certificate. *(1)* ~~The~~ *A* temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate ~~and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board~~, authorizes the holder to perform one or more of the acts embraced in 37-3-102~~(6)~~*(7)* in a manner reasonably consistent with ~~his~~ *the holder's* training, skill, and experience, subject~~, nevertheless,~~ to all specifications, conditions, and limitations imposed by the board.

(2) A temporary certificate may not be issued for a period that exceeds 1 year. However, the certificate may be renewed, at the board's discretion, for additional 1-year periods but may not be renewed more than five times."

Section 8. Section 37-3-307, MCA, is amended to read:

"37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, *by the national board of osteopathic medical examiners or successors,* or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary ~~license~~ *certificate* may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary ~~license~~ *certificate* subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary ~~license~~ *certificate* to a person ~~if he~~ *who* has committed unprofessional conduct. The issuance of a temporary certificate ~~imposes no~~ *does not impose any* future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary ~~license~~ *certificate*. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant."

Section 9. Section 37-3-313, MCA, is amended to read:

"37-3-313. ~~Registration~~ *Renewal* fees — failure to pay — limiting authority to impose~~registration~~ *renewal* fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a~~registration~~ *renewal* fee as prescribed by the board.

(2) The payments for ~~registration~~ *renewal* must be made prior to the expiration date of the ~~registration~~ *license*, as set forth in a department rule~~, and a receipt acknowledging payment of the registration fee must be issued by the department~~. The department shall mail ~~registration~~ *renewal* notices ~~at least 60 days~~ before the ~~registration~~ *renewal* is due.

(3) In case of default in the payment of the ~~registration~~ *renewal* fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying ~~certificate~~ *license* to practice medicine may be ~~revoked~~ *considered lapsed* by the board ~~on 30 days' notice given to the delinquent of the time and place of considering the revocation~~. ~~A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.~~

(4) A~~registration or~~ license *or renewal* fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state."

Section 10. Section 37-3-315, MCA, is amended to read:

"37-3-315. Qualifications for licensure — restricted certificate — suspension — practice authorized. (1) A person may not be granted a restricted license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school *or college of osteopathic medicine*;

(c) is licensed and engaged in the active practice of medicine *or osteopathic medicine* in another state or foreign country, whose licensing standards are acceptable to the board;

(d) has never been subject to license discipline in any form;

(e) demonstrates evidence of research and publication:

(i) in a peer-reviewed medical journal in the English language;

(ii) in the 2 years preceding receipt of the application; and

(iii) that demonstrate the applicant's competency in the field of medicine in which the restricted license is requested;

(f) has been accepted for privileges in a hospital pending licensure by the board;

(g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties; ~~or~~

(iii) board certification in a specialty recognized or certified by the American osteopathic association; or

~~(iii)~~*(iv)* passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, *the comprehensive osteopathic medical licensing examination,* the special purpose examination, *the comprehensive osteopathic medical variable-purpose examination,* an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The restricted license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a restricted license is limited to the practice of medicine specifically approved by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the restricted certificate."

Section 11. Section 37-3-345, MCA, is amended to read:

"37-3-345. Qualifications for telemedicine certificate — basis for denial. The board may not grant a telemedicine certificate to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted certificate *or license* to practice medicine *or osteopathic medicine* in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

(3) has no history of disciplinary action or limitation of any kind imposed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine certificate;

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician certified to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the board; and

(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana."

Section 12. Section 37-4-301, MCA, is amended to read:

"37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination ~~shall~~ *must* consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board, which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of ~~such~~ *a* written and practical examination ~~shall~~ *must* be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. ~~It shall~~ *The examination must* include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing ~~any such~~ examination procedures.

(4) Applicants for licensure shall submit an application, which ~~shall~~ *must* include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) ~~a licensure~~ *an application* fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

~~(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.~~

~~(6)~~*(5)* Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

~~(7)~~*(6)* Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass ~~his~~ *the* first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

~~(8)~~*(7)* The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 13. Section 37-4-311, MCA, is amended to read:

"37-4-311. Rehabilitation. The board shall establish a protocol for the referral to a board-approved rehabilitation program for ~~licensed dentists~~ *licensees subject to the jurisdiction of the board* who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness."

Section 14. Section 37-4-312, MCA, is amended to read:

"37-4-312. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each ~~licensed dentist~~ *licensee*, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the ~~dentist~~ *licensee*, organization, association, society, or person has that appears to show that a ~~dentist~~ *licensee* is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program endorsed by the board under 37-4-311 in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that ~~they~~ *the program personnel* recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

Section 15. Section 37-4-402, MCA, is amended to read:

"37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination ~~shall~~ *must* consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures.

(5) Applicants for licensure shall submit an application, which must include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) ~~a licensure~~ *an application* fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) ~~Applications must be submitted no less than 20 days prior to the jurisprudence examination.~~ Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified,

may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 16. Section 37-6-304, MCA, is amended to read:

"37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses must be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed on a date set by department rule.

(4) A license renewal fee set by the board must be paid on a date set by department rule.

(5) The department shall mail renewal notices ~~no later than 60 days~~ prior to the renewal date.

(6) If the renewal fee is not paid on or before the renewal date, the board may ~~revoke the licensee's certificate after giving 30 days' notice to the licensee~~ *consider the license lapsed.* ~~A certified letter addressed to the delinquent licensee's last known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. A certificate may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.~~

~~(7) A license revoked for nonpayment of the renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.~~

~~(8) Licenses must be conspicuously displayed by podiatrists at their offices or other places of practice.~~"

Section 17. Section 37-12-102, MCA, is amended to read:

"37-12-102. Exemptions — limitations on construction of chapter. ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of ~~his profession~~ *those professions*. The practice of chiropractic as ~~herein~~ defined *in this chapter* is ~~hereby~~ declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining ~~the same~~ *medicine and surgery* and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining ~~the same~~ *osteopathy*. ~~Duly licensed~~ *Licensed* chiropractors ~~shall~~ *are* not ~~be~~ subject to the provisions of ~~chapter 5 of~~ this title *pertaining to the practice of osteopathy* or liable to any prosecution ~~thereunder~~ *under those provisions*."

Section 18. Section 37-12-302, MCA, is amended to read:

"37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board~~, at least 21 days prior to a meeting of the board~~. Each applicant must be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, in which the applicant has attended a course of study of 4 school years of not less than 9 months each. The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. Application must be made in

writing, must be sworn to by an officer authorized to administer oaths, and must recite the history of applicant's educational qualifications, how long the applicant has studied chiropractic, of what school or college the applicant is a graduate, and the length of time the applicant has been engaged in practice. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board. A fee must also be paid for a subsequent examination and application.

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement."

Section 19. Section 37-12-304, MCA, is amended to read:

"37-12-304. Examinations — subjects. (1) ~~Examinations for a license to practice chiropractic must be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application must be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded~~ *Applicants for a license to practice chiropractic must have passed an examination prescribed by the board.*

~~(2) Examinations must be administered on subjects taught in chiropractic colleges, on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic. A license must be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, the applicant is not entitled to a license.~~

~~(3)~~*(2)* The board may accept the grades an applicant has received in the examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though the applicant holds a valid certificate from the national board of chiropractic examiners."

Section 20. Section 37-13-306, MCA, is amended to read:

"37-13-306. Renewal — fee — ~~military exemption~~. ~~(1)~~ The license to practice acupuncture must be renewed on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be ~~in the hands of the secretary of the board~~ *received at the board's office* not later than the expiration date of the license.

~~(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be canceled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee~~

~~prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.~~

~~(3) If the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon the board's records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.~~

~~(4) A licensee who allows the license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all renewal fees then accrued plus an additional fee prescribed by the board for each renewal period following the cancelling of the license.~~

~~(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the renewal fee or make application for renewal until the renewal date of the calendar period in which the person returns from military service to civilian or inactive status.~~"

Section 21. Section 37-16-403, MCA, is amended to read:

"37-16-403. Examinations — time and place ~~— number of failures allowed~~. ~~(1)~~ An applicant for a license who is notified by the department that the applicant has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to take written and practical examinations in order to demonstrate that the applicant is qualified to practice the fitting of hearing aids and related devices.

~~(2) An applicant who fails two successive practical examinations is eligible for reexamination after 2 years have elapsed since the date of the applicant's last examination and after the applicant has completed additional training or education recognized by the board.~~"

Section 22. Section 37-19-302, MCA, is amended to read:

"37-19-302. License required for practice of mortuary science — qualifications of applicants. (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary ~~in Montana~~ after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board."

Section 23. Section 37-19-303, MCA, is amended to read:

"37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. ~~The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.~~"

Section 24. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval fee — renewal of license — renewal fee. (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department *of labor and industry*.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department *of labor and industry* shall mail a renewal notice ~~no later than 60 days~~ prior to the renewal date. ~~A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license.~~

(6) If the license renewal fee is not paid on or before the renewal date, the board may ~~revoke~~ *consider* the license ~~after giving 30 days' notice to the licensee~~ *lapsed*. ~~A license may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.~~

(7) Fees received by the department *of labor and industry* must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 25. Section 37-20-303, MCA, is amended to read:

"37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 , *4, 6* through 17, 31, or 32."

Section 26. Section 37-26-301, MCA, is amended to read:

"37-26-301. Practice of naturopathic health care — alternative health care formulary committee. (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1) ~~(n)~~ *(m)*, with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies, as well as drugs on the natural substance formulary list provided for in subsection (3):

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) A five-member alternative health care formulary committee appointed by the board shall establish a natural substance formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.

(4) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(5) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable."

Section 27. Section 37-27-105, MCA, is amended to read:

"37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board shall have the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules ~~must~~ *may* include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses;

(f) the adoption of disciplinary standards for licensees;

(g) the development of standardized informed consent and reporting forms;

(h) the adoption of ethical standards for licensed direct-entry midwives;

(i) the adoption of supporting documentation requirements for primary birth attendants; and

(j) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201."

Section 28. Section 37-27-202, MCA, is amended to read:

"37-27-202. Examination — preparation — requirements. (1) An examination for a license to practice direct-entry midwifery must be prepared by a ~~certified nurse-midwife designated by the board in consultation with the physician on~~ *national testing agency approved by* the board.

(2) Examinations must be conducted once each year, be fair and impartial, and be sufficiently comprehensive to adequately test the applicant's competence and ability.

(3) In order to be licensed, a person ~~shall~~ *must* attain a passing grade on the examination, as set by the board.

(4) A person who fails to achieve a passing grade on the examination may not engage in the practice of midwifery."

Section 29. Section 37-29-304, MCA, is amended to read:

"37-29-304. ~~Applications and fees~~ *Fees*. ~~(1) The board is initially entitled to charge and collect the following fees:~~

~~(a) $200 application for licensing;~~

~~(b) $200 for original license;~~

~~(c) $200 license renewal fee;~~

~~(d) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and~~

~~(e) $50 for a duplicate or replacement license or a license for a second address, provided that a denturist may not hold licenses bearing more than two different addresses.~~

~~(2)~~ The board ~~may~~ *shall* set ~~other~~ fees ~~and modify the initial fees~~ *commensurate with costs* in accordance with the provisions of 37-1-134."

Section 30. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors~~,~~ listed in major group 23 in the North American Industry Classification System Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (36)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter ~~5~~ *3*;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (36)(a), in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year."

Section 31. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter ~~5 or~~ 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."

Section 32. Repealer. Sections 37-5-101, 37-5-102, 37-5-301, 37-5-302, 37-5-305, 37-5-307, and 37-5-312, MCA, are repealed.

Section 33. Coordination instruction. If House Bill No. 285 and [this act] are both passed and approved, then [section 20 of this act] is amended to read:

"Section 20. Section 37-13-306, MCA, is amended to read:

"37-13-306. Renewal — fee — military exemption. ~~(1) The~~ *Except as provided in [section 2 of House Bill No. 285], the* license to practice acupuncture must be renewed on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on ~~forms~~ *a form* prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be ~~in the hands of the secretary of the board~~ *received at the board's office* not later than the expiration date of the license.

~~(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be canceled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.~~

~~(3) If the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon the board's records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.~~

~~(4) A licensee who allows the license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all renewal fees then accrued plus an additional fee prescribed by the board for each renewal period following the cancelling of the license.~~

~~(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the renewal fee or make application for renewal until the renewal date of the calendar period in which the person returns from military service to civilian or inactive status.~~""

Section 34. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 36. Effective date. [This act] is effective July 1, 2003.

Ap proved April 3, 2003

CHAPTER NO. 225

[SB 121]

AN ACT GENERALLY REVISING THE TAXATION OF PASS-THROUGH ENTITIES AND THEIR OWNERS; TO CLARIFY THAT ALL OWNERS OF PASS-THROUGH ENTITIES WITH MONTANA SOURCE INCOME ARE SUBJECT TO TAX; TO EXTEND THE CONSENT, COMPOSITE RETURN, AND WITHHOLDING PROVISIONS TO FOREIGN C. CORPORATIONS AND TO OTHER PASS-THROUGH ENTITY OWNERS; TO PROVIDE A REFUNDABLE CREDIT FOR SECOND-TIER PASS-THROUGH ENTITY OWNERS FOR WITHHELD AMOUNTS REMITTED ON THEIR BEHALF; TO CLARIFY AN INTENT THAT THE PASS-THROUGH ENTITY PROVISIONS NOT OVERRIDE THE MULTISTATE TAX COMPACT; PROVIDING A DEFINITION OF "FOREIGN C. CORPORATION"; AND AMENDING SECTIONS 15-30-101, 15-30-1102, 15-30-1112, AND 15-30-1113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

~~(8)~~*(9)* "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~(9)~~*(10)* "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

~~(10)~~*(11)* "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 1980.

~~(11)~~*(12)* "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(12)~~*(13)* "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific

provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(13)~~*(14)* "Knowingly" is as defined in 45-2-101.

~~(14)~~*(15)* "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

~~(15)~~*(16)* "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(16)~~*(17)* "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

~~(17)~~*(18)* (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(18)~~*(19)* "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(19)~~*(20)* "Nonresident" means a natural person who is not a resident.

~~(20)~~*(21)* "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(21)~~*(22)* "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

~~(22)~~*(23)* "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

~~(23)~~*(24)* "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(24)~~*(25)* "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(25)~~*(26)* "Purposely" is as defined in 45-2-101.

~~(26)~~*(27)* "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(27)~~*(28)* "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(28)~~*(29)* "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

~~(29)~~*(30)* "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(30)~~*(31)* "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(31)~~*(32)* "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(32)~~*(33)* "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

Section 2. Section 15-30-1102, MCA, is amended to read:

"15-30-1102. Income or license tax involving pass-through entities — information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, ~~manager,~~ member, or other owner of an entity described in subsection (1)(c)*, the first-tier pass-through entity,* is subject to the taxes provided in this chapter, if an individual*, trust, or estate*, and to the taxes provided in Title 15, chapter 31, if a C. corporation. *If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.*

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each ~~manager,~~ member~~,~~ or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (4)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of $10 multiplied by the number of the entity's partners, shareholders, ~~managers,~~ members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (4)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (4)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, ~~managers,~~ members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 3. Section 15-30-1112, MCA, is amended to read:

"15-30-1112. Composite returns and tax. (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, ~~manager, or~~ member, *or other owner* who:

(a) is a nonresident individual*, a foreign C. corporation, or a pass-through entity* whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, ~~manager, or~~ member, *or other owner*; and

(b) consents to be included in the filing.

(2) (a) Each participant's composite tax liability is the product obtained by:

(i) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(ii) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(b) A participant's share of the entity's income is the aggregate of the participant's share of the entity's income, gain, loss, or deduction or item of income, gain, loss, or deduction.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by 15-30-241 computed separately for each participant included in the filing of a composite return; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The composite return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing the entity information return. The composite return is in lieu of an individual income tax return required under 15-30-142 and 15-30-144*, a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403*.

(6) The composite tax is in lieu of the ~~tax~~ *taxes* imposed under*:*

(a) 15-30-103 and 15-30-105*;*

(b) 15-31-101 and 15-31-121; and

(c) 15-31-403.

(7) The department may adopt rules that are necessary to implement and administer this section."

Section 4. Section 15-30-1113, MCA, is amended to read:

"15-30-1113. Consent or withholding. (1) A pass-through entity that is required to file an information return as provided in 15-30-1102 and that has a partner, shareholder, ~~manager,~~ member, or other owner who is a nonresident individual*, a foreign C. corporation, or a pass-through entity that itself has any partner, shareholder, member, or other owner that is a nonresident individual, foreign C. corporation, or pass-through entity* shall, on or before the due date, including extensions, for the information return:

(a) *with respect to any partner, shareholder, member, or other owner who is a nonresident individual:*

(i) file a composite return ~~with respect to the individual nonresident~~;

~~(b)~~*(ii)* file an agreement of the individual nonresident to:

~~(i)~~*(A)* file a return in accordance with the provisions of 15-30-142;

~~(ii)~~*(B)* timely pay all taxes imposed with respect to income of the pass-through entity; and

~~(iii)~~*(C)* be subject to the personal jurisdiction of the state for the collection of income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

~~(c)~~*(iii)* remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return*;*

(b) with respect to any partner, shareholder, member, or other owner that is a foreign C. corporation:

(i) file a composite return;

(ii) file the foreign C. corporation's agreement to:

(A) file a return in accordance with the provisions of 15-31-111;

(B) timely pay all taxes imposed with respect to income of the pass-through entity; and

(C) be subject to the personal jurisdiction of the state for the collection of corporation license and income taxes and related interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(iii) remit an amount equal to the tax rate in effect under 15-31-121 multiplied by the foreign C. corporation's share of Montana source income reflected on the pass-through entity's information return; and

(c) with respect to any partner, shareholder, member, or other owner that is a pass-through entity, also referred to in this section as a "second-tier pass-through entity":

(i) file a composite return;

(ii) file a statement of the pass-through entity partner, shareholder, or other owner setting forth the name, address, and social security or federal identification number of each of that entity's partners, shareholders, members, or other owners and information that establishes that its share of Montana source income will be fully accounted in individual income or corporation license or income tax returns filed with the state; or

(iii) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by its share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection ~~(1)(c)~~ *(1)(a)(iii)* must be considered as a payment on the account of the nonresident individual for the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105. *On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the nonresident individual a record of the amount of tax paid on the individual's behalf.*

(3) *Any amount paid by a pass-through entity with respect to a foreign C. corporation pursuant to subsection (1)(b)(iii) must be considered as a payment on the account of the foreign C. corporation for the corporation license tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-101 or the corporation income tax imposed on the foreign C. corporation for the tax year pursuant to 15-31-403. On or before the due date, including extensions, of the*

pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the foreign C. corporation a record of the amount of tax paid on its behalf.

(4) Any amount paid by a pass-through entity with respect to a second-tier pass-through entity pursuant to subsection (1)(c)(iii) must be considered as payment on the account of the individual, trust, estate, or C. corporation to which Montana source income is directly or indirectly passed through and must be claimed as the distributable share of a refundable credit of the pass-through entity partner, shareholder, member, or other owner on behalf of which the amount was paid. On or before the due date, including extensions, of the pass-through entity's information return provided in 15-30-1102, the pass-through entity shall furnish to the second-tier pass-through entity a record of the refundable credit that may be claimed for the amount paid on its behalf.

(5) A pass-through entity is entitled to recover a payment made pursuant to ~~subsection (1)(c)~~ *subsection (1)(a)(iii), (1)(b)(iii), or (1)(c)(iii)* from the partner, shareholder, ~~manager,~~ member, or other owner on whose behalf the payment was made.

(6) Following the department's notice to a pass-through entity that a nonresident individual or foreign C. corporation did not file a return or timely pay all taxes as provided in subsection (1), the pass-through entity must, with respect to any tax year thereafter for which the nonresident individual or foreign C. corporation is not included in the pass-through entity's composite return, remit the amount described in subsection (1)(a)(iii) for the nonresident individual and the amount described in subsection (1)(b)(iii) for the foreign C. corporation.

(7) Nothing in this section may be construed as modifying the provisions of Article IV, section 18, of 15-1-601 and 15-31-312 allowing a taxpayer to petition for and the department to require methods to fairly represent the extent of the taxpayer's business activity in the state."

Ap proved April 3, 2003

CHAPTER NO. 226

[SB 216]

AN ACT PROVIDING THAT A FORMER MEMBER OF THE SELF-INSURERS GUARANTY FUND IS LIABLE FOR ASSESSMENTS MADE BY THE FUND IN ANY YEAR FOLLOWING THE DATE THAT THE MEMBER'S STATUS AS A PRIVATE SELF-INSURER IS TERMINATED; REQUIRING A FORMER MEMBER'S ASSESSMENT TO BE BASED ON BENEFITS PAID DURING THE LAST CALENDAR YEAR IMMEDIATELY PRECEDING THE ANNUAL ASSESSMENT; AMENDING SECTION 39-71-2615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2615, MCA, is amended to read:

"39-71-2615. Initial fee — assessment. (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) (a) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the following benefits paid by each member during the preceding calendar year:

(i) compensation benefits; and

(ii) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, the total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(b) Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund ~~for 3 years~~ *in any year* following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the benefits paid during the last calendar year immediately preceding the ~~termination of the member's status as a private self-insurer~~ *annual assessment*.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 227

[SB 221]

AN ACT ALLOWING THE TAKING OF SALMON AND LAKE TROUT BY SPEAR OR GIG IN FORT PECK RESERVOIR DURING CERTAIN TIMES; AND AMENDING SECTION 87-3-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-204, MCA, is amended to read:

"87-3-204. Restrictions on fishing methods. (1) ~~No~~ *A* game fish may *not* be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any ~~such~~ set gun, trap, or other device to entrap game fish be used, made, or set.

(2) ~~It is unlawful for a~~ *A* person ~~to~~ *may not:*

(a) take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; ~~to~~

(b) take or catch fish with hook baited with any poisonous substance or by ~~means of the use of~~ *using* any poisonous substance, including fish berries; or ~~to~~

(c) take or catch fish by ~~means of the use of~~ *using* fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate ~~such~~ waters within the state ~~of Montana~~ wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish, and traps, seines, nets, and rubber or spring-propelled spears, when employed by

~~sportsmen~~ *persons* swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by ~~such~~ *those* means in the waters, when so designated, is to be done under ~~such~~ rules ~~as~~ *that* the department ~~may prescribe~~ *prescribes* with reference ~~thereto~~ *to the waters* and under the supervision of the department. All ~~such~~ nongame fish so taken may be possessed and sold in ~~such~~ *a* manner and under ~~such~~ restrictions ~~as~~ *that* the department may direct. All fish, other than those ~~herein~~ designated *in this section*, ~~so~~ taken under department rules, when prescribed by the department, ~~shall~~ *must* be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department ~~shall have the power to~~ *may* designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines ~~which~~ *that* may be used as setlines.

(6) Game fish ~~shall~~ *must* be taken only by angling~~:~~, that is, by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under ~~such~~ rules and regulations ~~as~~ *that* the ~~fish, wildlife, and parks~~ commission ~~may prescribe~~ *prescribes*;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the ~~same~~ *fish* has been hooked by angling as ~~above~~ specified *in subsection (6)*;

(e) the taking of minnows, other than game fish variety, by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in ~~such~~ waters ~~as may be~~ designated by the department;

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under ~~such~~ rules and regulations ~~as~~ *that* the ~~fish, wildlife, and parks~~ commission ~~may prescribe~~ *prescribes*; ~~or~~

(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod*; or*

(h) the taking of salmon and lake trout in Fort Peck reservoir by spear or gig from December through March, under rules and regulations prescribed by the commission."

Ap proved April 3, 2003

CHAPTER NO. 228

[SB 253]

AN ACT CREATING A CLASS B-5 10-DAY NONRESIDENT FISHING LICENSE; ESTABLISHING THE TERMS, USE, AND COST OF THE LICENSE; DIRECTING A PORTION OF THE LICENSE FEE TO THE PURCHASE, OPERATION, DEVELOPMENT, AND MAINTENANCE OF FISHING ACCESSES; AMENDING SECTIONS 87-1-605, 87-2-104, 87-2-306, 87-2-805, AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class B-5—ten-day nonresident fishing license. Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of $43.50 to any agent of the department authorized to issue fishing and hunting licenses, is entitled to a 10-day nonresident fishing license that authorizes the holder to fish with hook and line, as prescribed by rules and regulations of the department, for 10 consecutive days as indicated on the license.

Section 2. Section 87-1-605, MCA, is amended to read:

"87-1-605. (Temporary) Fees used to purchase recreational facilities. (1) One dollar of the fee for a Class A resident fishing license, 10% of the fee for a Class A-8 resident temporary fishing license, $1 of the fee for a Class B-4 nonresident fishing license, *$3.50 of the fee for a Class B-5 nonresident fishing license,* and $5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation and maintenance must equal at least 50% of the money set aside each year under this section and must be expended as provided in subsection (3). The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

(3) Operation and maintenance money set aside each year under this section must be expended based on the following priority:

(a) weed management;

(b) streambank restoration; and

(c) general operation and maintenance. (Terminates July 1, 2003—sec. 1, Ch. 109, L. 1999.)

87-1-605. (Effective July 1, 2003) Fees used to purchase recreational facilities. (1) One dollar of the fee for a Class A resident fishing license, 10% of the fee for a Class A-8 resident temporary fishing license, $1 of the fee for a Class B-4 nonresident fishing license, *$3.50 of the fee for a Class B-5 nonresident fishing license,* and $5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing

accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the money set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974."

Section 3. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 *or Class B-5* licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class B-7, Class B-8, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species."

Section 4. Section 87-2-306, MCA, is amended to read:

"87-2-306. Paddlefish tags. (1) The department may issue paddlefish tags to persons listed in subsection (2) for a fee of $5 for residents and $15 for nonresidents. Each tag authorizes the holder to fish with hook and line for paddlefish as prescribed by rules of the department.

(2) The following persons may obtain paddlefish tags pursuant to this section:

(a) holders of valid Class A, Class B, ~~and~~ Class B-4*, and Class B-5* fishing licenses;

(b) residents under 15 years of age with a valid wildlife conservation license; and

(c) residents 62 years of age or older with a valid wildlife conservation license."

Section 5. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under eighteen years of age — youth combination sports license. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and

migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B , ~~or~~ B-4, *or B-5* fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) A person who lawfully purchases a youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license."

Section 6. Section 87-3-236, MCA, is amended to read:

"87-3-236. Warm water game fish surcharge and stamp — warm water game fish defined — accounts established — dedication of revenue to Fort Peck multispecies fish hatchery. (1) A person who is

required to be licensed in order to fish in Montana and who desires to fish for warm water game fish in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, *Class B-5,* or Class A-8 fishing license, pay a warm water game fish surcharge of $5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish for warm water game fish as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera Stizostedion, Esox, Micropterus, and Lota and includes largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye (Stizostedion vitreum), sauger (Stizostedion canadense), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), and tiger muskellunge.

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the construction, operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in 87-3-235, which may include a cost-share agreement with the federal government for construction of the Fort Peck multispecies fish hatchery, and beginning October 1, 2005, for the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than those in the account provided for in subsection (5). There is an account in the federal special revenue fund into which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in 87-3-235.

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. The waters designated in the list are the only waters for which a warm water game fish stamp is required."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 3, and the provisions of Title 87, chapter 2, part 3, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 229

[SB 398]

AN ACT CLARIFYING THAT FINGERPRINT AND OTHER CRIMINAL HISTORY RECORD INFORMATION RELATING TO APPLICANTS FOR ADMISSION TO THE STATE BAR MAY BE EXCHANGED WITH THE MONTANA SUPREME COURT AND ITS COMMISSION ON CHARACTER AND FITNESS FOR LICENSING PURPOSES; AMENDING SECTION 44-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-302, MCA, is amended to read:

"44-5-302. Dissemination of criminal history record information that is not public criminal justice information. (1) Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(a) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with 44-5-304; or

(d) the agency receiving the information is authorized by law to receive it.

(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the ~~state bar~~ *Montana supreme court and its commission on character and fitness* for licensing purposes."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 3, 2003

CHAPTER NO. 230

[HB 557]

AN ACT GENERALLY REVISING PROVISIONS RELATING TO ANATOMICAL GIFTS; PROVIDING FOR THE DEVELOPMENT OF AN ORGAN DONATION REGISTRY SYSTEM; PROVIDING FOR THE TRANSFER OF ORGAN DONOR INFORMATION FROM THE DEPARTMENT OF JUSTICE TO THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION; LIMITING USES OF ORGAN DONOR INFORMATION; ALLOWING THE DEPARTMENT OF JUSTICE TO RECOVER COSTS; CLARIFYING THAT THE DONOR'S WISHES ARE PARAMOUNT; AND AMENDING SECTIONS 61-5-301 AND 72-17-201, MCA.

WHEREAS, more than 80,000 people are currently waiting for life-saving organ transplants on the national transplant waiting list, of which 1,200 persons live in our region, and 17 people die each day as a result of the shortage of donated organs.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings. (1) The legislature finds that the use of anatomical gifts, including the donation of organs or tissue, for the purpose of transplantation is of great interest to the citizens of Montana and may save or prolong the life or improve the health of extremely ill and dying persons. The creation of a statewide organ and tissue donation registry is crucial to facilitate timely and successful organ and tissue procurement.

(2) The legislature further finds that continuing education of the existence and maintenance of a statewide organ and tissue donation registry is in the best interest of the people of Montana.

Section 2. Statewide organ and tissue donation registry. (1) The department of justice shall electronically transfer to the federally designated organ procurement organization all information that appears on the front of a driver's license, including the name, gender, date of birth, and most recent address of any person who obtains a driver's license and who volunteers to donate organs or tissue upon death, as provided in 61-5-301. The department of justice may charge actual costs for the first transfer of information, as provided in subsection (5). However, all subsequent electronic transfers of donor information must be at no charge to the federally designated organ procurement organization.

(2) Information obtained by the federally designated organ procurement organization must be used for the purpose of establishing a statewide organ and tissue donation registry accessible to in-state, recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Montana resident is a donor of an anatomical gift and is not located in the state at the time of death or immediately before the death of the donor.

(3) An organ or tissue donation organization may not obtain information from the organ and tissue donation registry for the purpose of fundraising. Organ and tissue donation registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donation registry information may be made by the organ procurement organization to a recognized, in-state procurement agency for other tissue recovery or to an out-of-state, federally designated organ procurement organization.

(4) The federally designated organ procurement organization may acquire donor information from sources other than the department of justice.

(5) All reasonable costs associated with the creation and maintenance of the organ and tissue donation registry, as determined by the department of justice, must be paid by the organ and tissue procurement organizations. Any money collected by the department of justice must be deposited in an account in the state special revenue fund established by the department of justice for the purpose of the payment of reasonable costs associated with the development and maintenance of the organ and tissue donation registry and necessary for the initial installation and setup for electronic transfer of the donor information.

(6) An individual does not need to participate in the organ and tissue donation registry to be a donor of organs or tissue. The registry is intended to facilitate organ and tissue donation and not inhibit persons from being donors upon death.

Section 3. Section 61-5-301, MCA, is amended to read:

"61-5-301. Indication on driver's license of intent to make anatomical gift. (1) The department of justice shall provide on each driver's license a space for indicating when the licensee has executed a document under 72-17-201 of intent to make a gift of all or part of ~~his~~ *the driver's* body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally ~~whether he~~ *if the applicant* wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) ~~his~~ *the applicant's* intent to make an anatomical gift.

(4) The department shall issue to ~~every~~ *each* applicant who indicates ~~such~~ an intent *to make an anatomical gift* a statement ~~which~~ *that*, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of ~~his~~ *the donor's* driver's license.

(5) ~~The department shall also furnish the licensee a means of revoking the document of gift upon the license.~~ *The department shall electronically transfer the information of all persons who volunteer, upon application for a driver's license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in [sections 1 and 2] and any subsequent changes to the applicant's donor status.*"

Section 4. Section 72-17-201, MCA, is amended to read:

"72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by ~~an~~ individual. (1) An individual who is at least 18 years of age may:

(a) make an anatomical gift for any of the purposes stated in 72-17-202; *or*

(b) limit an anatomical gift to one or more of those purposes~~; or~~

~~(c) refuse to make an anatomical gift~~.

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been ~~so~~ signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the

anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected. *A gift made in accordance with this section is sufficient legal authority for procurement without additional authority from the donor, donor's family, or estate.*

(6) *(a)* A donor may amend or revoke an anatomical gift not made by will only by:

~~(a)~~*(i)* a signed statement;

~~(b)~~*(ii)* an oral statement made in the presence of two individuals;

~~(c)~~*(iii)* any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

~~(d)~~*(iv)* the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(b) A donor shall notify the federally designated organ procurement organization of the destruction, cancellation, or mutilation of the document for the purpose of removing the person's name from the organ and tissue donation registry created in [sections 1 and 2].

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills~~,~~ or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death. *The donor's family or health care provider may not refuse to honor the gift or thwart the procurement of the donation.*

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

(iii) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under 72-17-214 or on a removal or release of other parts under 72-17-215.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9)."

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 72, chapter 17, and the provisions of Title 72, chapter 17, apply to [sections 1 and 2].

Ap proved April 4, 2003

CHAPTER NO. 231

[HB 700]

AN ACT REVISING LAWS RELATING TO THE ENVIRONMENT; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH AUTHORITY FOR STAYING CERTAIN ACTIONS; ALLOWING THE BOARD TO REQUIRE A WRITTEN UNDERTAKING; AUTHORIZING THE BOARD TO ADOPT RULES FOR REGISTRATION OF SOURCES OF AIR CONTAMINANTS AND GENERAL PERMITS AND MULTIPLE SIMILAR SOURCES; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR GENERAL PERMITS FOR DISCHARGES FROM CATEGORIES OF POINT SOURCES; AMENDING SECTIONS 75-2-111, 75-2-204, 75-2-211, 75-2-218, 75-2-221, AND 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant ~~thereto~~ *to that section*;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, ~~and~~ permit applications, *and registrations* consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 2. Section 75-2-204, MCA, is amended to read:

"75-2-204. Rules relating to construction, installation, alteration, operation, or use. The board may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless ~~a permit~~ *the owner or operator* has ~~been~~ obtained *a permit* under this part *or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part*."

Section 3. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance,

modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) *and [section 7]*, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the

purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) *(a)* The department's decision on the application is not final ~~unless~~ *until* 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board~~.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the

issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) *and [section 7]*, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the

purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) *(a)* The department's decision on the application is not final ~~unless~~ *until* 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.~~

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 4. Section 75-2-218, MCA, is amended to read:

"75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) *(a)* Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board~~.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) *also* apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an

express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 5. Section 75-2-221, MCA, is amended to read:

"75-2-221. Deposit of air quality permitting fees. (1) All money collected by the department pursuant to *75-2-111 and* 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit."

Section 6. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits — ground water exclusions. (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and

that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The board may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an

individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit."

Section 7. Registration. The board may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2).

Section 8. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 7].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Retroactive applicability. [Sections 3 and 4] apply retroactively, within the meaning of 1-2-109, to a request for a hearing or an appeal filed on or after January 1, 2003.

Ap proved April 4, 2003

CHAPTER NO. 232

[HB 41]

AN ACT REVISING THE LEGISLATIVE COUNCIL'S FUNCTIONS AND APPOINTMENT AUTHORITY REGARDING INTERSTATE, INTERNATIONAL, AND INTERGOVERNMENTAL ENTITIES; AMENDING SECTION 5-11-707, MCA; REPEALING SECTION 5-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, current law is confusing regarding the Legislative Council's role relating to legislative appointments to interstate, international, and intergovernmental entities that are not otherwise provided for under law; and

WHEREAS, this legislation clarifies that the Legislative Council is the appointing entity for legislative membership for voting purposes in organizations that include but are not limited to the Council of State Governments, the National Conference of State Legislatures, and the Legislative Council on River Governance.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 3], the following definitions apply:

(1) "Intergovernmental entity" means an organization, committee, delegation, or association of local, state, tribal, regional, or international governmental bodies.

(2) "International entity" means an organization, committee, delegation, or association that fosters and encourages cooperation, information exchange, or relations among nations.

(3) "Interstate entity" means an organization, committee, delegation, or association that fosters and encourages cooperation, information exchange, or relations among states.

(4) "Member" or "membership" means the authority to represent the Montana legislature for voting purposes in an interstate, international, or intergovernmental entity.

Section 2. Legislative council's role in interstate, international, and intergovernmental cooperation. The legislative council shall:

(1) encourage the state of Montana to develop and maintain mutually constructive contact and relations with interstate, international, and intergovernmental entities;

(2) promote mutually beneficial exchanges of information between the state of Montana and interstate, international, and intergovernmental entities;

(3) endeavor to advance cooperation between the state of Montana and interstate, international, and intergovernmental entities; and

(4) facilitate participation of the state of Montana as a member of appropriate interstate, international, and intergovernmental entities.

Section 3. Legislative council appointments to interstate, international, and intergovernmental entities. (1) Unless otherwise provided by law, the legislative council shall appoint legislators to serve as members of appropriate interstate, international, and intergovernmental entities.

(2) The president of the senate, the speaker of the house, the minority leader of the senate, and the minority leader of the house may recommend nominees for the legislative council's consideration in making appointments to interstate, international, and intergovernmental entities.

(3) If the legislative council appoints more than one legislator to participate as a member in an interstate, international, or intergovernmental entity, no more than 50% of the number of legislators appointed may be from one political party.

(4) If funds are available that the legislative council has the authority to expend, the legislative council, as the appropriate funding authority, may authorize that a legislator appointed as a member to an interstate, international, or intergovernmental entity be compensated, as provided in 5-2-302, for salary and expenses associated with participating in an entity-sponsored activity.

(5) If a vacancy occurs in membership to an interstate, international, or intergovernmental entity, appointment to fill the vacancy must be made in the same manner as the original appointment.

(6) The legislative council shall make appointments to any policy committee established by the Pacific Northwest economic region as provided in 5-11-707(2).

Section 4. Section 5-11-707, MCA, is amended to read:

"5-11-707. Appointment to Pacific Northwest economic region — vacancy. (1) Pursuant to 5-11-706, Article III, the governor or a designee and four legislators must be appointed to the delegate council of the Pacific Northwest economic region. The legislative members are appointed as follows:

(a) one member to be appointed by the president of the senate;

(b) one member to be appointed by the speaker of the house of representatives;

(c) one member to be appointed by the minority leader of the senate; and

(d) one member to be appointed by the minority leader of the house of representatives.

(2) If the Pacific Northwest economic region establishes policy committees under 5-11-706, Article V, appointments of legislators to the policy committees are to be made by the legislative council as provided in ~~5-11-301~~ *[section 3]*.

(3) In the event that a vacancy occurs, appointment to fill the vacancy must be made in the same manner as the original appointment."

Section 5. Repealer. Section 5-11-301, MCA, is repealed.

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective on passage and approval.

Ap proved April 7, 2003

CHAPTER NO. 233

[HB 63]

AN ACT REPEALING THE STATUTORY DESIGNATION OF ASSETS AT CHIEF PLENTY COUPS STATE PARK AND PICTOGRAPH CAVE STATE PARK AS PRIORITIES FOR PRESERVATION AND FUNDING; REPEALING SECTION 23-1-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 23-1-130, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 4, 2003

CHAPTER NO. 234

[HB 129]

AN ACT EXTENDING THE AUTHORITY TO EXPEND UNEXPENDED FUNDS PREVIOUSLY APPROPRIATED FOR THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM TO THE PROGRAM TERMINATION DATE IN 2009; AMENDING SECTION 5, CHAPTER 529, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5, Chapter 529, Laws of 1999, is amended to read:

"**Section 5**. **Appropriation**. There is appropriated $750,000 from the general license account to the department of fish, wildlife, and parks for the 2001 biennium for the purposes of [section 1]. Funds from the appropriation in this section that remain unexpended after the 2001 biennium may be expended during ~~the 2003 biennium~~ *subsequent bienniums through the 2009 biennium* for the purposes of [section 1]."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 7, 2003

CHAPTER NO. 235

[HB 236]

AN ACT CLARIFYING AND REVISING THE USE OF BONDS ISSUED FOR TECHNOLOGY PROJECTS; PROVIDING FOR THE USE OF REMAINING BOND PROCEEDS ALLOCATED TO THE DEPARTMENT OF REVENUE FOR STABILIZATION AND ASSESSMENT OF SOFTWARE AND DATA IN THE POINTS PROJECT, FOR THE PLANNING, DEVELOPMENT, ACQUISITION, INSTALLATION, ADMINISTRATION, AND IMPLEMENTATION OF INFORMATION TECHNOLOGY SYSTEMS TO REPLACE DEPARTMENT OF REVENUE INFORMATION TECHNOLOGY SYSTEMS, FOR THE PLANNING, DEVELOPMENT, AND IMPLEMENTATION OF BUSINESS PROCESS CHANGES TO FACILITATE AND ENABLE THE REPLACEMENT ACTIVITIES, AND FOR STAFFING A PROJECT MANAGEMENT OFFICE TO FACILITATE AND ENABLE THE REPLACEMENT AND BUSINESS PROCESS CHANGE ACTIVITIES; AMENDING SECTIONS 2 AND 8, CHAPTER 447, LAWS OF 1997, AND SECTIONS 2 AND 5, CHAPTER 519, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, Chapter 447, Laws of 1997, is amended to read:

"**Section 2. Appropriation of bond proceeds and approval of information technology information projects.** Upon the sale of general obligation bonds by the board of examiners, the following bond proceeds are appropriated from the capital projects fund to each responsible agency for the following information technology projects:

Agency/Project	Bond Proceeds
DEPARTMENT OF REVENUE	
Integrated Revenue and Tax Systems (Consolidation of Employer's Reporting for Income Tax Withholding, Old Fund Liability Tax, and Unemployment Insurance Contributions; Income Tax Modernization; ~~and~~ Property Tax Integration*; Planning, Development, Acquisition, Installation, Administration, and Implementation of Information Technology Systems to Replace Department of Revenue Information Technology Systems; Planning, Development, and Implementation of Business Process Changes to Facilitate and Enable the Replacement Activities; and Staffing a Project Management Office to Facilitate and Enable the Replacement and Business Process Change Activities; and Stabilization of Software and Data in POINTS Project*)	$14,000,000

DEPARTMENT OF ADMINISTRATION	
Montana Project to Reengineer Revenue and the Information Management Environment (MT PRRIME)	19,800,000
OFFICE OF BUDGET AND PROGRAM PLANNING	
Montana Integrated Budget System (MIBS)	500,000
DEPARTMENT OF LABOR	
Unemployment Benefit Package	3,600,000
MONTANA UNIVERSITY SYSTEM	
Technology Initiative	3,200,000
DEPARTMENT OF CORRECTIONS	
Information Technology Plan	1,890,408"

Section 2. Section 8, Chapter 447, Laws of 1997, is amended to read:

"**Section 8. Expenditures.** Expenditures of bond proceeds under [sections 1 through 8] may be used for information technology project administration and implementation, including software and required hardware, software licensing, and contracted services. *The remaining amount of bond proceeds allocated to the department of revenue for the MT PRRIME project may be used on the stabilization and assessment of software and data in the POINTS project, on planning, development, acquisition, installation, administration, and implementation of information technology systems to replace department of revenue information technology systems and planning, development, and implementation of business process changes to facilitate and enable the replacement activities, and on staffing of a project management office to facilitate and enable the replacement and business process change activities.*"

Section 3. Section 2, Chapter 519, Laws of 1999, is amended to read:

"**Section 2. Appropriation of bond proceeds and approval of information technology project.** Upon the sale of general obligation bonds by the board of examiners, the following bond proceeds are appropriated from the capital projects fund for the following projects:

Agency/Project	Bond Proceeds
DEPARTMENT OF REVENUE	
Project META *and stabilization of software and data in the POINTS project*	$18,000,000
MONTANA UNIVERSITY SYSTEM	
Banner Project	800,000"

Section 4. Section 5, Chapter 519, Laws of 1999, is amended to read:

"**Section 5. Expenditures.** (1) Except as provided in subsection (2), bond proceeds under [sections 1 through 4] may be used only for information technology project administration and implementation, including software and required hardware, software licensing, and contract services. ~~The~~ *Except as provided in this subsection, the* department of revenue and the Montana university system are prohibited from using any of the proceeds from the sale of bonds, authorized by [sections 1 through 5], for agency current level operating expenses. *The department of revenue may use remaining bond proceeds issued for project META for stabilization and assessment of software and data in the*

POINTS project, on planning, development, acquisition, installation, administration, and implementation of information technology systems to replace department of revenue information technology systems and planning, development, and implementation of business process changes to facilitate and enable the replacement activities, and on staffing of a project management office to facilitate and enable the replacement and business process change activities.

(2) All of the bonds authorized and issued for the Montana university system under [sections 1 through 4] must be used to reduce student fees levied for information technology purposes."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to acts and expenditures after November 1, 2002.

Ap proved April 7, 2003

CHAPTER NO. 236

[HB 272]

AN ACT PROHIBITING A STATE AGENCY FROM OFFSETTING A DEBT OWED BY A LOCAL GOVERNMENT AGAINST THE ENTITLEMENT SHARE PAYMENT OWED TO A LOCAL GOVERNMENT; AMENDING SECTIONS 15-1-121 AND 17-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-201;

(j) title and registration fees pursuant to 61-3-203;

(k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for

consolidated local governments. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter

of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(13) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 2. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt — offsets. (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to 15-1-211. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount

available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to this state those taxes or other debts owed to an agency of this state.

(b) (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state those taxes or other debts owed to this state or an agency of this state.

(ii) To facilitate an agreement of the kind authorized by subsection (3)(b)(i), the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by this subsection (3)(b)(ii) only if the other state or agency of the other state allows this state or an agency of this state to offset against tax refunds owed by the other state or agency of the other state taxes or other debts owed to this state or an agency of this state.

(c) A state or agency of another state entering into an agreement with the department pursuant to subsection (3)(b)(ii) may not exercise the offset against tax refunds unless the other state or agency of the other state has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as though filed by the person or entity. The amount due any person or entity from

the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section.

(6) A debt owed to a state agency by a local government may not be offset against a payment due to a local government pursuant to 15-1-121."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 7, 2003

CHAPTER NO. 237

[HB 319]

AN ACT GENERALLY REVISING LAWS RELATING TO CREDIT UNIONS; CLARIFYING THE USE OF "CREDIT UNION" IN THE NAME OF CREDIT UNIONS; AUTHORIZING OUT-OF-STATE CREDIT UNIONS TO DO BUSINESS IN THIS STATE UNDER CERTAIN CONDITIONS; AUTHORIZING MONTANA CREDIT UNIONS TO CONDUCT BUSINESS IN OTHER STATES UNDER CERTAIN CONDITIONS; GENERALLY REPLACING REFERENCES TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION WITH REFERENCES TO THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR EXAMINATIONS OF CREDIT UNIONS ON A SCHEDULE DETERMINED BY THE DEPARTMENT RATHER THAN ON AN ANNUAL BASIS; ESTABLISHING CRITERIA FOR CEASE AND DESIST ORDERS AND INVOLUNTARY DISSOLUTION; REVISING SUSPENSION CRITERIA; ESTABLISHING CRITERIA FOR APPOINTING A CONSERVATOR FOR A CREDIT UNION; ESTABLISHING CRITERIA FOR THE INVOLUNTARY MERGER OF A CREDIT UNION; PROVIDING FOR THE CONFIDENTIALITY OF CERTAIN CREDIT UNION INFORMATION MAINTAINED BY THE DEPARTMENT OF ADMINISTRATION; REVISING CERTAIN ORGANIZATIONAL AND ADMINISTRATIVE PROCEDURES OF CREDIT UNIONS; REVISING VOLUNTARY LIQUIDATION AND MERGER PROCEDURES; REVISING BOARD OF DIRECTORS AND COMMITTEE PROCEDURES; REVISING ACCOUNT, SHARE, AND LOAN PROVISIONS; REVISING RESERVE REQUIREMENTS; AMENDING SECTIONS 32-3-103, 32-3-201, 32-3-202, 32-3-203, 32-3-204, 32-3-205, 32-3-206, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-310, 32-3-321, 32-3-322, 32-3-323, 32-3-401, 32-3-403, 32-3-404, 32-3-408, 32-3-411, 32-3-412, 32-3-414, 32-3-417, 32-3-505, 32-3-506, 32-3-508, 32-3-601, 32-3-602, 32-3-604, 32-3-608, 32-3-611, 32-3-702, 32-3-703, AND 32-3-705, MCA; AND REPEALING SECTION 32-3-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-103, MCA, is amended to read:

"32-3-103. Use of name exclusive. *(1) The name of any credit union organized under this chapter must include the phrase "credit union". A credit union may not adopt a name either identical to the name of any other credit union doing business in this state or so similar as to be misleading or to cause confusion.*

(2) ~~With the exception of~~ *A person, other than* a credit union organized under the provisions of this chapter or of any other credit union act or an ~~association~~ *organization or corporation whose membership or ownership is primarily limited to* ~~of~~ credit unions or *credit union organizations,* ~~a recognized chapter~~

thereof, any person, corporation, partnership, or association using *may not use* a name or title containing the words "credit union" or any derivation ~~thereof~~ *of the words "credit union"*, ~~or representing themselves in their advertising or otherwise as conducting business as~~ *and the person may not represent that the person is a credit union and may not conduct business as* a credit union.

(3) A person who violates a provision of this section shall be fined not more than $500 or imprisoned not more than 1 year, or both, and may be permanently enjoined from ~~using such words in its name~~ *further violation of the provisions of this section*."

Section 2. Out-of-state credit unions. (1) A credit union chartered under the laws of another state or territory of the United States may conduct business as a credit union in this state with the approval of the department of administration, provided that credit unions incorporated under this chapter are allowed to do business in the other state or territory under conditions similar to these provisions.

(2) Before granting approval to do business in this state, the department must find that an out-of-state credit union:

(a) is a credit union organized under laws similar to this chapter;

(b) is financially solvent;

(c) has account insurance comparable to that required for credit unions incorporated under this chapter;

(d) is examined and supervised by a regulatory agency of the state in which it is organized; and

(e) needs to conduct business in this state to adequately serve its members in this state.

(3) An out-of-state credit union may not conduct business in this state unless it:

(a) complies with the consumer protection statutes and rules applicable to credit unions incorporated under this chapter;

(b) agrees to furnish the department with a copy of the examination report conducted by its regulatory agency or to submit to an examination by the department; and

(c) designates and maintains an agent for the service of process in this state.

(4) The department may revoke the approval of an out-of-state credit union conducting business in this state if the department finds that:

(a) the credit union no longer meets the requirements of subsection (2);

(b) the credit union has violated the laws of this state or lawful rules or orders issued by the department;

(c) the credit union has engaged in a pattern of unsafe or unsound credit union practices;

(d) continued operation by the credit union is likely to have a substantially adverse impact on the financial, economic, or other interests of residents of this state; or

(e) the credit union is prohibited from operating in its own home state.

Section 3. Conducting business outside this state. (1) A credit union chartered under this chapter may conduct business outside of this state in other

states or territories where it is permitted to conduct business as a credit union, under conditions substantially similar to the provisions of this chapter.

(2) If another state or territory's credit union laws or regulations allow credit unions operating in that state or territory to exercise additional powers not allowed in this state, the credit union conducting business outside this state may request permission from the department of administration to exercise those additional powers while operating in that state.

(3) Upon request for approval to exercise a power not allowed in this state, submitted by certified mail, return receipt requested, the department shall respond with a determination in not more than 60 days. For good cause shown within the 60-day period, the department may extend the response period for an additional 30 days. If a response is not received within 60 days or 90 days, as applicable, the requesting credit union may exercise the power.

Section 4. Section 32-3-201, MCA, is amended to read:

"32-3-201. ~~Director of department~~ *Department* of administration. (1) The ~~director of the~~ department of administration shall administer the laws of this state relating to credit unions. The ~~director~~ *department* may appoint or employ special assistants, deputies, examiners, or other employees that are necessary for the purpose of administering or enforcing this chapter.

(2) The ~~director~~ *department* may adopt rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The ~~director~~ *department* shall adopt rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk.

(4) The department may enter into agreements with other states establishing the division of supervisory responsibilities between the state in which a credit union is organized and the state or states in which the credit union's branches may be located."

Section 5. Section 32-3-202, MCA, is amended to read:

"32-3-202. Reports. (1) Credit unions organized under this chapter shall report to the ~~director~~ *department of administration* annually on or before February 1 on forms supplied by ~~him~~ *the department* for that purpose. Additional reports may be required.

(2) A fine of $5 for each day a report is in arrears ~~shall~~ *must* be levied against the offending credit union unless it is excused for cause by the ~~director~~ *department*."

Section 6. Section 32-3-203, MCA, is amended to read:

"32-3-203. Examinations. (1) The department of administration shall ~~annually~~ examine or cause to be examined each credit union *on a schedule determined by the department.* Each credit union and all of its officers and agents ~~must be required to~~ *shall* give ~~to~~ representatives of the ~~director of the~~ department full access to all books, papers, securities, records, and other sources of information under their control. For the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination must be forwarded to the executive officer of each credit union promptly after completion. The report must contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and committee members shall meet to consider matters contained in the report.

(3) In lieu of making an ~~annual~~ examination of a credit union, the ~~director~~ *department* may accept an audit report of the condition of the credit union made by an auditor approved by the ~~director~~ *department*. The cost of the audit must be borne by the credit union."

Section 7. Section 32-3-204, MCA, is amended to read:

"32-3-204. Records. (1) A credit union shall maintain all books, records, accounting systems, and procedures in accordance with rules that ~~the director of~~ the department of administration prescribes. In prescribing rules, the ~~director~~ *department* shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the ~~director~~ *department*.

(3) A photostatic or photographic copy or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, of any credit union records ~~must be~~ *is* admissible as evidence of transactions with the credit union."

Section 8. Section 32-3-205, MCA, is amended to read:

"32-3-205. ~~Suspension~~ *Cease and desist orders — suspension — involuntary liquidation.* *(1) The department of administration may issue cease and desist orders after having determined, from competent and substantial evidence, that a credit union:*

(a) is engaged or is about to engage in an unsafe or unsound practice; or

(b) is violating or has violated a material provision of any law, rule, or condition imposed in writing by the department or any written agreement made with the department.

(2) (a) The department may suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any director, officer, or committee member who has committed any violation of a law, rule, or cease and desist order, who has engaged in or participated in any unsafe or unsound practice in connection with the credit union, or who has committed or engaged in any act, omission, or practice that constitutes a breach of that person's fiduciary duty as a director, officer, or committee member when the department has determined that:

(i) the action of the director, officer, or committee member has resulted or will likely result in substantial financial loss or other damage;

(ii) the interests of the credit union's members have been or may be prejudiced by the action of the director, officer, or committee member;

(iii) the director, officer, or committee member has received financial gain or other benefit as a result of the action; or

(iv) the action of the director, officer, or committee member involves personal dishonesty or demonstrates unfitness to serve as a director, officer, or committee member.

(b) A director, officer, or committee member suspended from office pursuant to subsection (2)(a) may request a hearing under the Montana Administrative Procedure Act.

~~(1)~~*(3) (a)* If it appears that ~~any~~ *a* credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the ~~director of the~~ department ~~of administration shall~~ *may* issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors must be given notice by certified mail of the suspension. The notice must include a list of the reasons for the suspension and a list of the specific violations of this chapter.

~~(2)~~*(b)* Upon receipt of a suspension notice, the credit union shall cease all operations, except those authorized by the ~~director~~ *department, or the department may appoint a conservator to operate the credit union during the period of suspension*. The ~~credit union~~ *board of directors* shall ~~then~~ file with the ~~director~~ *department* a reply to the suspension notice and ~~may request a hearing to~~ present a plan of *proposed* corrective actions ~~proposed~~ if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

~~(3)~~*(c)* Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected *or upon acceptance of a plan of proposed corrective actions*, the ~~director~~ *department* may revoke the suspension notice and permit the credit union to resume normal operations.

~~(4)~~*(d)* If the ~~director~~ *department*, after issuing a notice of suspension ~~and providing an opportunity for a hearing~~, rejects the credit union's plan to continue operations, ~~the director may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of the action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section~~ *the board may request an administrative hearing.*

~~(5)~~*(4)* If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing *or if after a hearing, the department continues to reject the credit union's plan to continue operations*, the ~~director~~ *department* may ~~then~~*:*

(a) permit the credit union to operate under a conservator until conditions requiring suspension are remedied;

(b) involuntarily merge the credit union in accordance with the provisions of [section 10]; or

(c) revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union.

(5) The department may not involuntarily merge or involuntarily liquidate a credit union prior to the suspension procedures outlined in this section. A credit union may petition the appropriate court to stay the department's suspension, involuntary merger, or involuntary liquidation order.

(6) In the event of liquidation of a credit union, the assets of the credit union or the proceeds from the disposition of the credit union's assets must be applied and distributed in the following sequence:

(a) to secured creditors up to the value of their secured collateral;

(b) for the costs and expenses of liquidation;

(c) for wages due employees of the credit union;

(d) for taxes owed to any government unit;

(e) for any debts owed the United States;

(f) to general creditors and to secured creditors to the extent that their claims exceed the value of their collateral; and

(g) to shareholders of the credit union to the extent of their uninsured shares."

Section 9. Conservatorship. (1) In conjunction with a suspension order or if the department of administration's examination has been obstructed or impeded, the department may appoint itself or appoint any other competent person as conservator to immediately take possession and control of the business and assets of a credit union. The conservator, representing the best interest of the credit union members, must be vested with the full power of management of the credit union.

(2) Not later than 15 days after the date on which the conservator takes possession and control of the business and assets of a credit union pursuant to subsection (1), the credit union may apply to the appropriate court for an order requiring the department to show cause why the department or the designated conservator should not be enjoined from continuing possession and control.

(3) Except as provided in subsection (2), the conservator may maintain possession and control of the business and assets of the credit union and may operate the credit union until:

(a) the department permits the credit union's officials to continue business subject to any terms and conditions the department imposes; or

(b) the credit union is involuntarily merged or involuntarily liquidated in accordance with the provisions of 32-3-205.

(4) The department may appoint any agents considered necessary to assist the conservator in carrying out the duties of the conservator under this section.

(5) All expenses incurred by the conservator in exercising the authority of that office under this section with respect to a credit union must be paid out of the assets of the credit union, except that the department may waive all or a part of the expenses.

Section 10. Involuntary merger. The department of administration may initiate the involuntary merger of a credit union that is insolvent or in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union that is insolvent or in danger of insolvency if the department is satisfied that:

(1) an emergency requiring expeditious action exists with respect to a credit union that is insolvent or in danger of insolvency;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval of the merger, purchase, or assumption.

Section 11. Confidentiality — penalties. (1) (a) Any report of examination issued under 32-3-203, any report made by a credit union under 32-3-202, and any other credit union documentation maintained by the department of administration, other than those reports that are required to be published, must be considered confidential information. The information may

not be imparted to persons who are not officially associated with the department, and the information contained in the reports and statements may be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with federal credit union regulatory agencies and with the financial regulatory departments of other states. The department may furnish information to the legislative auditor for use in pursuit of official duties. A prosecuting official may obtain the information by court order.

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in subsection (1)(b), be imparted to any person not officially associated with the department. The information may be used by the department only in the furtherance of its official duties.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a credit union is guilty of a felony and must be removed from office. Upon conviction, the person shall be fined an amount not exceeding $1,000, be imprisoned in a state correctional facility for a term not exceeding 5 years, or both.

Section 12. Section 32-3-206, MCA, is amended to read:

"32-3-206. Authorized activities of credit unions. Upon written application to the ~~director~~ *department of administration*, a credit union may engage in any activity in which ~~such~~ *a* credit union could engage *if it* were ~~it~~ operating as a federal chartered credit union at the time ~~such~~ *the* authority is granted. ~~Such powers~~ *The activities* ~~shall~~ include~~,~~ but *are* not ~~by way of limitation~~ *limited to,* the power to do any act and *to* own, possess, and carry as assets property ~~of such character~~ including stocks, bonds, or other debentures ~~which~~ *that*, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions~~, notwithstanding~~ *and are not subject to* any restrictions ~~elsewhere~~ contained *elsewhere* in ~~the statutes of the state of~~ Montana *law*. ~~except that the~~ *However, the* ~~director~~ *department* may not charter a credit union not having a common bond of membership as defined in 32-3-304. The ~~director~~ *department* shall approve an activity if ~~he~~ *it* finds that ~~it~~ *the activity* fosters competitive equality between state and federal credit unions and prevents adverse effects on members of state-chartered credit unions. If the ~~director~~ *department* disapproves an activity, the credit union must be given an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a compelling reason exists for denying approval of the activity for which the credit union applied."

Section 13. Section 32-3-301, MCA, is amended to read:

"32-3-301. Organization procedure. (1) Any seven or more residents of this state who are of legal age and who have a common bond, as described in 32-3-304, may organize a credit union and become charter members of the credit union by complying with this section.

(2) The subscribers shall execute, in duplicate, articles of incorporation that conform to the applicable Montana corporation law and shall agree to the terms of the articles. The articles must state:

(a) the name, which must include the words "credit union" and which ~~may not be the same as that of any other existing credit union in this state~~ *must conform with the provisions of 32-3-103*, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which must be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union is organized under this chapter for the purposes set forth in the articles;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which may be not less than $5; and

(f) that the credit union may exercise incidental powers that are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers that are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the bylaws in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee if the bylaws provide for a supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, must be executed by the parties. This agreement must be submitted to the ~~director of the~~ department of administration.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the ~~director of the~~ department ~~of administration~~. The ~~director~~ *department* may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and if the ~~director~~ *department* is satisfied that the proposed field of operation is favorable to the success of the credit union and that the standing of the proposed organizers gives assurance that the credit union's affairs will be properly administered. The ~~director~~ *department* shall return to the applicants or their representatives a copy of the bylaws and the articles, which must be preserved in the permanent files of the credit union. The application must be acted upon within 30 days. The articles of incorporation must be filed with the secretary of state who, upon payment of the fees for filing the articles, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter may not transact any business until formal approval of the charter has been received.

(7) If the department denies a certificate of approval, the subscribers may request a hearing under the Montana Administrative Procedure Act."

Section 14. Section 32-3-302, MCA, is amended to read:

"32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the ~~director of the~~ department of administration shall ~~cause to be prepared~~ *prepare* a form of articles of incorporation and a form of bylaws, consistent with this chapter, ~~which~~ *that* may be used by credit union incorporators for their guidance. The articles of incorporation and bylaws must be available without charge to persons desiring to organize a credit union."

Section 15. Section 32-3-303, MCA, is amended to read:

"32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of

incorporation or bylaws must be submitted, *by certified mail, return receipt requested,* to the ~~director of the~~ department of administration, ~~who~~ *which* shall approve or disapprove the amendments within 60 days.

(2) Amendments become effective upon:

(a) approval in writing by the ~~director~~ *department*, for which a fee may not be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state.

(3) If the department does not approve or disapprove the amendments within the 60-day period, the amendments must be considered approved, except that the department may extend the approval period for an additional 30 days for good cause as stated in a written notice given to the credit union within the original 60-day period."

Section 16. Section 32-3-307, MCA, is amended to read:

"32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the ~~director of the~~ department of administration, for whom credit union services are otherwise unavailable."

Section 17. Section 32-3-310, MCA, is amended to read:

"32-3-310. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union ~~shall~~ *must* be held at the time, place, and in the manner indicated by the bylaws.

(2) At all ~~such~~ meetings a member ~~shall have but~~ *has only* one vote, irrespective of ~~his~~ *the member's* shareholdings. ~~No~~ *A* member may *not* vote by proxy, but a member may vote by absentee ballot *or mail ballot* if the bylaws of the credit union so provide.

(3) A society, association, partnership, or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided ~~such~~ *that the* person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than 18 years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both."

Section 18. Section 32-3-321, MCA, is amended to read:

"32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section ~~and the applicable Montana corporation laws~~.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the ~~president~~ *presiding officer of the board* shall notify the ~~director of the~~ department of administration in writing, setting forth the reasons for the proposed action *and a plan for liquidation*. Within 10 days after the members act on the question of liquidation, the ~~president~~ *presiding officer of the board* shall notify the ~~director~~ *department* in writing as to whether or not the members approved the proposed liquidation.

(4) ~~As soon as the board of directors decides to submit the question of liquidation to the members,~~ *Depending on the credit union's circumstances, a liquidation plan may or may not require the suspension of* payment on shares, withdrawal of shares, ~~making any~~ transfer of shares to loans and interest, ~~making~~ investments of any kind, ~~and granting~~ *new* loans, *or other similar financial transactions* ~~must be suspended~~ pending action by members on the proposal to liquidate. On approval by the members of the proposal, all business transactions must be permanently discontinued. Necessary expenses of operation must continue to be paid on authorization of the ~~board of directors or~~ liquidating agent *or committee* during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing must be given to each member, by first-class mail, at least 10 days prior to the meeting.

(6) If liquidation is approved, the board of directors shall appoint a liquidating agent or committee for the purpose of conserving and collecting assets, closing the affairs of the credit union, and distributing the assets as required by this chapter.

~~(6)~~*(7)* A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing debts and obligations until its affairs are fully adjusted.

~~(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:~~

~~(a) expenses incidental to liquidating, including any surety bond that may be required;~~

~~(b) any liability due nonmembers; and~~

~~(c) special purpose thrift accounts as provided in this chapter. Remaining assets must be distributed to the members proportionately to the shares held by each member as of the date dissolution was approved.~~

(8) The liquidating agent or committee shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in 32-3-205(6).

~~(8)~~*(9)* As soon as the ~~board of directors or the~~ liquidating agent *or committee* determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the ~~board or the~~ *liquidating* agent *or committee* shall execute a certificate of dissolution on a form prescribed by the department. The form, together with all pertinent books and records of the liquidating credit union, must be filed with the department *and the secretary of state*. Upon filing *with both entities*, the credit union is dissolved.

(10) If the department determines that the liquidating agent or committee has failed to make reasonable progress in the liquidating of the credit union's affairs and distribution of its assets or has violated a provision of this chapter, the department may issue a cease and desist order against the liquidating agent or committee and appoint a new liquidating agent to complete the liquidation under the department's direction and control. The department shall fill any

vacancy caused by the resignation, death, illness, removal, desertion, or incapacity to function of the liquidating agent."

Section 19. Section 32-3-322, MCA, is amended to read:

"32-3-322. Merger. (1) Any credit union may, with the approval of the ~~director of the~~ department of administration ~~and compliance with the applicable Montana corporation law~~, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members called for that purpose.

(2) After agreement by ~~the~~ *each board of* directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which must set forth all of the following:

(a) the time and place of the meeting of ~~the~~ *each* board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) The certificate and a copy of the plan of merger agreed upon must be forwarded to the ~~director~~ *department*, certified by the ~~director~~ *department*, and returned to both credit unions within 30 days. *A copy of the certificate of merger and certified plan must be filed with the secretary of state by the surviving credit union.*

(4) Upon return of the certificate from the ~~director~~ *department*, all property rights and members' interest of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union remain intact.

(5) This section must be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law."

Section 20. Section 32-3-323, MCA, is amended to read:

"32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the ~~director of the~~ department of administration.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect a conversion, a credit union shall comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of

the ~~director of the~~ department ~~of administration~~ and file proof of compliance with the ~~director~~ *department*."

Section 21. Section 32-3-401, MCA, is amended to read:

"32-3-401. General powers. A credit union may:

(1) make contracts as provided for in this chapter;

(2) sue and be sued;

(3) adopt and use a common seal and alter ~~same~~ *the seal*;

(4) acquire, lease, hold, and dispose of property, either in whole or in part, necessary or incidental to its operations;

(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;

(6) receive savings from its members in the form of shares or special-purpose thrift accounts;

(7) lend its funds to its members as hereinafter provided;

(8) borrow from any source up to 50% of total assets, after deduction of the notes payable account;

(9) discount and sell any eligible obligations, subject to rules prescribed by the ~~director~~ *department of administration*;

(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the ~~director~~ *department*;

(11) invest surplus funds as provided in this chapter;

(12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies, and central type credit union organizations;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this chapter or other laws and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this chapter;

(16) collect, receive, and disburse ~~moneys~~ *money* in connection with the sale of negotiable checks, money orders, and other money type instruments and for such other purposes as may provide benefit or convenience to its members and charge a reasonable fee for ~~such~~ *the* services;

(17) perform ~~such~~ tasks and missions ~~as~~ *that* are requested by the federal government or this state or any agency or political subdivision ~~thereof~~ *of the federal government or this state*, when approved by the board of directors and not inconsistent with this chapter;

(18) contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to ~~such~~ regulations ~~as are~~ prescribed by the ~~director~~ *department*;

(19) make donations or contributions to any civic, charitable, or community organizations as authorized by the board of directors, subject to regulations ~~as are~~ prescribed by the ~~director~~ *department*;

(20) purchase or make available insurance for its directors, officers, agents, employees, and members;

(21) act as custodian or trustee of individual retirement accounts, as custodian or trustee of pension funds of self-employed individuals or of the sponsor of the credit union, or as custodian or trustee under any other pension or profit-sharing plan if the funds of ~~such~~ *the* accounts are invested in shares of the credit union; or

(22) act as fiscal agent for and receive deposits from the federal government, this state, or any agency or political subdivision ~~thereof~~ *of the federal government or this state*."

Section 22. Section 32-3-403, MCA, is amended to read:

"32-3-403. Election or appointment of officials. (1) The credit union must be directed by a board, consisting of an odd number of at least five directors, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for terms that the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three members at the organization meeting and within 30 days following each annual meeting of the members for terms that the bylaws provide. However, the bylaws of the credit union may provide that the supervisory committee members are elected for terms that the bylaws provide by the members of the credit union at the annual meeting of the members or may provide that the credit union may not have a supervisory committee. If the bylaws provide that the credit union may not have a supervisory committee, the duties and powers of the supervisory committee, as described in 32-3-417 and 32-3-418(1), are the responsibility of the board of directors.

(3) ~~The~~ *As provided in the bylaws, the* board of directors shall appoint *or the members shall elect* a credit committee, consisting of an odd number of at least three members, for terms that the bylaws provide. ~~or,~~ *In* ~~in~~ lieu of a credit committee, *the bylaws may provide that the board of directors* shall appoint a credit manager."

Section 23. Section 32-3-404, MCA, is amended to read:

"32-3-404. Record of board and committee members. Within ~~15~~ *30* days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union must be filed with the department of administration on forms provided by the department."

Section 24. Section 32-3-408, MCA, is amended to read:

"32-3-408. Executive officers. (1) At their ~~organization~~ *next* meeting ~~and within 15 days~~ following each annual meeting of the members, the directors shall elect from their own number:

(a) ~~an executive officer, who may be designated as chairman~~ *a presiding officer* of the board ~~or president~~;

(b) ~~a vice-chairman~~ *one or more vice presiding officers* of the board ~~or one or more vice-presidents~~;

(c) a treasurer; and

(d) a secretary.

(2) The treasurer and the secretary may be the same individual.

(3) The persons so elected ~~shall~~ *must* be the executive officers of the corporation.

(4) The terms of the officers ~~shall~~ *must* be 1 year or until their successors are chosen and have duly qualified.

(5) The duties of the officers ~~shall~~ *must* be prescribed in the bylaws.

(6) The board of directors may employ an officer in charge of operations, whose title ~~shall~~ *must* be either president or general manager or president and general manager~~;~~, or~~, in lieu thereof,~~ the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union."

Section 25. Section 32-3-411, MCA, is amended to read:

"32-3-411. Meetings of *board of* directors *and committees*. *(1) Either the* ~~The~~ board of directors ~~and~~ *or* the executive committee shall meet *each month.* ~~as often~~ *The board of directors or the executive committee may meet at other times* as necessary~~, but one body must meet at least monthly and the other at least quarterly~~.

(2) Unless specifically prohibited by the bylaws, directors and members of the supervisory committee or credit committee may participate in and act at any meeting of the board or the supervisory or credit committee through the use of communications equipment that enables all persons participating in the meeting to communicate with each other. Participation in the meeting in this manner constitutes attendance.

(3) Unless specifically prohibited by the bylaws, any action required by this chapter to be taken at a meeting of the board of directors or a committee or any other action that may be taken at a meeting of the board of directors or a committee may be taken without a meeting if a consent in writing setting forth the action taken is signed by all the directors of the board or the committee members entitled to vote with respect to the subject matter of the action taken. The written consents must be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more board directors or committee members. All the approvals evidencing the consent must be delivered to the secretary to be filed in the corporate records of the credit union. The action taken is effective when all the directors or committee members have approved the consent unless the consent specifies a different effective date. A consent signed by all the directors or committee members has the same effect as a unanimous vote and may be stated as a unanimous vote in any document filed with the department under this chapter."

Section 26. Section 32-3-412, MCA, is amended to read:

"32-3-412. Duties of directors. The directors shall:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under ~~such~~ conditions ~~as~~ *prescribed by* the board ~~prescribes~~. A record of a membership officer's approval or denial of membership ~~shall~~ *must* be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the ~~director~~ *department of administration*, to protect the credit union against losses caused by occurrences covered ~~therein~~ *by the bond* such as fraud, dishonesty, forgery, theft, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, or other agent. However, the directors have the option of providing coverage under this subsection for only the treasurer elected by the board.

(3) determine from time to time the interest rate or rates consistent with this chapter to be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on ~~such~~ classes of loans and under ~~such~~ conditions ~~as~~ *prescribed by* the board ~~prescribes~~;

(4) fix from time to time the maximum amount ~~which~~ *that* may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares ~~which~~ *that* may be owned by a member, ~~such~~ *the* limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of ~~such~~ persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee, and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees considered necessary; and

(14) perform ~~such~~ other duties as the members from time to time direct and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members."

Section 27. Section 32-3-414, MCA, is amended to read:

"32-3-414. Meeting of credit committee — *loan approval*. The credit committee shall meet as often as the business of the credit union requires ~~and not less frequently than once a month~~ to consider applications for loans. ~~No~~ *A* loan ~~shall~~ *may not* be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. *However, credit union loan policies may provide that the credit committee may approve loans by category of size or type.*"

Section 28. Section 32-3-417, MCA, is amended to read:

"32-3-417. ~~Duties of supervisory committee or board~~ *Audits.* (1) The board of directors or supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. ~~It~~ *The board or committee* shall make or cause to be made ~~such~~ *any* supplementary audits or examinations as it ~~deems~~ *considers* necessary or as are required by the ~~director~~ *department of administration* or by the board of directors and submit reports of these supplementary audits to the board of directors.

(2) The board of directors or supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time and not less frequently than every 2 years."

Section 29. Section 32-3-505, MCA, is amended to read:

"32-3-505. Joint accounts. (1) A member may designate any person or persons to hold shares and thrift club accounts with ~~him~~ *the member* in joint tenancy with the right of survivorship, *as a tenant in common, or under any other form of multiple party account ownership permitted by law and allowed by the credit union.* ~~but no~~ *A* joint tenant, unless a member in ~~his~~ *the joint tenant's* own right, ~~shall~~ *may not* be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. *If a credit union allows more than one joint owner to seek credit union membership through a joint account, the joint account must contain a membership share for each joint owner seeking membership.*

(2) Payment of part or all of ~~such accounts~~ *a joint account* to any of the joint ~~tenants~~ *owners* ~~shall~~, to the extent of ~~such~~ *the* payment, ~~discharge~~ *discharges* the liability to all *joint owners*."

Section 30. Section 32-3-506, MCA, is amended to read:

"32-3-506. ~~Trust accounts~~ *Shares in trust.* (1) Shares may be issued in the name of a ~~member in~~ *revocable* trust ~~for a beneficiary, including a minor; but no~~ *if the trustor is a member, or shares may be issued in the name of an irrevocable trust if either the trustor or the beneficiary is a member. A* beneficiary, unless a member in ~~his~~ *the beneficiary's* own right, ~~shall~~ *may not* be permitted to vote, obtain loans, *or* hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of ~~such~~ *the* shares *described in subsection (1)* to ~~such member shall~~ *a trustee*, to the extent of ~~such~~ *the* payment, ~~discharge~~ *discharges* the liability of the credit union to the ~~member~~ *trustee* and the beneficiary~~;~~, and the credit union ~~shall be under no obligation~~ *is not obligated* to see *to* the application of ~~such~~ *the* payment.

~~(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary.~~"

Section 31. Section 32-3-508, MCA, is amended to read:

"32-3-508. Dormant accounts. ~~(1) If a credit union is unable to contact a member, beneficiary, or other person via first-class mail at the last address shown on the records of the credit union and if such inability continues for a period of more than 5 years, all shares, accounts, dividends, interest, and other sums due or standing in the name of such member, beneficiary, or other person~~

~~may, by action of the board of directors, be segregated and thereafter no dividends or interest will accrue thereto.~~

~~(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance~~ *When administering member accounts that are dormant, unclaimed, or abandoned, a credit union shall comply* with the Uniform ~~Disposition of~~ Unclaimed Property Act *provided for in Title 70, chapter 9, part 8*.

~~(3) This section does not apply to shares, accounts, dividends, interest, and other sums due to or standing in the name of two or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1).~~"

Section 32. Section 32-3-601, MCA, is amended to read:

"32-3-601. Loans — purposes, terms, *and conditions.* A credit union may loan to members for ~~such purpose~~ *the purposes* and ~~upon such security and terms as the credit committee, credit manager, or loan officer approves~~ *under the conditions as prescribed by the board of directors. The board of directors shall establish written policies with respect to granting loans and extending lines of credit. The policies must include terms, conditions, and acceptable forms of security.*"

Section 33. Section 32-3-602, MCA, is amended to read:

"32-3-602. Loan application. Every application for a loan must be made ~~in~~ *upon* a form ~~that the credit committee, credit manager, or loan officer prescribes~~ *prescribed by the credit union*. The application must state the security, if any, offered. Each loan must be evidenced by a written document or electronic data capable of being converted into written form."

Section 34. Section 32-3-604, MCA, is amended to read:

"32-3-604. Security. In addition to generally accepted types of security, the endorsement of a note by a surety, comaker, or guarantor~~,~~ or ~~assignment~~ *pledge* of shares ~~of wages~~, in a manner consistent with the laws of this state, ~~shall~~ *must* be ~~deemed~~ *considered* security within the meaning of this chapter. The adequacy of any security ~~shall be determined by the credit committee, credit manager, or loan officer,~~ *is* subject to ~~this chapter and the bylaws~~ *the lending policies established by the board of directors*."

Section 35. Section 32-3-608, MCA, is amended to read:

"32-3-608. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, and credit manager and to members of its supervisory and credit committees if:

(a) the loan complies with the requirements of this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers, *except that employees may receive low-interest or no-interest loans for job-related expenses under an employee assistance program approved by the department of administration*; and

(b) the loan or aggregate of loans to any one director or committee member that exceeds $20,000 plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, the credit manager, and members of its supervisory and credit committees to act as

comakers, guarantors, or endorsers of loans to other members.~~, except when~~ *If* the loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds $20,000, a report to the board of directors is required."

Section 36. Section 32-3-611, MCA, is amended to read:

"32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and ~~the director of~~ the department of administration.

(2) A credit union may not begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the ~~director of the~~ department ~~of administration~~.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) ~~The director of the~~ *Subject to the provisions of [section 11], the* department ~~of administration~~ shall make available reports of condition and examination reports to the ~~administrator of the~~ national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of ~~such administrators or officials~~ *the national credit union administration or insurance plan official*. The ~~director~~ *department* may appoint the ~~administrator of the~~ national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union."

Section 37. Section 32-3-702, MCA, is amended to read:

"32-3-702. ~~Makeup~~ *Maintenance* of regular reserve *account*. ~~(1)~~ *The department of administration may require a credit union to establish and maintain, at a certain level, a regular reserve account as a contingency to address potential losses. The department may rely on standards adopted by the national credit union administration in making any determination to require a credit union to establish a regular reserve account.*

~~Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:~~

~~(a) 10% of gross income until the regular reserve equals 5% of the total of outstanding loans and risk assets; then~~

~~(b) 7% of gross income until the regular reserve equals 6% of the total of outstanding loans and risk assets; then~~

~~(c) 5% of gross income until the regular reserve equals 7% of the total of outstanding loans and risk assets.~~

~~(2) Whenever the regular reserve falls below 7%, 6%, or 5% of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of 5%, 6%, or 7%.~~

~~(3) Any entrance fees, charges, and transfer fees shall, after payment of organization expense, be added to the regular reserve.~~"

Section 38. Section 32-3-703, MCA, is amended to read:

"32-3-703. Use of regular reserve *account*. The regular reserve *account* belongs to the credit union and must be used to meet losses including, with prior approval of the ~~director of the~~ department of administration, losses from the sale of investments or securities. The regular reserve *account* may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the ~~director of the~~ department ~~of administration~~."

Section 39. Section 32-3-705, MCA, is amended to read:

"32-3-705. Special reserves. In addition to the regular reserve *account*, special reserves to protect the interest of members must be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the ~~director of the~~ department of administration to be necessary."

Section 40. Repealer. Section 32-3-704, MCA, is repealed.

Section 41. Codification instruction. [Sections 2, 3, and 9 through 11] are intended to be codified as an integral part of Title 32, chapter 3, and the provisions of Title 32, chapter 3, apply to [sections 2, 3, and 9 through 11].

Ap proved April 4, 2003

CHAPTER NO. 238

[HB 340]

AN ACT ALLOWING A GUARDIAN TO PROVIDE FOR FINAL DISPOSITION OF A WARD'S PHYSICAL REMAINS AND PERSONAL EFFECTS AFTER THE WARD'S DEATH, UPON ORDER OF A COURT; AMENDING SECTIONS 72-5-231, 72-5-233, 72-5-321, AND 72-5-324, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-231, MCA, is amended to read:

"72-5-231. Powers and duties of guardian of minor. Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in

which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

(5) Upon the death of a guardian's ward, the guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition, including burial, entombment, or cremation, of the ward's physical remains and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Section 2. Section 72-5-233, MCA, is amended to read:

"72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected. *(1)* A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death*, except as provided in subsection (2)*, adoption, marriage, or attainment of majority, but termination does not affect ~~his~~ *a guardian's* liability for prior acts or ~~his~~ *a guardian's* obligation to account for funds and assets of ~~his~~ *the guardian's* ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) The guardian's authority and responsibility for a minor who dies while the minor is a ward of the guardian terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects as provided in 72-5-231(5)."

Section 3. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to ~~his~~ *the guardian's* possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting ~~his~~ *the* ward that a parent has respecting ~~his~~ *an* unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular

and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, ~~he~~ *the full guardian* is entitled to custody of the person of ~~his~~ *the* ward and may establish the ward's place of ~~abode~~ *residence* within or ~~without~~ *outside of* this state.

(b) If entitled to custody of ~~his~~ *the* ward, ~~he~~ *the full guardian* shall make provision for the care, comfort, and maintenance of ~~his~~ *the* ward and whenever appropriate arrange for ~~his~~ *the ward's* training and education. Without regard to custodial rights of the ward's person, ~~he~~ *the full guardian* shall take reasonable care of ~~his~~ *the* ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of ~~his~~ *the* ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If ~~no~~ *a* conservator for the estate of the ward has *not* been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform ~~his~~ *that person's* duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward~~.~~. ~~but he~~ *However, the full guardian* may not use funds from ~~his~~ *the* ward's estate for room and board ~~which~~ ~~he~~ *that the full guardian,* ~~his~~ *the full guardian's* spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. ~~He~~ *The full guardian* must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of ~~his~~ *the* ward and of the estate which has been subject to ~~his~~ *the full guardian's* possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this ~~code~~ *chapter*, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for ~~his~~ *the guardian's* failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which ~~he~~ *the limited guardian* is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for ~~his~~ *the guardian's* services and for room and board furnished to the ward as agreed upon between ~~him~~ *the guardian* and the conservator, provided the amounts agreed upon are

reasonable under the circumstances. The full guardian or limited guardian authorized to oversee ~~such aspects of~~ the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) ~~No~~ *A* full guardian or limited guardian may *not* involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is ~~himself~~ unwilling or unable to give informed consent to ~~such~~ commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

(6) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Section 4. Section 72-5-324, MCA, is amended to read:

"72-5-324. Termination of appointment — how effected — certain liabilities and obligations not affected. (1) *(a)* ~~The~~ *Except as provided in subsection (1)(b), the* authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(b) The guardian's authority and responsibility for an incapacitated person, who dies while the person is a ward of the guardian, terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects, as provided in 72-5-321(6).

(2) Termination does not affect ~~his~~ *the guardian's* liability for prior acts ~~nor his~~ *or the guardian's* obligation to account for funds and assets of ~~his~~ *the* ward."

Ap proved April 4, 2003

CHAPTER NO. 239

[HB 554]

AN ACT REVISING THE CRITERIA FOR AWARDING RECLAMATION GRANTS AND LOANS; TEMPORARILY REMOVING PRIORITIES FOR ABANDONED MINE PROJECTS AND REDUCING PRIORITIES FOR OIL AND GAS PROJECTS; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-2-1113, MCA, is amended to read:

"90-2-1113. Evaluation criteria — priority. ~~(1) Except as provided in subsections (2) and (3), the~~ *(1) Except as provided in subsection (2), the*

department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

~~(a)~~*(a)* the degree to which the project will provide benefits in its eligibility category or categories;

~~(b)~~*(b)* the degree to which the project will provide public benefits;

~~(c)~~*(c)* the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

~~(d)~~*(d)* the degree to which the project will provide for the conservation of natural resources;

~~(e)~~*(e)* the degree of need and urgency for the project;

~~(f)~~*(f)* the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

~~(g)~~*(g)* the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

~~(h)~~*(h)* any other criteria that the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

~~(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed a total of $600,000 for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection (2)(a) for oil and gas reclamation projects. The board may use a maximum of 2.5% of the amount of a grant for administrative costs associated with implementing the projects covered in the grant.~~

~~(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the $600,000 limitation for the next biennium.~~

~~(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1).~~

~~(3) Subject to the conditions of this part, the department shall give priority to grant requests not to exceed a total of $800,000 for the biennium for abandoned mine reclamation projects. A grant may not be used for personnel costs or general operating expenses.~~

(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed a total of $200,000 for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection (2)(a) for oil and gas reclamation projects. The board may use a maximum of 2.5% of the amount of a grant for administrative costs associated with implementing the projects covered in the grant.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the $600,000 limitation for the next biennium.

(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1)."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates June 30, 2005.

Ap proved April 7, 2003

CHAPTER NO. 240

[HB 585]

AN ACT RELATING TO ADVANCED PRACTICE REGISTERED NURSING; PROVIDING FOR ATTENDING ADVANCED PRACTICE REGISTERED NURSES TO BE RECOGNIZED AS HEALTH CARE PROVIDERS WITH THE AUTHORITY TO FOLLOW A LIVING WILL PROTOCOL AND A DO NOT RESUSCITATE PROTOCOL; AND AMENDING SECTIONS 50-9-102, 50-9-103, 50-9-104, 50-9-105, 50-9-106, 50-9-107, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, 50-9-206, 50-10-101, 50-10-102, 50-10-103, 50-10-104, AND 50-10-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-9-102, MCA, is amended to read:

"50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(2) "Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

~~(1)~~*(3)* "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

~~(2)~~*(4)* "Board" means the Montana state board of medical examiners.

~~(3)~~*(5)* "Declaration" means a document executed in accordance with the requirements of 50-9-103.

~~(4)~~*(6)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~*(7)* "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

~~(6)~~*(8)* "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

~~(7)~~*(9)* "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, serves only to prolong the dying process.

~~(8)~~*(10)* "Living will protocol" means a locally developed, community-wide method or a standardized, statewide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

~~(9)~~*(11)* "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~(10)~~*(12)* "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

~~(11)~~*(13)* "Qualified patient" means a patient 18 years of age or older who has executed a declaration in accordance with this chapter and who has been determined by the attending physician *or attending advanced practice registered nurse* to be in a terminal condition.

~~(12)~~*(14)* "Reliable documentation" means a standardized, statewide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

~~(13)~~*(15)* "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

~~(14)~~*(16)* "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician *or attending advanced practice registered nurse*, result in death within a relatively short time."

Section 2. Section 50-9-103, MCA, is amended to read:

"50-9-103. Declaration relating to use of life-sustaining treatment — designee. (1) An individual of sound mind and 18 ~~or more~~ years of age *or older* may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18~~or more~~ years of age *or older* to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant~~,~~ or another at the declarant's direction~~,~~ and *must be* witnessed by two individuals. A ~~physician or~~ health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician*or advanced practice registered nurse* to withhold or withdraw life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician *or attending advanced practice registered nurse*, cause my death within a relatively short time and I am no longer able to make decisions

regarding my medical treatment, I direct my attending physician *or attending advanced practice registered nurse,* pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this .... day of ....., ...

Signature .....

City, County, and State of Residence.....

The declarant voluntarily signed this document in my presence.

Witness .....

Address .....

Witness .....

Address .....

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician *or attending advanced practice registered nurse,* cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint ..... or, if he or she is not reasonably available or is unwilling to serve, ..., to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician *or attending advanced practice registered nurse*, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this .... day of ....., ...

Signature .....

City, County, and State of Residence.....

The declarant voluntarily signed this document in my presence.

Witness .....

Address .....

Witness .....

Address .....

Name and address of designee.

Name .....

Address .....

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502, or the judicial appointment of an individual, contains written authorization to make decisions regarding the withholding or withdrawal of

life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A ~~physician or other~~ health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, ~~promptly so~~ *shall* advise the declarant and any individual designated to act for the declarant *promptly*."

Section 3. Section 50-9-104, MCA, is amended to read:

"50-9-104. Revocation of declaration. (1) A declarant may revoke a declaration at any time and in any manner, without regard to mental or physical condition. A revocation is effective upon its communication to the attending physician, *attending advanced practice registered nurse*, or other health care provider by the declarant or a witness to the revocation. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician *or attending advanced practice registered nurse* at the earliest opportunity. A revocation communicated to a person other than the attending physician, *attending advanced practice registered nurse*, emergency medical services personnel, or ~~a~~ health care provider is not effective unless the attending physician *or attending advanced practice registered nurse* is informed of it before the qualified patient is in need of life-sustaining treatment.

(2) The attending physician, *attending advanced practice registered nurse*, or other health care provider shall make the revocation a part of the declarant's medical record."

Section 4. Section 50-9-105, MCA, is amended to read:

"50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician *or attending advanced practice registered nurse*; and

(b) the declarant is determined by the attending physician *or attending advanced practice registered nurse* to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) When the declaration becomes operative, the attending physician *or attending advanced practice registered nurse* and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203."

Section 5. Section 50-9-106, MCA, is amended to read:

"50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician *or attending advanced practice registered nurse*, the attending physician *or attending advanced practice registered nurse* may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician *or attending advanced practice registered nurse* to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

(4) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(5) A decision of the attending physician *or attending advanced practice registered nurse* acting in good faith that a consent is valid or invalid is conclusive.

(6) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician *or attending advanced practice registered nurse* to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."

Section 6. Section 50-9-107, MCA, is amended to read:

"50-9-107. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a ~~physician or other~~ health care provider may assume that a declaration complies with this chapter and is valid."

Section 7. Section 50-9-201, MCA, is amended to read:

"50-9-201. Recording determination of terminal condition and content of declaration. Upon determining that a declarant is in a terminal condition, the attending physician *or attending advanced practice registered nurse* who knows of a declaration shall record that determination and the terms of the declaration in the declarant's medical record."

Section 8. Section 50-9-202, MCA, is amended to read:

"50-9-202. Treatment of qualified patients. (1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) This chapter does not affect the responsibility of the attending physician, *attending advanced practice registered nurse,* or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.

(3) Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician *or attending advanced practice registered nurse* to be pregnant so long as it is probable that

the fetus will develop to the point of live birth with continued application of life-sustaining treatment."

Section 9. Section 50-9-203, MCA, is amended to read:

"50-9-203. Transfer of patients. An attending physician, *attending advanced practice registered nurse,* or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician, *advanced practice registered nurse,* or health care provider who is willing to do so. If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out."

Section 10. Section 50-9-204, MCA, is amended to read:

"50-9-204. Immunities. (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician *or advanced practice registered nurse* who causes the withholding or withdrawal of life-sustaining treatment from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining treatment under the direction or with the authorization of a physician *or advanced practice registered nurse*;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining treatment under the direction of or with the authorization of a physician *or advanced practice registered nurse* or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs.

(2) A ~~physician or other~~ health care provider whose action under this chapter is in accord with reasonable medical standards is not subject to civil or criminal liability or discipline for unprofessional conduct with respect to that decision.

(3) A ~~physician or other~~ health care provider whose decision about the validity of consent under 50-9-106 is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

(4) An individual designated pursuant to 50-9-103(1) or an individual authorized to consent pursuant to 50-9-106, whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision."

Section 11. Section 50-9-205, MCA, is amended to read:

"50-9-205. Effect on insurance — patient's decision. (1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term of the policy to the contrary.

(3) A person may not prohibit or require the execution of a declaration as a condition for being insured for or receiving health care services.

(4) This chapter ~~creates no~~ *does not create a* presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) This chapter does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that any person has to effect the withholding or withdrawal of medical care.

(6) This chapter does not require a~~physician or other~~ health care provider to take action contrary to reasonable medical standards.

(7) This chapter does not condone, authorize, or approve mercy killing or euthanasia."

Section 12. Section 50-9-206, MCA, is amended to read:

"50-9-206. Penalties. (1) A ~~physician or other~~ health care provider who willfully fails to transfer the care of a patient in accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician *or advanced practice registered nurse* who willfully fails to record the determination of terminal condition or the terms of a declaration in accordance with 50-9-201 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) An individual who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) An individual who falsifies or forges the declaration of another individual or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for or receiving health care service is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(6) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(7) The penalties provided in this section do not displace any sanction applicable under other law."

Section 13. Section 50-10-101, MCA, is amended to read:

"50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual licensed under Title 37, chapter 8, to practice professional nursing in this state and who has fulfilled the requirements of the board of nursing pursuant to 37-8-202 and 37-8-409.

(2) "Attending advanced practice registered nurse" means the advanced practice registered nurse who is selected by or assigned to the patient and who has primary responsibility for the treatment and care of the patient.

~~(1)~~*(3)* "Attending physician" has the meaning provided in 50-9-102.

~~(2)~~*(4)* "Board" means the state board of medical examiners.

~~(3)~~*(5)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(4)~~*(6)* "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician *or attending advanced practice registered nurse* has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

~~(5)~~*(7)* "Do not resuscitate order" means a directive from a licensed physician *or advanced practice registered nurse* that emergency life-sustaining procedures should not be administered to a particular person.

~~(6)~~*(8)* "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians, *advanced practice registered nurses,* and emergency medical services personnel.

~~(7)~~*(9)* "Emergency medical services personnel" has the meaning provided in 50-9-102.

~~(8)~~*(10)* "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

~~(9)~~*(11)* "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

~~(10)~~*(12)* "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 14. Section 50-10-102, MCA, is amended to read:

"50-10-102. Immunities. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person:

(a) a physician *or advanced practice registered nurse* who causes the withholding or withdrawal of life-sustaining procedures from that person;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician *or an advanced practice registered nurse*;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;

(e) physicians, *advanced practice registered nurses*, persons under the direction or authorization of a physician *or an advanced practice registered nurse*, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate protocol.

(3) Emergency medical services personnel who follow a do not resuscitate order from a licensed physician *or advanced practice registered nurse* are not subject to civil or criminal liability and are not guilty of unprofessional conduct."

Section 15. Section 50-10-103, MCA, is amended to read:

"50-10-103. Adherence to do not resuscitate protocol — transfer of patients. (1) Emergency medical services personnel, other than physicians *or advanced practice registered nurses*, shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician *or an advanced practice registered nurse*, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician, *an attending advanced practice registered nurse*, or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician *or advanced practice registered nurse* or to a health care facility in which the do not resuscitate protocol will be followed."

Section 16. Section 50-10-104, MCA, is amended to read:

"50-10-104. Effect on insurance — patient's decision. (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with this part is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to this part does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, *advanced practice registered nurse,* health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) This part does not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) This part does not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so, nor does this part impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this part are cumulative.

(6) This part does not authorize or approve mercy killing."

Section 17. Section 50-10-106, MCA, is amended to read:

"50-10-106. Penalties. (1) A physician *or advanced practice registered nurse* who willfully fails to transfer a patient in accordance with 50-10-103 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A person who purposely conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both."

Ap proved April 7, 2003

CHAPTER NO. 241

[HB 627]

AN ACT REVISING THE DEFINITION OF "COST" WHEN APPLIED TO PROPERTY TAX LIEN PURCHASES AND THE TAX DEED PROCESS; ALLOWING THE RECOVERY OF CERTAIN COSTS REQUIRED BY LAW THAT ARE INCURRED BY A PURCHASER OF A PROPERTY TAX LIEN; REQUIRING TIMELY SUBMISSION OF RECEIPTS TO THE COUNTY TREASURER FOR CERTAIN CLAIMED COSTS; AND AMENDING SECTION 15-17-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-17-121, MCA, is amended to read:

"15-17-121. Definitions. Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) "Certificate" or "tax sale certificate" means the document described in 15-17-212.

(2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:

(i) preparing the list of delinquent taxes;

(ii) preparing the notice of pending tax sale;

(iii) conducting the tax sale;

(iv) assigning the county's interest in a tax lien to a third party;

(v) identifying interested persons entitled to notice of the pending issuance of a tax deed;

(vi) notifying interested persons;

(vii) issuing the tax deed; and

(viii) any other administrative task associated with accounting for or collecting delinquent taxes.

(b) ~~Cost does not include the~~ *The term includes receipted* costs *that are required by law and* incurred by the ~~owner~~ *purchaser* of a property tax lien other than the county.

(c) The term does not include interest for payments for the following:

(i) postage for certified mailings and certified mailings with return receipt requested;

(ii) a title search, to the extent necessary to identify interested persons entitled to notice of the pending issuance of a tax deed;

(iii) publishing costs for required publications; and

(iv) filing costs for proof of notice.

(d) The purchaser of the property tax lien shall provide receipts to the county treasurer upon issuance of a tax sale certificate as required in 15-17-212 and notification that a tax deed may be issued as required by 15-18-212 and 15-18-216.

(3) "County" means any county government and includes those classified as consolidated governments.

(4) "Property tax lien" means a lien acquired by the payment at a tax sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(5) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

(6) "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(7) "Tax sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien."

Ap proved April 4, 2003

CHAPTER NO. 242

[SB 206]

AN ACT REVISING THE BOND RELEASE PROVISIONS FOR TIMBER SLASH FIRE HAZARD REDUCTION AGREEMENTS; AMENDING SECTION 76-13-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-408, MCA, is amended to read:

"76-13-408. Fire hazard reduction agreement and bond — bond release and penalty — exemption. (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to precommercial thinning, weeding, or pruning, upon private forest lands within the state, the person conducting the work must be issued an exemption certificate by the department or shall provide for the reduction or management of the fire hazard to be created, except where a minimum slash hazard would exist, by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted under this part.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount ~~as may be~~ prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. Bond amounts for master fire hazard reduction agreements are calculated to cover the potential cost to the department for fire hazard abatement in case of default and are based on the average annual volume of uncompleted abatement. Master fire hazard reduction agreement bonds are to be administered as nonsite-specific umbrella bonds, for which the entire bond or any portion of the bond may be collected to pay for unabated fire hazards on ~~any or~~ all sites covered by the bond. The department shall review master fire hazard reduction agreement bond amounts at least annually. The bonds must be adjusted according to the volume of timber harvested and the level of compliance of the bond provider.

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted under this part.

(4) The bond must be released upon the issuance of the certificate of clearance. At the request of the fire hazard reduction agreement holder, cash bonds for fire hazard reduction agreements exceeding 200,000 board feet, or the equivalent, must be partially released upon satisfactory completion of slash piling if the fire hazard reduction agreement holder has a record of compliance with the provisions of 76-13-407 or this section. The department may inspect the sites for which release or partial release is being requested, or it may rely on the submittal of a signed affidavit ~~and relevant site photographs~~ provided by the

person posting the bond. A person that submits a fraudulent affidavit ~~or photographs~~ is subject to the penalty provisions of 45-7-202, may have other fire hazard reduction agreements revoked, or may be denied the issuance of fire hazard reduction agreements in the future.

(5) If a minimum slash hazard will be created, the activity is exempt from the provisions of this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 7, 2003

CHAPTER NO. 243

[HB 196]

AN ACT COMBINING THE BOARD OF BARBERS WITH THE BOARD OF COSMETOLOGISTS; ESTABLISHING THE COMPOSITION AND QUALIFICATION OF MEMBERS ON THE COMBINED BOARD OF BARBERS AND COSMETOLOGISTS AND PROVIDING FOR 5-YEAR STAGGERED TERMS FOR THE MEMBERS; SUBSTITUTING THE TERM "SALON OR SHOP" FOR "COSMETOLOGY SALON" AND "BARBERSHOP"; PROVIDING A PURPOSE STATEMENT FOR BARBERING AND COSMETOLOGY DISCIPLINES REGULATED UNDER TITLE 37, CHAPTER 31, MCA; REVISING DEFINITIONS IN TITLE 37, CHAPTER 31, MCA, TO BE CONSISTENT WITH THE COMBINED BOARD; EXPANDING RULEMAKING AUTHORITY TO PROVIDE FOR THE COMBINED BOARD; REVISING PROHIBITED ACTS, LICENSING REQUIREMENTS, AND TEACHING LICENSE REQUIREMENTS TO REFLECT THE COMBINED BOARD; REDUCING THE HOURS OF STUDY FOR A BARBER'S LICENSE FROM 2,000 HOURS TO 1,500 HOURS; PROVIDING RECIPROCITY FOR OUT-OF-STATE BARBERS; REVISING SCHOOL CERTIFICATION AND INSPECTION REQUIREMENTS TO REFLECT THE COMBINED BOARD; ALLOWING USE OF A THIRD PARTY TO PROVIDE EXAMINATION SERVICES; REVISING FEE PROVISIONS AND LICENSE DENIAL, REVOCATION, AND SUSPENSION PROVISIONS TO REFLECT THE COMBINED BOARD; MOVING ELECTROLOGY PROVISIONS FROM TITLE 37, CHAPTER 32, MCA, TO TITLE 37, CHAPTER 31, MCA; AMENDING SECTIONS 2-15-1747, 15-30-256, 37-20-303, 37-31-101, 37-31-102, 37-31-203, 37-31-301, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-321, 37-31-322, 37-31-323, 37-31-331, 39-51-204, 49-2-101, AND 50-61-103, MCA; AND REPEALING SECTIONS 2-15-1746, 37-30-101, 37-30-201, 37-30-202, 37-30-203, 37-30-301, 37-30-303, 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401, 37-30-402, 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413, 37-30-421, 37-30-422, 37-30-423, 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201, 37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, AND 37-32-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1747, MCA, is amended to read:

"2-15-1747. Board of *barbers and* cosmetologists. (1) There is a board of *barbers and* cosmetologists.

(2) ~~(a)~~ The board consists of ~~seven~~ *nine* members *appointed by the governor with the consent of the senate* and ~~may~~ *must* include:

~~(i)~~*(a)* three licensed cosmetologists *each of whom has been a resident of this state for a least 5 years and has been actively engaged in the profession of cosmetology for at least 5 years immediately prior to being appointed to the board*;

(b) one member who has been a resident of this state for at least 5 years and who has been actively engaged as a licensed electrologist, esthetician, or manicurist for at least 5 years immediately prior to being appointed to the board;

~~(ii) one licensed manicurist or licensed electrologist;~~

~~(iii) two persons who are members of or affiliated with a school of cosmetology; and~~

~~(iv) one public member who is not engaged in the practice of cosmetology, electrology, or manicuring.~~

~~(b) Members are appointed by the governor with the consent of the senate~~

(c) three licensed barbers each of whom has been a resident of this state for at least 5 years and has been actively engaged in the profession of barbering for at least 5 years immediately prior to appointment to the board; and

(d) two members of the public who are not engaged in the practice of barbering, cosmetology, electrology, esthetics, or manicuring.

(3) ~~Each licensed member appointed shall have actively engaged in the profession of cosmetology, manicuring, or electrology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No~~ *Not* more than two members of the board may be members of or affiliated with a school ~~of cosmetology~~.

(4) (a) If there is not a licensed barber qualified and willing to serve on the board in one of the three barber positions, the governor may appoint a cosmetologist, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(b) If there is not a licensed cosmetologist qualified and willing to serve on the board in one of the three cosmetologist positions, the governor may appoint a barber, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

~~(4)~~*(5)* Each member shall serve for a term of ~~4~~ *5* years. *The terms must be staggered.*

~~(5)~~*(6)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 15-30-256, MCA, is amended to read:

"15-30-256. Employment defined and exclusions from definition of employment. (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by an employee for an employer.

(2) The term "employment" does not include:

(a) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 15-30-201(4)(c);

(b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom an exemption may be claimed by the employer under the Internal Revenue Code or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor pursuant to 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has previously acknowledged or acknowledges in writing that the person performing the service and the service are not covered for unemployment insurance purposes. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

(e) service performed by a cosmetologist *or barber* who is licensed under Title 37, chapter 31, ~~or a barber who is licensed under Title 37, chapter 30,~~ and:

(i) who has acknowledged in writing that the cosmetologist or barber working under contract is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a ~~cosmetology~~ salon *or shop*, as defined in 37-31-101, ~~or a barbershop, as defined in 37-30-101,~~ which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the ~~cosmetology~~ salon or ~~barbershop~~ *shop* may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership or a limited liability partnership, or members of a member-managed limited liability company that has filed articles of organization with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed by a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all service as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;

(n) service performed by an inmate of a state prison or other state correctional or custodial institution;

(o) service by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed for aid or sustenance only;

(q) active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(r) agricultural labor; or

(s) service performed by an independent contractor."

Section 3. Purpose. It is a matter of legislative policy in the state of Montana that the practice of barbering, cosmetology, electrology, esthetics, and manicuring affects the public health, safety, and welfare and is subject to regulation and control in order to protect the public from unauthorized and unqualified practice.

Section 4. Section 37-20-303, MCA, is amended to read:

"37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17~~,~~ *or* 31~~, or 32~~."

Section 5. Section 37-31-101, MCA, is amended to read:

"37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of *barbers and* cosmetologists provided for in 2-15-1747.

(2) "Booth" means any part of a ~~cosmetology, manicuring, or esthetics~~ salon *or shop* that is rented or leased for the performance of ~~cosmetologist,~~ *barbering, cosmetology, electrology, esthetics, or* manicuring~~, or esthetics~~ services, as specified in 39-51-204~~(1)(e)~~.

~~(3) "Cosmetology salon" means the premises, a building, or a part of a building in which a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist is practiced by a person licensed under the provisions of this chapter.~~

~~(4)~~*(3)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) "Electrology" means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.

(b) Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

(5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(6) "Esthetics" means skin care of the ~~face, neck, and hands~~ *body*, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

~~(7) "Esthetics salon" means the premises, a building, or a part of a building in which the art of esthetics is practiced.~~

~~(8)~~*(7)* "Manicuring" includes ~~nail care of the hands and feet~~ *care of the nails, the hands, the lower arms, the feet, and the lower legs* and the application and maintenance of artificial nails.

~~(9) "Manicuring salon" means the premises, a building, or a part of a building in which the art of manicuring is practiced.~~

(8) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

(a) shaving or trimming a beard;

(b) cutting, styling, coloring, or waving hair;

(c) straightening hair by the use of chemicals;

(d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;

(e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

~~(10)~~*(9)* (a) "Practice ~~and~~ *or* teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in ~~cosmetology~~ salons *or shops*, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair~~, scalp, face, arms, feet, or hands~~ *and body*.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

(10) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, cosmetology, electrology, esthetics, or manicuring.

(11) "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board."

Section 6. Section 37-31-102, MCA, is amended to read:

"37-31-102. Exemptions. ~~Nothing in~~ *The provisions of* this chapter ~~prohibits~~ *do not prohibit*:

(1) service in case of emergency or domestic administration without compensation; *or*

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science~~; or~~

~~(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair~~."

Section 7. Section 37-31-203, MCA, is amended to read:

"37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ or to teach *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~;

~~(3) the qualification and registration of applicants for manager-operator licenses;~~

~~(4)~~*(3)* the regulation and instruction of apprentices and students;

~~(5)~~*(4)* the conduct of schools of *barbering,* cosmetology, *electrology, esthetics, and* manicuring~~, and esthetics~~ for apprentices and students;

~~(6)~~*(5)* the qualification and registration of applicants for booth rental licenses; and

~~(7)~~*(6)* generally the conduct of the persons, firms, or corporations affected by this chapter."

Section 8. Section 37-31-301, MCA, is amended to read:

"37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice *barbering,* cosmetology, *electrology, esthetics, or manicuring* for compensation;

(b) own, manage, operate, or conduct a school of *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~;

(c) manage or operate a ~~cosmetology salon, manicuring salon, esthetics~~ salon *or shop*~~,~~ or *a* booth; *or*

(d) teach in a school of *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics;~~

~~(e) practice manicuring for compensation;~~

~~(f) practice as a finger waver; or~~

~~(g) practice esthetics for compensation~~.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a ~~cosmetology~~ salon *or shop* to employ or use an unlicensed person as a *barber,* cosmetologist, *electrologist, esthetician, or* ~~a~~ manicurist~~, or an esthetician~~;

(b) to operate a *school of barbering,* cosmetology*, electrology, esthetics, or manicuring* ~~school~~ without complying with all of the regulations of 37-31-311;

(c) to practice *barbering,* cosmetology, *electrology, esthetics, or manicuring* in any place other than in a licensed salon *or shop* as provided in this chapter, except when a ~~licensed operator~~ *licensee* is requested:

(i) by a customer to go to a place other than a licensed salon *or shop* and is sent to the customer from a licensed salon *or shop*; or

(ii) by a customer with a disability or homebound customer to go to the customer's place of residence; *or*

~~(d) for a person who owns, manages, or controls a manicuring salon to employ or use an unlicensed person as a manicurist;~~

~~(e) for a person who owns, manages, or controls an esthetics salon to employ or use an unlicensed person as an esthetician;~~

~~(f) to operate a manicuring school or a school of esthetics without complying with 37-31-311;~~

~~(g)~~*(d)* to violate any of the provisions of this chapter."

Section 9. Section 37-31-302, MCA, is amended to read:

"37-31-302. License required to practice, teach, or operate salon *or shop,* booth, or school. (1) A person may not practice or teach *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ without a license.

(2) A place may not be used or maintained for the teaching of *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ for compensation except under a certificate of registration *as a school*.

(3) A person may not operate or manage a ~~cosmetology~~ salon *or shop*~~, a manicuring salon, or an esthetics salon or practice cosmetology, manicuring, or esthetics~~ without a license.

(4) A person may not operate or conduct a school of *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ or teach ~~the art of~~ *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ without a license to teach *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, ~~or~~ corporation*, or other legal entity* desiring to operate a ~~cosmetology~~ salon *or shop* shall ~~make an application~~ *apply* to the department for a certificate of registration and license. The application must be accompanied by the registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid."

Section 10. Section 37-31-303, MCA, is amended to read:

"37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach *barbering,* cosmetology, *electrology, esthetics, or manicuring* ~~or for a license to practice manicuring must~~ *shall* ~~qualify by filing~~ *file* an application prescribed by the board and ~~by taking and passing~~ *pass* the examination prescribed by the board *in order to qualify for licensure.* The license must be renewed ~~annually under~~ *in accordance with the provisions of* 37-31-322."

Section 11. Section 37-31-304, MCA, is amended to read:

"37-31-304. Qualifications of applicants for license to practice. (1) *Before a person may practice barbering, the person shall obtain a license to practice barbering from the department.* Before a person may practice cosmetology, the person shall obtain a license to practice cosmetology from the department. *Before a person may practice electrology, the person shall obtain a license to practice electrology from the department.* Before a person may practice manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology. Before a person may practice esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice barbering, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a registered barbering

school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file a written application and deposit the application fee with the department and pass an examination as to fitness to practice barbering.

(c) The board shall issue a license to practice barbering, without examination, to a person licensed in another state if the board determines that:

(i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and

(ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

~~(2)~~*(3)* (a) To be eligible to take the examination to practice cosmetology, the applicant ~~may not be less than~~ *must be at least* 18 years of age, must be of good moral character, and must possess a high school diploma or ~~the~~ *its* equivalent ~~of a high school diploma~~ *that is* recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or ~~the~~ *its* equivalent ~~of a high school diploma~~. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a registered cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection ~~(2)(a)~~ *(3)(a)* shall file ~~with the department~~ a written application ~~to take the examination~~ and ~~shall~~ deposit ~~with the department~~ the required ~~examination~~ *application* fee *with the department* and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file a written application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

~~(3)~~*(5)* (a) To be eligible to take the examination to practice manicuring, an applicant ~~may not be less than~~ *must be at least* 18 years of age~~;~~, must be of good moral character~~;~~, *and must* possess a high school diploma~~, the~~ *or its* equivalent ~~of a high school diploma~~ *that is* recognized by the superintendent of public instruction~~, or a certificate of completion from a vocational-technical program; and~~. *The applicant* must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma~~, the~~ *or its* equivalent ~~of a high school diploma,~~ or a *certificate of completion from a* vocational-technical program ~~certificate of completion~~. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection ~~(3)(a)~~ *(5)(a)* shall file ~~with the department~~ a written application ~~to take the examination~~ and deposit ~~with the department~~ the required ~~examination~~ *application* fee *with the department and pass an examination as to fitness to practice manicuring*.

~~(4)~~*(6)* (a) To be eligible to take the examination to practice esthetics, an applicant~~:~~

~~(i) may not be under~~ *must be at least* 18 years of age~~;~~,

~~(ii)~~ must be of good moral character~~;~~, *and*

~~(iii)~~ must possess a high school diploma~~, the~~ *or its* equivalent ~~of a high school diploma~~ *that is* recognized by the superintendent of public instruction~~, or a certificate of completion from a vocational-technical program; and~~.

~~(iv)~~ *The applicant* must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a registered school of cosmetology or a registered school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma~~, the~~ *or its* equivalent ~~of a high school diploma, or a vocational-technical program certificate of completion~~. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection ~~(4)(a)~~ *(6)(a)* shall~~:~~

~~(i)~~ file ~~with the department~~ a written application ~~to take the examination;~~

~~(ii)~~ *and* deposit ~~with the department~~ the required ~~examination~~ *application* fee~~;~~ *with the department* and

~~(iii)~~ pass an examination as to fitness to practice esthetics."

Section 12. Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics~~;~~, or to teach cosmetology, the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma *that is* recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.

(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.

(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(7) To be eligible to take an examination to obtain a license to teach barbering, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice barbering issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student teacher training; or

(ii) have been actively engaged as a barber for 3 continuous years immediately before taking the teacher's examination.

(8) To be eligible to take an examination for a license to teach electrology, a person must:

(a) be a high school graduate or possess an equivalent of a high school diploma recognized by the superintendent of public instruction;

(b) have a 100-hour teacher certificate; and

(c) have been actively engaged as an electrologist for 3 continuous years immediately preceding taking the teacher's examination."

Section 13. Section 37-31-308, MCA, is amended to read:

"37-31-308. Examination — reexamination — exemption for persons with disabilities. (1) Examinations for a license to practice *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ or to teach *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ must be held at places and times specified by the board. ~~The examinations must be supervised by the board.~~ The examinations may not be confined to a specific method or system. *The board may contract with an outside agency for examination and grading services.* ~~The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined.~~

~~(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:~~

~~(a) sooner than 6 months after the date of the second failure; or~~

~~(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.~~

~~(3) Anyone failing twice to pass the examination for a license to practice manicuring or a license to practice esthetics shall meet the additional requirements prescribed by the board before applying to retake the examination.~~

~~(4) Anyone failing twice to pass the examination for a license to teach cosmetology, manicuring, or esthetics shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.~~

~~(5)~~*(2)* Persons with physical disabilities trained for *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ by the department of public health and human services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a *school of barbering,* cosmetology, *electrology, esthetics, or* ~~a~~ manicuring~~, or an esthetics school~~, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 14. Section 37-31-311, MCA, is amended to read:

"37-31-311. Schools — certificate of registration — requirements — bond — curriculum. (1) A person, firm, partnership, ~~or~~ corporation, *or other legal entity* may not operate a school for the purpose of teaching *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate must be filed with the department on a form prescribed by the board.

(2) A school for teaching barbering may not be granted a certificate of registration unless it complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering.

(c) It maintains a school term of not less than 1,500 hours and prescribes a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering.

~~(2)~~*(3)* A school for teaching cosmetology may not be granted a certificate of registration unless it complies *with* or ~~can~~ *is able to* comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times *involved* in the immediate supervision of the work of the school or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students ~~to~~ *for* each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the ~~ready and full~~ teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and prescribes a course of practical training and technical instruction equal to the requirements for board examinations~~.~~*. The school's* ~~which~~ course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) ~~An owner or person in charge of a school of cosmetology may~~ *It does* not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrology may not be granted a certificate of registration unless it maintains a school term, prescribes a course of practical training and technical instruction, and possesses apparatus and equipment necessary for teaching electrology as prescribed by the board.

~~(3)~~*(5)* A school for teaching manicuring may not be granted a certificate of registration unless it complies with subsections~~(2)(a)~~ *(3)(a)* and ~~(2)(d)~~ *(3)(d)* and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ~~ready and full~~ teaching of all subjects or practices of manicuring.

(b) It maintains a school term and *prescribes* a course of practical training and technical instruction as prescribed by the board.

(c) ~~An owner or person in charge of a school of manicuring may~~ *It does* not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

~~(4)~~*(6)* A school for teaching esthetics may not be granted a certificate of registration unless it complies with subsections~~(2)(a)~~ *(3)(a)* and ~~(2)(d)~~ *(3)(d)* and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) ~~An owner or person in charge of a school of esthetics may~~ *It does* not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

~~(5)~~*(7)* Licenses or certificates of registration for schools of *barbering*, cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ may be refused, revoked, or suspended~~,~~ as provided in 37-31-331.

~~(6)~~*(8)* A teacher or student teacher may not be permitted to practice *barbering*, cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ on the public in a school of *barbering*, cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

~~(7)~~*(9)* The board may make further rules necessary for the proper conduct of schools of *barbering*, cosmetology, *electrology, esthetics, and* manicuring~~, and esthetics~~.

~~(8)~~*(10)* The board shall require the person, firm, partnership, ~~or~~ corporation, *or other legal entity* operating a school of *barbering*, cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ to furnish a ~~good and sufficient~~ bond *or other security* in the amount of $5,000 and in a form and manner prescribed by the board.

~~(9)~~*(11)* A professional ~~cosmetology, manicuring, or esthetics~~ salon *or shop* may not be operated in connection with a school of *barbering*, cosmetology, *electrology, esthetics, or* ~~of~~ manicuring~~, or of esthetics~~.

~~(10)~~*(12)* The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of *barbering*, cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~."

Section 15. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting ~~cosmetology~~ salons *or shops* and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a ~~cosmetology~~ salon~~, manicuring salon, esthetics salon~~ *or shop*, booth, *school of barbering*, school of cosmetology, *school of electrology, school of esthetics, or* school of manicuring~~, or school of esthetics~~ during business hours for the purpose of inspection, and the refusal of a licensee *or school* to permit the inspection during business hours is cause for revocation of ~~the~~ *a licensee's* license *or a school's certificate of registration*.

(2) Upon application for a license, a ~~cosmetology, manicuring, or esthetics~~ salon *or shop* shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a ~~cosmetology, manicuring, or esthetics~~ salon *or shop*, upon payment of the initial inspection fee, a temporary permit authorizing the ~~cosmetology, manicuring, or esthetics~~ salon *or shop* to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever ~~event~~ occurs first. ~~This~~ *A* temporary permit is not renewable.

(4) The department shall ~~cause an~~ *require the inspector or inspectors* ~~inspector~~, appointed as provided in subsection (1), to conduct an annual inspection of each ~~cosmetology, manicuring, and esthetics~~ salon *or shop* in the state."

Section 16. Section 37-31-321, MCA, is amended to read:

"37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for ~~examination~~ *licensure* or for *a* certificate of registration has

complied with the requirements of this chapter and has paid the required fee, the board shall admit ~~the~~ *a license* applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or *who* are entitled to ~~the~~ *a* certificate of registration under this chapter."

Section 17. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — ~~delinquency~~ *late renewal* fee. (1) Licenses and certificates *of registration* may not be issued for longer than 1 year unless otherwise provided by department rule. Licenses and certificates *of registration* expire on the date set by department rule and may be renewed. Licenses and certificates *of registration* may be renewed by application made on or before the renewal date and by the payment of a required renewal fee. Expired licenses and certificates *of registration* may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and must be as set by the board.

(2) A *late renewal* fee prescribed by the board must be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates *of registration* made after ~~December 31 of each year or other predetermined renewal deadline~~ *the renewal date*."

Section 18. Section 37-31-323, MCA, is amended to read:

"37-31-323. Fees. (1) Fees for licenses and certificates of registration ~~shall~~ *must* be paid to the department in amounts prescribed by the board.

(2) The license and registration fees ~~shall~~ *must* be paid ~~annually, unless otherwise provided by board rule,~~ in advance to the department *unless otherwise provided by board rule.*

(3) ~~No other~~ *Other* or additional license or registration ~~fee~~ *fees* may *not* be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of *barbering*, cosmetology, *electrology, esthetics, or manicuring*."

Section 19. Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, ~~or~~ corporation, *or other legal entity* operating a ~~cosmetology salon, manicuring salon, esthetics~~ salon *or shop*~~,~~ or a school of *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~ to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of ~~cosmetology~~ salons *or shops*~~,~~ ~~manicuring salons, esthetics salons,~~ or schools of *barbering,* cosmetology, *electrology, esthetics, or* manicuring~~, or esthetics~~;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of ~~morphine or~~ any habit-forming drug;

(f) permitting a certificate of registration or license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 20. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist *or barber* who is licensed under Title 37, chapter 31, ~~or a barber who is licensed under Title 37, chapter 30,~~ and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a ~~cosmetology~~ salon *or shop,* as defined in 37-31-101, ~~or a barbershop, as defined in 37-30-101, which~~ *and the* contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the ~~cosmetology~~ salon or *shop* ~~barbershop~~ may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a

program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in

attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act; or

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 21. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) "Commission" means the commission for human rights provided for in 2-15-1706.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) "Department" means the department of labor and industry provided for in 2-15-1701.

(9) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) "Employee" means an individual employed by an employer.

(11) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(13) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(16) "National origin" means ancestry.

(17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

(18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

(19) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions

and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, ~~barbershop, beauty parlor~~ *barbering, cosmetology, electrology, esthetics, or manicuring salon or shop*, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private."

Section 22. Section 50-61-103, MCA, is amended to read:

"50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *of a building or structure* by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

(a) armories;

(b) assembly halls;

(c) auditoriums;

(d) bowling alleys;

(e) broadcasting studios;

(f) chapels;

(g) churches;

(h) club rooms;

(i) dance halls;

(j) exhibition rooms;

(k) gymnasiums;

(l) lecture halls;

(m) lodge rooms;

(n) motion picture theaters;

(o) museums;

(p) night clubs;

(q) opera houses;

(r) passenger stations;

(s) pool rooms;

(t) recreation areas;

(u) restaurants;

(v) skating rinks;

(w) television studios;

(x) theaters; and

(y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *of a building or structure* for the transaction of business or the rendering or receiving of professional services, including among others:

(a) banks;

(b) ~~barbershops~~ *barbering, cosmetology, electrology, esthetics, or manicuring salons or shops*;

~~(c) beauty parlors;~~

~~(d)~~*(c)* office buildings;

~~(e)~~*(d)* radio stations;

~~(f)~~*(e)* telephone exchanges; and

~~(g)~~*(f)* television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *of a building or structure* by persons assembled for the purpose of learning or receiving educational instruction, including among others:

(a) academies;

(b) colleges;

(c) libraries;

(d) schools; and

(e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *of a building or structure* for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:

(a) assembly plants;

(b) creameries;

(c) electric substations;

(d) factories;

(e) ice plants;

(f) laboratories;

(g) laundries;

(h) manufacturing plants;

(i) mills;

(j) power plants;

(k) processing plants;

(l) pumping stations;

(m) repair garages;

(n) smokehouses; and

(o) workshops.

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *of a building or structure* by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

(a) ~~asylums~~ *mental health facilities*;

(b) homes for the aged;

(c) hospitals;

(d) ~~houses of correction~~ *correctional facilities*;

(e) day-care facilities;

(f) infirmaries;

(g) jails;

(h) nurseries;

(i) orphanages;

(j) nursing homes;

(k) penal institutions;

(l) reformatories;

(m) sanitariums;

(n) long-term care facilities; and

(o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion ~~thereof~~ *of a building or structure* by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

(a) apartments;

(b) clubhouses;

(c) convents;

(d) dormitories;

(e) dwellings;

(f) hotels;

(g) motels;

(h) multifamily houses; and

(i) lodging houses."

Section 23. Repealer. Sections 2-15-1746, 37-30-101, 37-30-201, 37-30-202, 37-30-203, 37-30-301, 37-30-303, 37-30-305, 37-30-307, 37-30-308, 37-30-310, 37-30-311, 37-30-401, 37-30-402, 37-30-403, 37-30-404, 37-30-405, 37-30-406, 37-30-407, 37-30-411, 37-30-412, 37-30-413, 37-30-421, 37-30-422, 37-30-423, 37-30-424, 37-30-501, 37-32-101, 37-32-102, 37-32-103, 37-32-201,

37-32-301, 37-32-302, 37-32-304, 37-32-305, 37-32-306, and 37-32-311, MCA, are repealed.

Section 24. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 37, chapter 31, part 1, and the provisions of Title 37, chapter 31, part 1, apply to [section 3].

Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Ap proved April 8, 2003

CHAPTER NO. 244

[HB 354]

AN ACT CREATING AND REVISING EXEMPTIONS TO THE PRACTICE OF BARBERING, COSMETOLOGY, AND APPLICATION OF MAKEUP AND OTHER SERVICES INVOLVING ESTHETICS IN CASES OF EMERGENCY AND FOR CERTAIN VISUAL ARTS PRODUCTIONS; AMENDING SECTION 37-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemptions. (1) Nothing in this chapter prohibits barbering, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production by persons employed or under contract to provide these services.

(2) Notwithstanding the provisions of 37-30-501, a person exempt under this section may not be charged a penalty for violating this chapter or be required to register or to obtain a license under this chapter unless the person engages in the practice of barbering, as defined in 37-30-101, outside of the course of or without connection to a theatrical or other visual arts production.

Section 2. Section 37-31-102, MCA, is amended to read:

"37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) ~~service in case of emergency or~~ *service in case of emergency or* domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; ~~or~~

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair*; or*

(4) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 30, and the provisions of Title 37, chapter 30, apply to [section 1].

Section 4. Coordination instruction. If House Bill No. 196 and [this act] are both passed and approved, then [section 1 of this act] is void.

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 8, 2003

CHAPTER NO. 245

[HB 368]

AN ACT EXTENDING THE 2-YEAR TIME LIMIT FOR SUBMITTING CLAIMS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; MODIFYING THE ELIGIBILITY REQUIREMENTS; REVISING PROCEDURES FOR REIMBURSEMENT OF ELIGIBLE COSTS; PROVIDING FOR THIRD-PARTY REVIEW OF CLAIMS AND PLANS; REVISING THE AUTHORITY OF THE BOARD; AMENDING SECTIONS 75-11-307, 75-11-308, 75-11-309, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except *that* if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) *(i)* expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund*;* and

(ii) expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4)~~; and~~

~~(h) expenses for work completed by or on behalf of the owner or operator more than 2 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage~~*; and*

(h) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 2. Section 75-11-308, MCA, is amended to read:

"75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

~~(a) the release was discovered on or after April 13, 1989;~~

(a) the release was discovered on or after April 13, 1989, and the release occurred from:

(i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the time that the release was discovered;

(ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from a petroleum storage tank at the time that the release was discovered; or

(iii) an underground storage tank, as defined in 75-11-503, that the property owner had no previous knowledge of if the tank was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release at the time that the release was discovered;

~~(b) the department is notified of the release in the manner and within the time provided by law or rule;~~

~~(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;~~

~~(d)~~*(b)* the release was an accidental release;

~~(e)~~*(c)* ~~with the exception of the release,~~ *following the discovery of the release,* ~~the operation and management of the tank~~ ~~complied~~ *the underground storage tank from which the release occurred was removed or had a valid permit pursuant to 75-11-509 and the petroleum storage tank remained in compliance* with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases ~~when the release was discovered and remained in compliance following discovery of the release~~; and

~~(f)~~*(d)* the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective action plan approved by the department, from the time of discovery until the release is resolved.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

(3) When, subsequent to the discovery of a release, an owner or operator fails to remain in compliance as required by subsection ~~(1)(e)~~ *(1)(c)* or fails to conduct corrective action as required by subsection ~~(1)(f)~~ *(1)(d)* and is issued a violation letter by the department, all reimbursement of claims submitted after the date of the violation letter must be suspended. Upon a determination by the department that all violations identified in the violation letter have been corrected, all suspended and future claims may be reimbursed according to criteria established by the board. In determining the amount of reimbursement, if any, the board may consider the effect and duration of the noncompliance."

Section 3. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator ~~and the board~~ of its approval of a corrective action plan *and shall promptly submit a copy of the approved corrective action plan to the board.*

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(f) *(i)* The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board. ~~The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.~~

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 4. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being utilized in the most efficient manner, the board may implement a program of third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim for review by a qualified third party of the board's choosing.

(2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the board may remand the plan to the department for further review.

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309(2)(a), the board may deny the costs, subject to 75-11-309(3).

Section 5. Section 75-11-313, MCA, is amended to read:

"75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections ~~(3)(b)~~ *(3)(c)* and ~~(3)(c)~~ *(3)(d)*. Administrative costs

under ~~subsection~~ *subsections* (3)(a) *and (3)(b)* must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature;

(d) money loaned to the board by the board of investments; and

(e) all interest earned on money in the fund.

(3) ~~The~~ *As provided in 75-11-318, the* fund may be used only:

(a) to administer this part, including payment of board ~~and department~~ expenses associated with administration;

(b) to pay the actual and necessary department expenses associated with administration;

~~(b)~~*(c)* to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

~~(c)~~*(d)* for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the advance or loan.

(4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year."

Section 6. Section 75-11-318, MCA, is amended to read:

"75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators. *The board may hire its own staff to assist in the implementation of this part.*

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) ~~The department shall provide staff support to the board as the department determines it is able.~~ The board shall use the fund to pay *for*:

~~(a) for department staff used:~~

(a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department

budget for legislative approval. Department administrative expenses on behalf of the board may include:

(i) ~~for~~ the review or preparation of corrective action plans;

(ii) ~~for~~ the oversight of corrective action undertaken by owners and operators for the purposes of this part; and

(iii) ~~for the review and processing of claims for reimbursement submitted by owners and operators under this part~~ *the actual and necessary administrative support provided to the board*~~; and~~

(b) ~~for~~ department of transportation staff *expenses* used for the collection of the petroleum storage tank cleanup fee*;*

(c) third-party review of corrective action plans or claims pursuant to [section 4];

(d) board staff expenses; and

(e) expenses of implementing the board's duties as provided in this part.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;

(e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department; and

(f) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225."

Section 7. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 3, and the provisions of Title 75, chapter 11, part 3, apply to [section 4].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Applicability. [Section 1] applies to all claims for reimbursement of expenses on file with the department of environmental quality on [the effective date of this act].

Ap proved April 8, 2003

CHAPTER NO. 246

[HB 414]

AN ACT PROVIDING A GRACE PERIOD FOR REGISTRATION OF MOTORBOATS, SAILBOATS, PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; AUTHORIZING THE OPERATION OF A MOTORBOAT, SAILBOAT, PERSONAL WATERCRAFT,

SNOWMOBILE, OR OFF-HIGHWAY VEHICLE DURING THE GRACE PERIOD; AMENDING SECTIONS 23-2-511, 23-2-512, 23-2-616, 23-2-618, AND 23-2-817, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats prohibited — display of decals. (1) ~~Every~~ *Subject to 23-2-512(6), every* motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display valid license decals. ~~No~~ *Subject to 23-2-512(6), a* person may *not* operate or give permission for the operation of any motorboat on ~~such~~ *the* waters *of this state* unless the motorboat is numbered and displays valid license decals in accordance with this part, with applicable federal law, or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in full force and effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on ~~such~~ *the* motorboat; and

(c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for 30 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and license decal required by subsection (1) provided that when the motorboat is operated during those 30 consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request."

Section 2. Section 23-2-512, MCA, is amended to read:

"23-2-512. Identification number. (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of $3.50. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within a

reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continue in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part. *The owner of a motorboat, sailboat, or personal watercraft registered under the provisions of this section may operate the boat between January 1 and February 15 without displaying the certificate of number or license decals for the current year if during that period the owner displays upon the boat the certificate of number or license decals assigned for the previous year. A certificate of number renewed by February 15 may not be considered delinquent.*

(7) In the event of a transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its

identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(11) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 3. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and decals — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621*and except as provided in 23-2-618*, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application must contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information that the department of justice may require.

(3) The application must be accompanied by a decal-registration fee of $6.50, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a

listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund."

Section 4. Section 23-2-618, MCA, is amended to read:

"23-2-618. Application for registration and decals to be made annually — grace periods. Application must be made annually to the county treasurer for registration and the issuance of a decal indicating that the fee in lieu of property tax has been paid for the current year. All registrations and decals expire on June 30 of each year. *The owner of a snowmobile registered under the provisions of this section may operate the snowmobile without the registration and decal for the current year between July 1 and August 15 if during that period the owner possesses the registration receipt and decal for the previous year. A snowmobile registered by August 15 is not considered to be delinquent for registration purposes.*"

Section 5. Section 23-2-817, MCA, is amended to read:

"23-2-817. Registration fee — application and issuance — disposition. (1) Each off-highway vehicle is subject to an annual registration fee of $2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

(a) the name and home mailing address of the owner;

(b) the certificate of ownership number;

(c) the name of the manufacturer of the off-highway vehicle;

(d) the model number or name;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax; and

(g) such other information as the department of justice may require.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt, which must

contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(5) All registration fees collected must be forwarded to the department of justice and deposited in the general fund.

(6) The owner of an off-highway vehicle registered under the provisions of this section may operate the off-highway vehicle without the registration receipt for the current year for 45 days after the registration is due if during that period the owner possesses the registration receipt for the previous year. An off-highway vehicle registered within the 45-day period is not considered to be delinquent for registration purposes."

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 8, 2003

CHAPTER NO. 247

[HB 428]

AN ACT REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES BY ELIMINATING A PROVISION NOT REQUIRING BACKFILLING; AMENDING SECTION 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-336, MCA, is amended to read:

"82-4-336. Reclamation plan and specific reclamation requirements. (1) Taking into account the site-specific conditions and circumstances, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents; or

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department; or

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas.

(b) With regard to open pits and rock faces, the reclamation plan must provide for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment; and

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands.

~~(c) The reclamation of open pits and rock faces does not require backfilling, in whole or in part, except and only to the extent necessary to meet the requirements of the applicable provisions of Title 75, chapters 2 and 5.~~

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges."

Section 2. Coordination instruction. If Senate Bill No. 366 and [this act] are both passed and approved, then [this act] is void.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to permits and permit amendments approved by the department of environmental quality after September 30, 1995.

Ap proved April 8, 2003

CHAPTER NO. 248

[HB 458]

AN ACT ALLOWING A QUALIFYING PERSON TO COMBINE AN APPLICATION FOR A SPECIAL LICENSE PLATE WITH AN APPLICATION FOR A LICENSE PLATE BEARING THE SYMBOL OF A PERSON WITH A DISABILITY; AND AMENDING SECTION 61-3-479, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-479, MCA, is amended to read:

"61-3-479. (Temporary) Special certificate of registration and issuance of generic specialty license plates — qualifications. (1) The department shall issue a special certificate of registration and generic specialty license plates to a person who applies if the person presents written certification, in a form prescribed by the department, from the sponsoring organization indicating that the person is eligible to receive the generic specialty license plates.

(2) If the sponsor is a governmental body that has a written agreement with the county treasurer pursuant to 61-3-480, the department shall issue a special certificate of registration and generic specialty license plates to an eligible person who applies if the person pays the donation specified by the governmental body to the county treasurer at the time of application.

(3) A special certificate of registration and generic specialty license plates may be issued only for a light vehicle.

(4) The department may issue a special certificate of registration and generic specialty license plates to joint owners of a motor vehicle if one of the owners is determined by the sponsor to be eligible and if the eligible owner's name appears on the vehicle's special certificate of registration.

(5) (a) Except as provided in 61-3-472 through 61-3-481, a person who receives a special certificate of registration and generic specialty license plates is subject to the same rules and laws as those that govern number plates.

(b) Except as provided in 61-3-472 through 61-3-481, the department is subject to the same rules and laws as govern the issuance of number plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to the maximum 4-year limitation provided in 61-3-332(3)(a).

(6) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(10)(g). (Terminates June 30, 2005—sec. 21, Ch. 402, L. 2001.)"

Ap proved April 8, 2003

CHAPTER NO. 249

[HB 479]

AN ACT REVISING THE LAWS THAT PROHIBIT TELECOMMUNI - CATIONS CARRIERS FROM SWITCHING A CUSTOMER'S TELECOMMUNICATIONS SERVICES WITHOUT THE CUSTOMER'S CONSENT; CLARIFYING THAT ENTITIES NOT OTHERWISE REGULATED BY THE PUBLIC SERVICE COMMISSION ARE SUBJECT TO THE PROHIBITION; DEFINING TERMS; PROHIBITING TELE- COMMUNICATIONS CARRIERS AND OTHER ENTITIES FROM MISREPRESENTING PRODUCTS AND SERVICES TO BE CHARGED ON TELEPHONE BILLS; PROHIBITING INITIATION OF UNAUTHORIZED CHARGES TO BE PLACED ON TELEPHONE BILLS; ESTABLISHING REGISTRATION REQUIREMENTS FOR ENTITIES OFFERING OR BILLING FOR SERVICES AND PRODUCTS; ESTABLISHING PENALTIES; PROVIDING FOR NOTICE TO THE ATTORNEY GENERAL; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY REQUEST COMPLAINTS OF VIOLATIONS; AMENDING SECTIONS 69-3-1301, 69-3-1302, 69-3-1303, AND 69-3-1305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-1301, MCA, is amended to read:

"69-3-1301. Purpose. The purpose of this part is to prohibit telecommunications carriers, including ~~carriers~~ *entities* not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent and to prohibit charges for a product or service not requested by or provided to the customer from being placed on the customer's telephone bill."

Section 2. Section 69-3-1302, MCA, is amended to read:

"69-3-1302. Definitions. As used in this part, the following definitions apply:

(1) "Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer a charge for a product or service offered by a service provider.

(2) "Billing aggregator" means any entity, other than a service provider, that forwards the charge for a product or service offered by a service provider to a billing agent.

~~(1)~~*(3)* "Commission" means the public service commission provided for in 2-15-2602.

~~(2)~~*(4)* "Customer" means a person who has purchased telecommunications services from a telecommunications carrier *or who has been billed charges on a telephone bill for the services or products of another entity.*

~~(3)~~*(5)* "Local exchange company" means the same as provided in 53-19-302.

~~(4)~~*(6)* "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(7) "Service provider" means any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

~~(5)~~*(8) (a)* "Telecommunications carrier" or "carrier" means any provider of telecommunications services. ~~A person~~ *An entity* providing other products and services is considered a telecommunications carrier only to the extent that the ~~person~~ *entity* is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 3. Section 69-3-1303, MCA, is amended to read:

"69-3-1303. Prohibition — exceptions. (1) A telecommunications carrier may not request a change in a customer's primary interexchange carrier or local exchange company except:

(a) when the requesting carrier has obtained from the customer a document signed by the customer that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) when the customer affected by the change initiates the contact with the carrier in order to request the change; or

(c) when the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must be signed by the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

~~(3) A telecommunications carrier or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:~~

~~(a) by written authorization, in which the telecommunications provider or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or~~

~~(b) by verbal authorization, in which the telecommunications carrier or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.~~

~~(4) The documentation provided for in subsections (3)(a) and (3)(b):~~

~~(a) must be signed by the customer responsible for paying the charges on the telecommunications bill; and~~

~~(b) may not be a part of a sweepstakes, contest, or similar promotional program.~~

~~(5) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier or entity for products or services that the customer did not authorize or that were not provided to the customer.~~

~~(6) The provisions of subsections (3), (4), and (5) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service.~~"

Section 4. Section 69-3-1305, MCA, is amended to read:

"69-3-1305. ~~Telecommunications~~ *Unauthorized change in telecommunications* carrier — liability — penalty for violation. (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of 69-3-1303 is liable:

(a) to the customer for all intrastate long-distance charges, interstate long-distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer.

(2) A telecommunications carrier *or any other entity* who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under 69-3-1303 or ~~initiates charges to be billed on a customer's telephone bill for services or products not provided to or authorized by the customer~~ *this section* is guilty of a misdemeanor and *upon conviction* shall be punished as provided in 46-18-212.

(3) (a) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that ~~a person~~ *any entity* has initiated an unauthorized change of a customer's telecommunications carrier ~~or has initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized~~, the commission may impose for each change ~~or charge~~ made in violation of 69-3-1303~~,~~ a civil fine not to exceed $1,000 for each violation, which must be deposited in the general fund.

(b) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that ~~a person~~ *an entity* has, with a frequency to indicate a general business practice, initiated unauthorized changes of customers' telecommunications carriers ~~or initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized~~, the commission may *take any of the following actions:*

(i) notify the secretary of state, ~~and the secretary of state~~ *who* shall *then* suspend or revoke any license, registration, or other filing entitling that ~~person~~ *entity* to transact business in this state*;*

(ii) prohibit any billing aggregator from billing charges on behalf of the carrier or other entity determined to have engaged in a pattern of violations;

(iii) prohibit a billing agent that bills directly for the carrier or other entity determined to have engaged in a pattern of violations from billing charges on behalf of that carrier or other entity;

(iv) revoke the registration of a service provider or billing aggregator; or

(v) limit the prohibitions under this subsection (3)(b) to a specific period of time. A prohibition under this subsection (3)(b) may be withdrawn upon a showing of good cause.

(4) The commission shall provide adequate time for a billing agent that is prohibited from billing on behalf of a carrier or other entity under this section to terminate a contractual agreement with that carrier or other entity.

~~(4)~~*(5)* The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law."

Section 5. Prohibitions on charges on bill — exceptions. (1) A telecommunications carrier, service provider, or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications carrier, service provider, or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier, service provider, or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(2) (a) The documentation provided for in subsection (1)(a) must be signed by the customer responsible for paying the charges on the telecommunications bill.

(b) The documentation provided for in subsection (1) may not be a part of a sweepstakes, contest, or similar promotional program.

(3) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier, service provider, or entity for products or services that the customer did not authorize or that were not provided to the customer.

(4) The provisions of subsections (1) through (3) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service, except upon a finding by the commission that services billed were neither requested nor received.

Section 6. Liability for unauthorized charges on telephone bill — penalty for violation. (1) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that any entity has initiated unauthorized charges to be placed on a customer's telephone bill for services or products not provided or authorized or that a billing aggregator has caused unauthorized charges to be forwarded to a billing agent for placement on a telephone bill, the commission may impose a civil fine not to exceed $1,000 for each violation. The fines must be deposited in the state general fund.

(2) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that a carrier or service provider has, with a frequency to indicate a general business practice, initiated unauthorized charges to be placed on a customer's telephone bill for services or products not provided or authorized or that a billing aggregator has caused unauthorized charges to be forwarded to a billing agent for placement on a telephone bill, the commission may take any of the following actions:

(a) notify the secretary of state, who shall then suspend or revoke any license, registration, or other filing entitling that carrier or service provider to transact business in this state;

(b) prohibit any billing agent that bills directly on behalf of the service provider determined to have engaged in a pattern of violations from placing the service provider's unauthorized charges on a customer's telephone bill;

(c) prohibit a carrier or service provider determined to have engaged in a pattern of violations from initiating unauthorized charges to be placed on a customer's telephone bill;

(d) prohibit a billing aggregator from forwarding that entity's unauthorized charges to a billing agent;

(e) revoke the registration of the service provider or billing aggregator; or

(f) limit the prohibitions under this subsection (2) to a specific period of time. A prohibition under this subsection (2) may be withdrawn upon a showing of good cause.

(3) The commission shall provide adequate time for a billing agent that is prohibited from billing on behalf of a service provider under this section to terminate contractual agreements with that service provider.

(4) The remedies provided by this section are in addition to any other remedies, including injunctive relief, available by law.

(5) A carrier or service provider that purposely or knowingly initiates unauthorized charges to be placed on a customer's telephone bill for services or products not provided to or authorized by the customer or a billing aggregator that causes unauthorized charges to be forwarded to a billing agent for placement on a telephone bill is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

Section 7. Misrepresentation concerning product or service — violations — complaints. (1) An entity may not misrepresent its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the customer's agreement to purchase the products or services of the entity and to have the charge for the product or service appear on the customer's telephone bill.

(2) If the commission finds that an entity is operating in violation of any provision of this section, the commission may:

(a) order the carrier or a billing agent that bills directly for that entity to terminate the billing and collection services for that entity. The commission shall provide adequate time for the billing agent to terminate contractual agreements with the entity. This section does not preclude a carrier or billing agent from taking action on its own to terminate billing and collection services.

(b) prohibit the entity's billing aggregator from forwarding any charges from an entity operating in violation of this section to a carrier or billing agent for placement on a customer's telephone bill.

(3) Failure by an entity to respond to commission requests for information related to an investigation of a possible violation of this section is grounds for the commission to:

(a) order the carrier, billing aggregator, or billing agent that bills directly for the entity to cease billing and collection services for the service provider; or

(b) prohibit a billing aggregator from forwarding charges to the billing agent to be placed on a customer's telephone bill.

(4) This section does not obligate a billing agent to provide billing and collection services to a billing aggregator or service provider.

(5) A telephone company has a right of indemnity against anyone who has provided it with false information as to the status of charges billed on behalf of a service provider.

Section 8. Registration requirements — prohibitions — revocation. (1) A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, unless the service provider is properly registered with the commission.

(2) A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless the billing aggregator is properly registered with the commission.

(3) A billing aggregator may not forward charges to a billing agent from a service provider who is required to be registered under this section and who is not properly registered under this section.

(4) A billing agent may not directly bill on behalf of a service provider that is not the billing agent if the service provider is not properly registered, if registration is required under this section.

(5) The commission shall provide a form for registration and establish the procedure for registering with the commission. A registration remains effective until revoked by the commission or surrendered by the service provider or billing aggregator.

(6) After notice and an opportunity for a hearing, the commission may revoke a registration.

(7) The commission may revoke the registration of a service provider that has:

(a) knowingly or repeatedly billed one or more customers for unauthorized service; or

(b) engaged in any other false or deceptive billing practices.

(8) The commission may revoke the registration of a billing aggregator that has:

(a) knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider that was required to be registered with the commission and that was not properly registered; or

(b) engaged in any other false or deceptive billing practices.

(9) Immediately following a revocation of registration under this section, the commission shall provide notice of the revocation to all telecommunications carriers and registered billing aggregators doing business in Montana.

Section 9. Submission of list of entities served by billing aggregator required. Each billing aggregator doing business in Montana shall submit to the commission a list of service providers and other entities for which the billing aggregator provides billing services. The commission shall adopt rules that specify information that must be included with the list in order to enforce the provisions of this part. The list must include the name and address of a contact person for each entity.

Section 10. Notice to attorney general. If the commission has reason to believe that any entity has violated any provision of the law for which a criminal penalty is provided or any law regarding fraud or consumer protection, the commission shall notify the attorney general.

Section 11. Codification instruction. [Sections 5 through 10] are intended to be codified as an integral part of Title 69, chapter 3, part 13, and the provisions of Title 69, chapter 3, part 13, apply to [sections 5 through 10].

Section 12. Effective date. [This act] is effective on passage and approval.

Ap proved April 8, 2003

CHAPTER NO. 250

[HB 549]

AN ACT INCREASING TO $30 THE SCHOLARSHIP DONATION FOR A COLLEGIATE LICENSE PLATE; AMENDING SECTION 61-3-465, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-465, MCA, is amended to read:

"61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of $2.50, when required; and

(ii) an annual scholarship donation of ~~$20~~ *$30* for the benefit of the institution named in the application.

(2) Once each month, the county treasurer shall, as provided in 15-1-504, transfer to the department of revenue the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the state general fund; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month, the department of revenue shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the department of revenue by the county treasurers during the preceding month."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved April 8, 2003

CHAPTER NO. 251

[HB 711]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO MAIL A RENEWAL NOTICE PRIOR TO THE EXPIRATION OF A DRIVER'S LICENSE; PROVIDING A RENEWAL NOTICE FEE; AND AMENDING SECTION 61-5-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts.

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary signature or a digital reproduction of the licensee's customary signature. The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a ~~commercial~~ driver's license ~~if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license~~. *The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.*

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 a year or fraction of a year;

(ii) intrastate — $3.50 a year or fraction of a year*;*

(d) renewal notice — 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the

expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Ap proved April 8, 2003

CHAPTER NO. 252

[SB 114]

AN ACT CLARIFYING THE CALCULATION OF THE GROWTH RATE OF THE ENTITLEMENT SHARE POOL FOR EACH YEAR OF THE NEXT BIENNIUM BEGINNING WITH CALENDAR YEAR 2002; AMENDING SECTION 15-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-201;

(j) title and registration fees pursuant to 61-3-203;

(k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year ~~2004~~ *2002*, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share

pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received

from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to December 31, 2001.

Ap proved April 8, 2003

CHAPTER NO. 253

[SB 141]

AN ACT ALLOWING THE RELEASE OF CRIMINAL JUSTICE INFORMATION TO FIRE SERVICE AGENCIES AND FIRE MARSHALS REGARDING THE CRIMINAL INVESTIGATION OF A FIRE; PROVIDING A PROCEDURE FOR A PROSECUTOR TO PETITION THE COURT FOR RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IN CERTAIN CASES; AMENDING SECTIONS 44-5-103 AND 44-5-303, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) *(a)* "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

(b) ~~It~~ *The term* does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice, *including a fire agency or fire marshal that conducts criminal investigations of fires*;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) *(a)* "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency.

(b) ~~It~~ *The term* does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) a nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

(a) information made public by law;

(b) information of court records and proceedings;

(c) information of convictions, deferred sentences, and deferred prosecutions;

(d) information of postconviction proceedings and status;

(e) information originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information — *procedure for dissemination through court.* (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. *Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a fire service agency or fire marshal concerning the criminal investigation of a fire.*

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal

responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

Section 3. Applicability. [This act] applies to any request for confidential criminal justice information made on or after [the effective date of this act].

Ap proved April 8, 2003

CHAPTER NO. 254

[SB 149]

AN ACT REVISING THE COMPOSITION OF THE DISTRICTS FROM WHICH THE DISTRICTING AND APPORTIONMENT COMMISSION MEMBERS ARE APPOINTED FOR THE PURPOSE OF POPULATION EQUALITY AND REDUCING THE NUMBER OF DISTRICTS FROM FOUR TO TWO; MAKING CORRESPONDING REVISIONS IN THE BOARD OF PUBLIC EDUCATION, BOARD OF REGENTS, COAL BOARD, AND HARD-ROCK MINING IMPACT BOARD APPOINTMENT PROVISIONS; AND AMENDING SECTIONS 2-15-1508, 2-15-1821, 2-15-1822, AND 5-1-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1508, MCA, is amended to read:

"2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than ~~two~~ *four* may be from one district provided for in 5-1-102.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) (a) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is determined by the governor and must be for not less than 1 year and not more than 4 years. The term begins July 1 and ends June 30 of the years designated by the governor. The provisions of subsections (1)(a) and (1)(b) do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment."

Section 2. Section 2-15-1821, MCA, is amended to read:

"2-15-1821. Coal board — allocation — composition. (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) The members of the coal board are selected as follows:

(i) two from the impact areas;

(ii) two with expertise in education; and

(iii) at least ~~one~~ *two* but not more than ~~two~~ *four* from each district provided for in 5-1-102.

(b) The governor shall further, in making these appointments, consider people from these fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning."

Section 3. Section 2-15-1822, MCA, is amended to read:

"2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by large-scale mineral development;

(b) at least ~~one person~~ *two persons* from each district provided for in 5-1-102;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) a person who, when appointed to the board, is an elected school district trustee;

(f) a person who, when appointed to the board, is an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a presiding officer from among its members."

Section 4. Section 5-1-102, MCA, is amended to read:

"5-1-102. Composition of commission. (1) The majority and minority leaders of each house shall each designate one commissioner *for the commission provided for in 5-1-101*. ~~A commissioner~~ *Two commissioners* must be appointed from each district listed in subsection (2). The majority leader in the senate has first choice of the district from which the majority leader will select a commissioner, and the majority leader of the house has second choice. Within 20 days after their designation, the four commissioners shall select the fifth

member, who shall serve as the presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select the fifth member.

(2) The commission districts are the following counties:

(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, ~~and~~ Ravalli~~;~~

~~(b) District 2: Lewis and Clark~~, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, ~~Meagher,~~ Beaverhead, Madison, Gallatin, ~~and~~ Park, *Sweet Grass, Stillwater, and Carbon*;

~~(c)~~*(b)* District ~~3~~ *2*: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, ~~and~~ Pondera~~; and~~

~~(d) District 4:~~, *Lewis and Clark, Meagher*, Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, *and* Yellowstone~~, Carbon, Stillwater, and Sweet Grass~~."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Ap proved April 8, 2003

CHAPTER NO. 255

[SB 183]

AN ACT PROVIDING FOR EDUCATIONAL AID FOR CERTAIN PERSONS EXONERATED OF A CRIME BY POSTCONVICTION DNA TESTING; PROVIDING FOR STATE AID FOR TUITION, FEES, BOOKS, BOARD, AND ROOM; AUTHORIZING THE BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE TUITION AND FEES FOR PERSONS ELIGIBLE FOR AID; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Educational aid to wrongfully convicted persons exonerated by postconviction DNA testing. (1) Subject to appropriation by the legislature, a person who was convicted in this state of a felony offense, who was incarcerated in a state prison for any period of time, and whose judgment of conviction was overturned by a court based on the results of postconviction forensic DNA testing that exonerates the person of the crime for which the person was convicted is entitled to receive educational aid at the state's expense. The department of corrections shall authorize educational aid for any person entitled to it under this section. The department shall establish, by rule, the procedures for application, designation of authority to receive aid, procedures for payment of aid, and forms to be used for this program. Aid under this section must include expenses for tuition, fees, books, board, and room at any:

(a) Montana community college;

(b) unit of the Montana university system, as described in 20-25-201; or

(c) accredited Montana tribally controlled community college.

(2) State aid under this section must include assistance, as described in subsection (1), in meeting any admission standards or criteria required at any of the institutions listed in subsection (1), including but not limited to assistance in satisfying requirements for a certificate of equivalency of completion of secondary education and assistance in completing any adult education program or courses. An adult education fund must be reimbursed by the state for any costs of completing an adult education program or courses under this section.

(3) The board of regents of higher education may waive fees and tuition for education provided under this section pursuant to 20-25-421. The department of corrections shall notify the board of regents before August 1 of each year of educational aid that is to be provided under this section for the next school year.

(4) The privilege of receiving aid under this section remains active for 10 years after the release of a person who qualifies for aid under subsection (1). State education aid must continue for up to a total of 5 years of aid within the 10-year aid period or until the degree or program for which the person is authorized under subsection (1) is completed, whichever is less, as long as the person continues to make satisfactory progress in the courses or program attempted. Aid is available for completion of any degree or program available from the institutions listed in subsection (1), at the recipient's choice.

Section 2. Section 20-25-421, MCA, is amended to read:

"20-25-421. Charges for tuition — waivers. (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may:

(a) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; however, when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 *or [section 1]*;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year in accordance with the national guard education benefit program provided for in 10-1-121."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2003.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to a person exonerated on or before [the effective date of this act].

Ap proved April 8, 2003

CHAPTER NO. 256

[SB 413]

AN ACT NAMING U.S. HIGHWAY 2 AS THE 163RD INFANTRY REGIMENT (SUNSET DIVISION) HERITAGE HIGHWAY.

WHEREAS, the 163rd Infantry Regiment has served Montana and this nation in war and in peace throughout the past 2 centuries; and

WHEREAS, the year 2003 is the occasion of the 60th anniversary of the 163rd Infantry Regiment's heroic efforts to help the allied forces win the Battle of Sanananda in World War II in the Southwest Pacific, a battle recognized as the first major land victory against the Japanese forces; and

WHEREAS, the 163rd Infantry Regiment was ordered into active duty on September 16, 1940, with a force of 1,700 men, including nearly 200 representatives of Montana tribes, and after training for 1 year became part of the initial American forces ordered into duty in the Pacific theater when the United States entered World War II in December 1941; and

WHEREAS, the 163rd Infantry Regiment earned numerous citations and letters of appreciation from Army headquarters during and after World War II, in particular for what General Jacob Devers referred to as "76 days of unrelieved fighting, a record in jungle warfare", as the 163rd Infantry Regiment and the 41st Infantry Division to which it was assigned carried on a 1,000-mile campaign in the jungles of New Guinea; and

WHEREAS, the 163rd Infantry Regimental combat team served as one of the initial occupation forces in Japan after World War II until being demobilized and sent home in January 1946; and

WHEREAS, the 163rd Infantry Regimental combat team upon its return to Montana became a major element of Montana's National Guard, serving as the basis for the Montana Army and Air National Guard, which continue to serve Montana today; and

WHEREAS, the 163rd Infantry Regimental combat team and its successor organizations, the 163rd Armored Cavalry Regiment and the 163rd Armored Brigade and current units, recruited along U.S. Highway 2 among Montana's Hi-Line communities of Bainville, Poplar, Wolf Point, Glasgow, Malta, Harlem, Chinook, Shelby, Havre, Whitefish, Kalispell, and Libby and on the Fort Peck, Rocky Boy, Fort Belknap, and Blackfeet Reservations; and

WHEREAS, the 163rd Infantry Regiment is the successor to volunteer troops that started with the Montana Territorial Volunteers, who served from 1867 to 1887, and proceeded to the First Montana Infantry Regiment, the Montana National Guard formed in March 1887, which became the First Montana Infantry Regiment, United States Volunteers, which was formed to fight in the Spanish-American and Philippine-American Wars in 1898-1899 and which later became the 2nd Montana Infantry, which provided emergency services for Montana before being activated to serve on the U.S.-Mexican Border in 1916 and then was redesignated as the 163rd Infantry Regiment prior to being called to duty in World War I in 1917-1919; and

WHEREAS, the cities and towns of the Hi-Line and the rest of Montana are extremely proud of the services of the 163rd Infantry Regiment; and

WHEREAS, more than 100,000 Montanans have served or are currently serving in units associated with the 163rd Infantry Regiment and deserve recognition for their accomplishments in serving the state and the country.

Be it enacted by the Legislature of the State of Montana:

Section 1. 163rd Infantry Regiment (Sunset Division) heritage highway. (1) U.S. highway 2 from the eastern border to the western border of Montana, a distance of 670 miles, is established as the 163rd Infantry Regiment (Sunset Division) heritage highway.

(2) The department of transportation shall provide appropriate markers to recognize the new name of the highway.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Ap proved April 8, 2003

CHAPTER NO. 257

[HB 323]

AN ACT REVISING LAWS GOVERNING REGISTERED MARKS AND TRADEMARKS TO CONFORM TO RECENT CHANGES IN THE MODEL

ACT; DEFINING THE TERMS "ABANDONED", "DILUTION", AND "USE"; REVISING THE DEFINITIONS OF "SERVICE MARK" AND "TRADEMARK"; REVISING THE CONTENT OF THE APPLICATION FOR REGISTRATION; REVISING REQUIREMENTS FOR THE FILING OF APPLICATIONS; REVISING THE REQUIREMENTS FOR CERTIFICATES OF REGISTRATION; REVISING THE DURATION AND RENEWAL OF CERTIFICATES OF REGISTRATION; REVISING LAWS GOVERNING ASSIGNMENTS AND CHANGE OF NAME; REVISING LAWS GOVERNING CANCELLATION OF REGISTRATION; REPLACING THE STATUTORY LIST OF CLASSIFICATIONS OF GOODS AND SERVICES WITH RULES ADOPTED BY THE SECRETARY OF STATE TO CONFORM TO CLASSIFICATIONS ADOPTED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE; REVISING LAWS ON INJURY TO BUSINESS REPUTATION AND DILUTION; PROVIDING FOR TREBLE DAMAGES AND ATTORNEY FEES IN CASES INVOLVING THE COMMISSION OF WRONGFUL ACTS WITH KNOWLEDGE OR IN BAD FAITH; PROVIDING FOR A FORUM FOR ACTIONS INVOLVING REGISTRATION AND PROVIDING FOR SERVICE OF PROCESS ON THE SECRETARY OF STATE; ELIMINATING EXISTING PROVISIONS CONCERNING WHEN A MARK IS CONSIDERED USED, APPLICATIONS FOR RENEWAL OF REGISTRATION, CERTIFICATES OF ASSIGNMENT, PENALTIES FOR FALSE SWEARING, AND THE FILING OF FACSIMILE COPIES; AMENDING SECTIONS 30-13-301, 30-13-303, 30-13-311, 30-13-312, 30-13-313, 30-13-315, 30-13-317, 30-13-318, 30-13-331, 30-13-332, 30-13-333, 30-13-334, AND 30-13-335, MCA; REPEALING SECTIONS 30-13-302, 30-13-314, 30-13-316, 30-13-319, AND 30-13-341, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-301, MCA, is amended to read:

"30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Abandoned" with respect to a mark, means the occurrence of either of the following:

(a) when a mark's use has been discontinued with intent not to resume use. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years constitutes prima facie evidence of abandonment.

(b) when any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

~~(1)~~*(2)* "Applicant" means the person filing an application for registration of a ~~trademark~~ *mark* under this part or the person's legal representatives, successors, or assigns.

(3) "Dilution" means the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of:

(a) competition between the owner of the famous mark and other parties; or

(b) likelihood of confusion, mistake, or deception.

~~(2)~~*(4)* "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

~~(3)~~*(5)* "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization*capable of suing and being sued in a court of law*.

~~(4)~~*(6)* "Registrant" means the person to whom the registration of a ~~trademark~~ *mark* under this part is issued or the person's legal representatives, successors, or assigns.

~~(5)~~*(7)* "Service mark" means ~~a mark used in the sale or advertising of services~~ *any word, name, symbol, or device or any combination of words, names, symbols, or devices used by a person,* to identify *and distinguish* the services of one person*, including a unique service,* ~~and distinguish them~~ from the services of others *and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they or the programs may advertise the goods of the sponsor*.

~~(6)~~*(8)* "Trade name" means ~~a word, name, symbol, device, or any combination thereof~~ *any name* used by a person to identify ~~the person's~~ *a* business~~,~~ *or* vocation~~, or occupation and distinguish it from the business, vocation, or occupation of others~~ *of that person*.

~~(7)~~*(9)* "Trademark" means any word, name, symbol, device, or any combination ~~thereof~~ *of words, names, symbols, or devices* ~~adopted and~~ used by a person to identify *and distinguish the* goods ~~made or sold by the~~ *of that* person, *including a unique product,* ~~and to distinguish them~~ from ~~goods made or~~ *those manufactured or* sold by others *and to indicate the source of the goods, even if that source is unknown*.

(10) "Use" means the bona fide use of a mark in the ordinary course of trade and not a use merely to reserve a right in a mark. For the purposes of this part, a mark is considered to be in use:

(a) (i) on goods when it is placed in any manner on the goods or other containers or the displays associated with the goods or on the tags or labels affixed to the goods or, if the nature of the goods makes placement on the goods or containers impracticable, when it is placed on documents associated with the goods or their sale; and

(ii) the goods are sold or transported in commerce in this state; and

(b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state."

Section 2. Section 30-13-303, MCA, is amended to read:

"30-13-303. Registrability. (1) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others may not be registered if it:

(a) *consists of or* comprises immoral, deceptive, or scandalous matter; ~~or~~

(b) *consists of or* comprises matter ~~which~~ *that* may disparage or falsely suggest a connection with persons, living or dead, or institutions, beliefs, or national symbols or bring them into contempt or disrepute; ~~or~~

(c) *consists of or* comprises the flag or coat of arms or other insignia of the United States, of any state or municipality, or of any foreign nation or any simulation ~~thereof~~ *of the flag or coat of arms of any of the enumerated entities*; ~~or~~

(d) *consists of or* comprises the name, signature, or portrait of any living individual, except with ~~his~~ *the individual's* written consent; ~~or~~

(e) ~~comprises~~ *consists of* a mark that:

(i) when ~~applied to~~ *used on or in connection with* the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(ii) when ~~applied to~~ *used on or in connection with* the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or

(iii) is primarily merely a surname; or

(f) *consists of or* comprises a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

(2) ~~However, nothing in subsection~~ *Subsection* (1)(e) ~~prevents~~ *does not prevent* the registration of a mark used in this state by the applicant ~~which~~ *that* has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, ~~as applied to~~ *as used on or in connection with* the applicant's goods or services, proof of continuous use ~~thereof~~ *of the mark or service mark* as a mark by the applicant in this state or elsewhere for the 5 years ~~immediately preceding~~ *before* the date ~~of the filing of the application for registration~~ *on which the claim of distinctiveness is made*."

Section 3. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who ~~adopts and~~ uses a mark ~~in this state~~ may file in the office of *the* secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for registration and~~,~~*:*

(i) if a corporation, the state of incorporation*;* ~~or,~~

(ii) if a limited liability company, the state of organization;

(iii) if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state;

~~(b) the essential feature of the mark to be registered;~~

~~(c)~~*(b)* the goods or services *on or* in connection with which the mark is used and the mode or manner in which the mark is used *on or* in connection with the goods or services and the class in which the goods or services fall;

~~(d)~~*(c)* the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or ~~the applicant's~~ *a* predecessor in business; *and*

~~(e) a statement that the mark is presently in use in this state by the applicant; and~~

~~(f)~~*(d)* a statement that the applicant is the owner of the mark, *that the mark is in use,* and that*, to the knowledge of the person verifying the application,* no other person *has registered the mark, either federally or in this state, or* has the right to use the mark ~~in this state~~ either in the identical form or in a form that so nearly resembles ~~it that it might be calculated to deceive or might be mistaken~~

~~for it~~ *the mark as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.*

(2) The secretary of state may require a statement as to whether an application to register the mark or portions or a composite of the mark has been filed by the applicant or a predecessor in interest in the United States patent and trademark office. If an application has been filed, the applicant shall provide complete information with respect to that filing, including the filing date and serial number of each application, the status of each application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for nonregistration.

(3) The secretary of state may require that a drawing of the mark, complying with requirements that the secretary of state may specify, accompany the application.

~~(2)~~*(4)* The application must be signed *and verified* by the applicant or a member of the firm or limited liability company or an officer of the corporation or association applying.

~~(3)~~*(5)* The application must be accompanied by ~~two copies of a specimen or facsimile of~~ *three specimens showing* the mark *as actually used.*

~~(4)~~*(6)* The application for registration must be accompanied by a filing fee as provided for in 30-13-320."

Section 4. Filing of applications. (1) Upon the filing of an application for registration and payment of the application fee, the secretary of state may cause the application to be examined for conformity with this part.

(2) The applicant shall provide any additional pertinent information requested by the secretary of state, including a description of a design mark, and may make or authorize the secretary of state to make amendments to the application that may be reasonably requested by the secretary of state or considered by the applicant to be advisable to respond to any rejection or objection.

(3) The secretary of state may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. A disclaimer may not prejudice or affect the applicant's or registrant's rights then existing or later arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

(4) Amendments may be made by the secretary of state upon the application submitted by the applicant upon the applicant's agreement, or the secretary of state may require that a new application be submitted.

(5) If the applicant is found not to be entitled to registration, the secretary of state shall advise the applicant of that finding and of the reasons for the finding. The applicant must have a reasonable period of time, specified by the secretary of state, in which to reply or to amend the application. In the event of a reply or amended application, the application must be reexamined. This procedure may be repeated until:

(a) the secretary of state finally refuses registration of the mark; or

(b) the applicant fails to reply or amend the application within the specified period, in which case the application is considered abandoned.

(6) If the secretary of state finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel registration. The writ may be granted, but without costs to the secretary of state, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(7) If applications are concurrently being processed by the secretary of state seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary of state shall grant priority to the applications in order of filing. If a prior application is granted a registration, the other application or applications must be rejected. A rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark in accordance with the provisions of 30-13-318.

Section 5. Section 30-13-312, MCA, is amended to read:

"30-13-312. ~~Filing application and issuing certificate~~ *Certificate* of registration. (1) ~~One original and one copy of an application for registration of a mark must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:~~

~~(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;~~

~~(b) file the original in his office; and~~

~~(c) issue a certificate of registration to which he shall affix the copy~~.

~~(2) The certificate of registration, together with the copy of the application for registration of mark affixed thereto, shall be returned~~ *Upon compliance by the applicant with the requirements of this part, the secretary of state shall cause a certificate of registration to be issued and delivered* to the applicant. *The certificate of registration must be issued under the signature of the secretary of state and the seal of the state. The certificate must show:*

(a) the name and business address of the person claiming ownership of the mark and, if a corporation, the state of incorporation or, if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state;

(b) the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state;

(c) the class of goods or services and a description of the goods or services on or in connection with which the mark is used;

(d) a reproduction of the mark; and

(e) the registration date and the term of the registration.

~~(3)~~*(2)* Any certificate of registration issued by the secretary of state under the provisions of this section or a copy ~~thereof~~ *of the certificate* duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of ~~such~~ *the* mark in any judicial proceeding in any court of this state."

Section 6. Section 30-13-313, MCA, is amended to read:

"30-13-313. Duration and renewal. (1) Registration of a mark under this part is effective for a term of ~~10~~ *5* years from the date of registration, and upon application filed within 6 months prior to the expiration of ~~such~~ *that* term, *in a*

manner complying with the requirements of the secretary of state, the registration may be renewed for another ~~10~~ *5* years.

~~(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:~~

~~(a) the name and business address of the applicant;~~

~~(b) a description of the mark; and~~

~~(c) a statement that the mark is still in use by the applicant in this state.~~

~~(3) The application for renewal of mark registration must be signed by the applicant.~~

~~(4)~~*(2)* The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.

(3) A registration may be renewed for successive periods of 5 years as provided in subsection (1).

(4) Any registration in force on [the effective date of this act] continues in full force and effect for the unexpired term of the registration and may be renewed by filing an application for renewal with the secretary of state complying with the requirements of the secretary of state and paying the renewal fee within 6 months prior to the expiration of the registration.

(5) All applications for renewal under this part must include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services."

Section 7. Section 30-13-315, MCA, is amended to read:

"30-13-315. Assignment — *change of name — other instruments.* (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. *An assignment must be by written, duly executed instruments and may be recorded with the secretary of state upon the payment of the recording fee payable to the secretary of state. Upon recording the assignment, the secretary of state shall issue a new certificate in the name of the assignee* for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to ~~such~~ *the* subsequent purchase.

~~(2) One original and one copy of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:~~

~~(a) the name and address of the assignor;~~

~~(b) the name and address of the assignee;~~

~~(c) the registration number of the mark; and~~

~~(d) the date of registration.~~

~~(3) The assignment of a mark must be signed and verified by the assignor.~~

~~(4) The assignment of a mark must be accompanied by a filing fee as provided for in 30-13-320.~~

(2) Any applicant or registrant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the applicant or registrant with the secretary of state upon the payment of the recording fee. The secretary of state may issue in the name of the assignee a certificate of registration of an assigned application. The secretary of state may issue, in the name of the assignee, a new certificate of registration for the remainder of the term of the registration or last renewal of the registration.

(3) Other instruments that relate to a mark registered or an application pending pursuant to this part, such as licenses, security interests, or mortgages, may be recorded at the discretion of the secretary of state if the instrument is in writing and is duly executed.

(4) An acknowledgment is prima facie evidence of the execution of an assignment or other instrument, and when recorded by the secretary of state, the record is prima facie evidence of execution.

(5) A photocopy of any instrument referred to in subsections (1) through (3) must be accepted for recording if it is certified by any of the parties to the instrument or their successors to be a true and correct copy of the original."

Section 8. Section 30-13-317, MCA, is amended to read:

"30-13-317. Records. The secretary of state shall keep for public examination a record of all marks registered or renewed under this part*as well as a record of all documents recorded pursuant to 30-13-315*."

Section 9. Section 30-13-318, MCA, is amended to read:

"30-13-318. Cancellation. The secretary of state shall cancel from the register, *in whole or in part*:

~~(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with this part;~~

~~(2)~~*(1)* any registration ~~for~~ *concerning* which ~~he~~ *the secretary of state* receives a ~~written~~ *voluntary* request for cancellation~~, signed and verified by~~ *from* the registrant or the assignee of record ~~and accompanied by fees as prescribed in this part~~;

~~(3)~~*(2)* each registration granted under this part and not renewed in accordance with the provisions of this part;

~~(4)~~*(3)* any registration concerning which a court of competent jurisdiction finds that:

(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the mark is or has become the generic name for the goods or services or a portion of the goods or services for which it has been registered;

~~(e)~~*(f)* the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that ~~he~~ *the registrant* is the owner of a concurrent registration of ~~his~~ *a* mark in the

United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

~~(5)~~*(4)* a registration *that is* ordered *to be* canceled by a court of competent jurisdiction on any grounds."

Section 10. Section 30-13-331, MCA, is amended to read:

"30-13-331. Classification. ~~(1)~~ The ~~following general classes~~ *secretary of state shall adopt rules establishing a classification* of goods and services ~~are established~~ for convenience of administration of this part. ~~This~~ *The* classification does not limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods *upon which* or services ~~comprised in a single class with regard to~~ *with* which the mark is actually being used *indicating the appropriate class or classes of goods or services*. ~~However, in no event may~~ *When* a single application ~~include~~ *includes* goods or services that fall within ~~different~~ *multiple* classes, ~~of goods or services~~ *the secretary of state may require payment of a fee for each class. To the extent practical, the classification of goods and services must conform to the classification adopted by the United States patent and trademark office.*

~~(2) The classes of goods are as follows:~~

~~(a) raw or partly prepared materials;~~

~~(b) receptacles;~~

~~(c) baggage, animal equipments, portfolios, and pocketbooks;~~

~~(d) abrasive and polishing materials;~~

~~(e) adhesives;~~

~~(f) chemicals and chemical compositions;~~

~~(g) cordage;~~

~~(h) smokers' articles, not including tobacco products;~~

~~(i) explosives, firearms, equipment, and projectiles;~~

~~(j) fertilizers;~~

~~(k) inks and inking materials;~~

~~(l) construction materials;~~

~~(m) hardware and plumbing and steamfitting supplies;~~

~~(n) metals and metal casting and forgings;~~

~~(o) oils and greases;~~

~~(p) paints and painters' materials;~~

~~(q) tobacco products;~~

~~(r) medicines and pharmaceutical preparations;~~

~~(s) vehicles;~~

~~(t) linoleum and oil cloth;~~

~~(u) electrical apparatus, machines, and supplies;~~

~~(v) games, toys, and sporting goods;~~

~~(w) cutlery, machinery, and tools, and parts thereof;~~

~~(x) laundry appliances and machines;~~

~~(y) locks and safes;~~

~~(z) measuring and scientific appliances;~~

~~(aa) horological instruments;~~

~~(bb) jewelry and precious metal ware;~~

~~(cc) brooms, brushes, and dusters;~~

~~(dd) crockery, earthenware, and porcelain;~~

~~(ee) filters and refrigerators;~~

~~(ff) furniture and upholstery;~~

~~(gg) glassware;~~

~~(hh) heating, lighting, and ventilating apparatus;~~

~~(ii) belting, hose, machinery packing, and nonmetallic tires;~~

~~(jj) musical instruments and supplies;~~

~~(kk) paper and stationery;~~

~~(ll) prints and publications;~~

~~(mm) clothing;~~

~~(nn) fancy goods, furnishings, and notions;~~

~~(oo) canes, parasols, and umbrellas;~~

~~(pp) knitted, netted, and textile fabrics, and substitutes therefor;~~

~~(qq) thread and yarn;~~

~~(rr) dental, medical, and surgical appliances;~~

~~(ss) soft drinks and carbonated waters;~~

~~(tt) foods and ingredients of foods;~~

~~(uu) wines;~~

~~(vv) malt beverages and liquors;~~

~~(ww) distilled alcoholic liquors;~~

~~(xx) merchandise not otherwise classified;~~

~~(yy) cosmetics and toilet preparations;~~

~~(zz) detergents and soaps.~~

~~(3) The classes of services are as follows:~~

~~(a) miscellaneous;~~

~~(b) advertising and business;~~

~~(c) insurance and financial;~~

~~(d) construction and repair;~~

~~(e) communications;~~

~~(f) transportation and storage;~~

~~(g) material treatment;~~

~~(h) education and entertainment.~~"

Section 11. Section 30-13-332, MCA, is amended to read:

"30-13-332. Fraudulent registration. Any person who, for ~~himself~~ *the person's own sake* or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state under the

provisions of this part by knowingly making any false or fraudulent representation *or declaration*, verbally or in writing or by any other fraudulent means, is liable to pay all damages sustained in consequence of ~~such~~ *the* filing or registration. ~~Such damages~~ *Damages* may be recovered by or on behalf of the injured party in any court of competent jurisdiction."

Section 12. Section 30-13-333, MCA, is amended to read:

"30-13-333. Infringement. (1) Subject to the provisions of 30-13-336 *and subsection (2) of this section*, ~~any~~ *a* person is liable in a civil action brought by the ~~lawful owner of a registered mark~~ *registrant* under 30-13-335 if ~~such~~ *the* person:

(a) uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which ~~such~~ *the* use is likely to cause confusion or mistake or to deceive as to the source of origin of ~~such~~ *the* goods or services; or

(b) reproduces, counterfeits, copies, or colorably imitates any ~~such~~ *registered* mark and applies ~~such~~ *the* reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of ~~such~~ *the* goods or services.

(2) However, the registrant is not entitled to recover under subsection (1)(b) any profits or damages unless the acts have been committed with knowledge that ~~such~~ *the* mark is intended to be used to cause confusion or mistake or to deceive."

Section 13. Section 30-13-334, MCA, is amended to read:

"30-13-334. Injury to business reputation — dilution. *(1)* ~~Likelihood of injury to business reputation or of~~ *The owner of a mark that is famous in this state is entitled, subject to the principles of equity and upon terms that seem reasonable to the court, to an injunction against another person's commercial use of a mark or trade name if the use begins after the mark has become famous and causes* dilution of the distinctive quality of ~~a~~ *the* mark ~~registered under this part or a mark valid at common law or a trade name valid at common law is grounds for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services~~ *and may obtain other relief as provided in this section*.

(2) In determining whether a mark is distinctive and famous, a court may consider factors including but not limited to:

(a) the degree of inherent or acquired distinctiveness of the mark in this state;

(b) the duration and extent of use of the mark in connection with the goods and services with which the mark is used;

(c) the duration and extent of advertising and publicity of the mark in this state;

(d) the geographical extent of the trading area in which the mark is used;

(e) the channels of trade for the goods or services with which the mark is used;

(f) the degree of recognition of the mark in the trading areas and channels of trade in this state used by the mark's owner and the person against whom the injunction is sought;

(g) the nature and extent of use of the same or similar mark by third parties; and

(h) whether the mark is the subject of a registration in this state or a federal registration under the act of March 3, 1881, or under the act of February 20, 1905, or on the principal register.

(3) In an action brought under this section, the owner of a famous mark is entitled only to injunctive relief in this state unless the person against whom the injunctive relief is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If a willful intent is proven, the owner is also entitled to the remedies set forth in this part, subject to the discretion of the court and the principles of equity.

(4) The following are not actionable under this section:

(a) fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark;

(b) noncommercial use of the mark; or

(c) all forms of news reporting and news commentary."

Section 14. Section 30-13-335, MCA, is amended to read:

"30-13-335. Remedies. (1) ~~Any~~ *An* owner of a mark registered under this part may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain ~~such~~ *the* manufacture, use, display, or sale as is considered by the court to be just and reasonable. The court may require the defendants to pay to ~~such~~ *the* owner all profits derived from ~~and/or~~ *and* all damages suffered by reason of ~~such~~ *the* wrongful manufacture, use, display, or sale. The court may also order that any ~~such~~ counterfeits or imitations in the possession or under the control of any defendant in ~~such~~ *the* case be delivered to an officer of the court or to the complainant to be destroyed. *The court, in its discretion, may enter judgment for an amount not to exceed three times the profits and damages and reasonable attorney fees of the prevailing party in cases in which the court finds that the other party committed the wrongful acts with knowledge, in bad faith, or otherwise as according to the circumstances of the case.*

(2) The enumeration in this part of any right or remedy does not affect a registrant's right to prosecute under any criminal law of this state."

Section 15. Forum for actions regarding registration — service on out-of-state registrants. (1) Actions to require cancellation of a mark registered pursuant to this part or in mandamus to compel registration of a mark pursuant to this part must be brought in district court. In an action in mandamus, the proceeding must be based solely upon the record before the secretary of state. In an action for cancellation, the secretary of state may not be made a party to the proceeding but must be notified of the filing of the complaint by the clerk of the court in which the action is filed and must be given the right to intervene in the action.

(2) In any action brought against a nonresident registrant, service may be effected upon the secretary of state as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under Rule 4D of the Montana Rules of Civil Procedure.

Section 16. Repealer. Sections 30-13-302, 30-13-314, 30-13-316, 30-13-319, and 30-13-341, MCA, are repealed.

Section 17. Codification instruction. [Sections 4 and 15] are intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to [sections 4 and 15].

Section 18. Effective date. [This act] is effective July 1, 2003.

Ap proved April 9, 2003

CHAPTER NO. 258

[HB 389]

AN ACT PROVIDING THAT WHEN A JUDGE IMPOSES A TERM OF INCARCERATION IN A STATE PRISON, THE DEPARTMENT OF CORRECTIONS SHALL DESIGNATE THE STATE PRISON IN WHICH THE PERSON WILL BE PLACED; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration*, as provided in Title 45 for the offense,* at a county detention center or *at a* state prison~~, as provided in Title 45, for the offense~~ *to be designated by the department of corrections*;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any penalties imposed pursuant to subsection (1), if the sentencing judge finds that the victim of the offense has sustained a pecuniary loss, the sentencing judge shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to persons sentenced on or before [the effective date of this act].

Ap proved April 9, 2003

CHAPTER NO. 259

[HB 496]

AN ACT INCLUDING INJUNCTIONS OR OTHER COURT ORDERS UNDER SEXUAL ASSAULT OR STALKING LAWS IN THE DEFINITION OF "PROTECTION ORDER" FOR PURPOSES OF THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; AMENDING SECTIONS 40-15-402 AND 40-15-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-15-402, MCA, is amended to read:

"40-15-402. Definitions. As used in this part, the following definitions apply:

(1) "Foreign protection order" means a protection order issued by a court of another state.

(2) "Issuing state" means the state whose court issues a protection order.

(3) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) "Protected individual" means an individual protected by a protection order.

(5) "Protection order" means an injunction or other order issued by a court under the domestic violence, ~~or~~ family violence, *sexual assault, or stalking* laws of the issuing state to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.

(6) "Respondent" means the individual against whom enforcement of a protection order is sought.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders."

Section 2. Section 40-15-403, MCA, is amended to read:

"40-15-403. Judicial enforcement of order. (1) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a court of this state. The court shall enforce the terms of the order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of protection orders.

(2) A court of this state may not enforce a foreign protection order issued by a court of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(3) A court of this state shall enforce the provisions of a valid foreign protection order that govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(4) A court of this state may not enforce under this part a provision of a foreign protection order with respect to support.

(5) A foreign protection order is valid if it:

(a) identifies the protected individual and the respondent;

(b) is currently in effect;

(c) was issued by a court that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(d) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the court issued the order or, in the case of an order ex parte, the respondent was given notice and had *an opportunity to be heard before the order was issued or had* an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.

(6) A foreign protection order valid on its face is prima facie evidence of its validity.

(7) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(8) A court of this state may enforce provisions of a mutual foreign protection order that favor a respondent only if:

(a) the respondent filed a written pleading seeking a protection order from the court of the issuing state; and

(b) the court of the issuing state made specific findings in favor of the respondent."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 9, 2003

CHAPTER NO. 260

[HB 507]

AN ACT REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY ADOPT RULES TO IMPLEMENT AND PREVENT CIRCUMVENTION OR EVASION OF THE CHILD LABOR STANDARDS ACT; MAKING THE ADOPTION OF RULES PERMISSIVE; AMENDING SECTION 41-2-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-2-117, MCA, is amended to read:

"41-2-117. Power to adopt rules. The department ~~shall~~ *may* adopt rules, including definitions of terms, to carry out the purposes of this part and to prevent the circumvention or evasion of this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 9, 2003

CHAPTER NO. 261

[HB 686]

AN ACT REVISING THE PROVISIONS OF THE DEFERRED RETIREMENT OPTION PLAN IN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; PROVIDING FOR RETROACTIVE PARTICIPATION IN THE DEFERRED RETIREMENT OPTION PLAN FOR CERTAIN MEMBERS; AMENDING SECTION 19-9-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-1204, MCA, is amended to read:

"19-9-1204. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-9-801~~(2)~~*(1)* is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or disability and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period.

(6) Subject to the provisions of this section, a member who was eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003, and who elects to participate in the DROP on or before October 1, 2003, may include within the member's DROP period any time during the period beginning July 1, 2002, and ending June 30, 2003."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to active members of the municipal police officers' retirement system who were eligible to retire under 19-9-801(1) on or after July 1, 2002, but before July 1, 2003.

Ap proved April 9, 2003

CHAPTER NO. 262

[HB 731]

AN ACT PROVIDING AN INCREASED PENSION BENEFIT TO MEMBERS UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT WHO HAVE COMPLETED MORE THAN 20 YEARS OF SERVICE; AMENDING SECTIONS 19-17-401 AND 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for *a full* pension, *partial pension,* ~~and~~ *or* disability ~~benefits~~ *benefit* under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For *a* full pension ~~benefits~~ *benefit,* a member must have completed ~~at least~~ 20 ~~years'~~ *years of* service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 ~~years'~~ *years of* service may qualify for *a* partial pension ~~benefits~~ *benefit* if the member has completed at least 10 ~~years'~~ *years of* service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters'

pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service."

Section 2. Section 19-17-404, MCA, is amended to read:

"19-17-404. Amount of pension and disability benefits. (1) ~~(a)~~ Each eligible member must receive *a* pension ~~and~~ *or* disability ~~benefits~~ *benefit* as provided in this section.

~~(b)~~*(2) (a)* ~~The base~~ *Except as provided in subsection (2)(c), the full* pension benefit *paid to eligible members* is $150 a month ~~for members who are eligible for full pension benefits~~.

~~(c)~~*(b)* ~~Partial~~ *A partial* pension ~~benefits are~~ *benefit is* calculated by multiplying the full pension benefit in subsection ~~(1)(b)~~ *(2)(a)* by a fraction, the numerator of which is the *eligible* member's years of service and the denominator of which is 20.

(c) The full pension benefit of a member who has completed 20 years of service and is at least 55 years of age and who continues to be an active member must be increased by $7.50 a month for each additional year of active service up to 30 total years of service.

~~(2)~~*(3)* The disability benefit paid to *an* eligible ~~members~~ *member* is calculated in the same manner as partial pension benefits described in subsection ~~(1)(c)~~ *(2)(b)*, except that the numerator may not be less than 10.

~~(3)~~*(4)* If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner."

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved April 9, 2003

CHAPTER NO. 263

[SB 22]

AN ACT AMENDING THE MONTANA AGRICULTURAL SEED LAWS TO ESTABLISH NEW LICENSING AND ASSESSMENT FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING AND ASSESSMENT FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-5-130 AND 80-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-5-130, MCA, is amended to read:

"80-5-130. Licensing — application — fee. (1) All facilities located in the state that condition agricultural seed shall obtain a license from the department for each facility. However, a seed grower, when conditioning only seed from that grower's own production, is not required to be licensed under this part.

(2) Each seed conditioning plant ~~must~~ *shall* post in a conspicuous location in the facility:

(a) its fees for conditioning services; and

(b) the license for the facility.

(3) A person whose name and address appear on the label of agricultural seed sold in Montana, as required by 80-5-123, shall obtain a seed labeler's license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:

(a) a Montana certified seed grower when labeling certified seed from that grower's own production;

(b) any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and the person's name and address; or

(c) a Montana grower who labels seed only of that labeler's own production with a gross annual sales value of $5,000 or less.

(4) A person who sells agricultural seed in Montana shall obtain a seed dealer's license from the department for each place where seed is located or sold, except for:

(a) a person who sells seed only in sealed packages of 10 pounds or less;

(b) a person who sells seed that has a gross sales value of $1,000 or less a year;

(c) a person who sells seed only to a Montana-licensed seed dealer, labeler, or conditioner; or

(d) a Montana grower selling only seed of that grower's own production with a gross annual sales value of $5,000 or less.

(5) (a) ~~Each type of license for an in-state person costs $50 a year.~~ *Except as provided in this subsection (5), the fee is $55 a year for each type of license. The department may by rule adjust the license fee by type of license to maintain adequate funding for the administration of this part. The fee may not be less than $55 a year or more than $75 a year.*

(b) ~~The~~ *Except as provided in this subsection (5)(b), the* license fee for an out-of-state person selling seed in Montana is ~~$100~~ *$110* a year. *The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than $110 a year or more than $150 a year.*

~~(c) The license fee for an out-of-state person who labels seed that is being sold in Montana is $50 a year.~~

~~(d) The license fee for a person who sells only lawn and turf grass seed is $50 a year.~~

~~(e)~~*(c)* ~~The~~ *Except as provided in this subsection (5)(c), the* license fee for a Montana grower who sells, ~~or~~ labels, *or sells and labels* only seed of that grower's own production is ~~$50~~ *$55* a year. *The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than $55 a year or more than $75 a year.*

(6) An application for a license under this section must be made in a manner and on forms provided by the department. The application must contain ~~among other things~~:

(a) the location of each seed conditioning plant if the application is for a seed conditioning plant license;

(b) a sample label if the application is for a seed labeler license; and

(c) a list of persons selling seed if required by department rule.

(7) Seed dealers shall provide with all shipments of agricultural seed a bill of lading or other evidence of delivery that includes:

(a) the names of:

(i) the seed dealer;

(ii) the shipper, if other than the seed dealer;

(iii) the buyer; and

(iv) the receiver, if other than the buyer; and

(b) the destination where the seed will be first unloaded."

Section 2. Section 80-5-131, MCA, is amended to read:

"80-5-131. Assessment on sales into Montana — reporting — rulemaking. (1) ~~Seed~~ *Except as provided in this subsection, seed* labelers located outside Montana who sell agricultural seed in Montana shall report those sales and pay a fee of ~~15~~ *20* cents per $100 in gross annual sales of agricultural seed. *The department may by rule adjust the assessment fee to maintain adequate funding for the administration of this part. The assessment fee may not be less than 20 cents per $100 or more than 30 cents per $100 in gross annual sales of agricultural seed.*

(2) The department shall by rule establish:

(a) reporting requirements, including persons who shall report, the form of reports, and the scope of information to be reported;

(b) the due date applicable to reports; and

(c) penalty provisions applicable to reports that are not received by the due date, not to exceed $10 or 10% of the assessment due, whichever is greater.

(3) Failure to submit the report as required or to pay the assessment in full constitutes a violation subject to the penalty provisions of this chapter."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 9, 2003

CHAPTER NO. 264

[SB 24]

AN ACT ALLOWING A COUNTY OR MUNICIPALITY TO CHARGE A CONVENIENCE FEE FOR PROVIDING ELECTRONIC GOVERNMENT SERVICES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Convenience fee for electronic county government services. (1) The county may charge a convenience fee and may allow county departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services.

Section 2. Convenience fee for electronic municipal government services. (1) The municipality may charge a convenience fee and may allow municipal departments to collect the convenience fee on selected electronic government services in order to provide funding for the support and furtherance of electronic government services.

(2) As used in this section, "convenience fee" means a fee charged to recover the costs of providing electronic government services.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 21, and the provisions of Title 7, chapter 5, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 5, part 41, and the provisions of Title 7, chapter 5, part 41, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved April 9, 2003

CHAPTER NO. 265

[SB 85]

AN ACT REQUIRING THE LEGISLATIVE COUNCIL TO REVIEW PROPOSED LEGISLATION FOR AGENCIES OR ENTITIES THAT ARE NOT ASSIGNED TO AN INTERIM COMMITTEE OR THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING 5-11-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-105, MCA, is amended to read:

"5-11-105. Powers and duties of council. (1) The legislative council shall:

(a) employ and, in accordance with the rules for classification and pay established as provided in this section, set the salary of an executive director of the legislative services division, who serves at the pleasure of and is responsible to the legislative council;

(b) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules for classification and pay of legislative branch employees, other than those of the office of consumer counsel;

(c) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules governing personnel management of branch employees, other than those of the office of consumer counsel;

(d) adopt procedures to administer legislator claims for reimbursements authorized by law for interim activity;

(e) establish time schedules and deadlines for the interim committees of the legislature, including dates for requesting bills and completing interim work;

(f) review proposed legislation for agencies or entities that are not assigned to an interim committee, as provided in 5-5-223 through 5-5-228, or to the environmental quality council, as provided in 75-1-324; and

~~(f)~~*(g)* perform other duties assigned by law.

(2) If a question of statewide importance arises when the legislature is not in session and a legislative interim committee has not been assigned to consider the question, the legislative council shall assign the question to an appropriate interim committee, as provided in 5-5-202, or to the appropriate statutorily created committee."

Ap proved April 9, 2003

CHAPTER NO. 266

[SB 133]

AN ACT AUTHORIZING THE DEPARTMENT OF CORRECTIONS, RATHER THAN THE YOUTH COURT JUDGE, TO SELECT AND APPOINT THE JUVENILE PAROLE OFFICER REPRESENTATIVE ON YOUTH PLACEMENT COMMITTEES; AND AMENDING SECTION 41-5-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-121, MCA, is amended to read:

"41-5-121. Youth placement committees — composition. (1) In each judicial district, the youth court *and the department* shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth referred to the youth court or the department under 41-5-1512 and 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-1512 or 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief probation officer or the chief probation officer's designee, who is the presiding officer of the committee;

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's probation officer.

(3) The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

~~(3)~~*(4)* Committee members serve without compensation.

~~(4)~~*(5)* Notwithstanding the provisions of 41-5-123, the committee may be convened by the department or the probation officer of the youth court.

~~(5)~~*(6)* If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.

~~(6)~~*(7)* The department may not disburse funds from the budget allocation accounts established pursuant to 41-5-130 unless the youth court ~~has~~ *and the department have* established a youth placement committee as provided in this section."

Ap proved April 9, 2003

CHAPTER NO. 267

[SB 162]

AN ACT CONFORMING MONTANA UNEMPLOYMENT INSURANCE LAW WITH FEDERAL LAW BY EXCLUDING A "NO-ADDITIONAL-COST SERVICE" FROM WAGES FOR STATE UNEMPLOYMENT INSURANCE TAX PURPOSES; DEFINING "NO-ADDITIONAL-COST SERVICE"; AMENDING SECTION 39-51-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the

disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

~~(18)~~*(19)* "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

~~(19)~~*(20)* "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(20)~~*(21)* "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is wholly owned by that tribe.

~~(21)~~*(22)* "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

~~(22)~~*(23)* (a) "Wages", unless specifically exempted under subsection ~~(22)(b)~~ *(23)(b)*, means all remuneration payable for personal services, including the

cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family; ~~or~~

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules*; or*

(iii) a no-additional-cost service.

~~(23)~~*(24)* "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(24)~~*(25)* An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Effective date — applicability. [This act] is effective July 1, 2003, and applies to tax periods beginning on or after July 1, 2003.

Ap proved April 9, 2003

CHAPTER NO. 268

[SB 163]

AN ACT ALLOWING THE PAYMENT OF TAXES AND FEES TO LOCAL GOVERNMENT ENTITIES BY CREDIT CARD OR OTHER COMMERCIALLY ACCEPTABLE MEANS; PROVIDING THAT THE PAYMENT IS NOT CONSIDERED MADE UNTIL THE LOCAL GOVERNMENT ENTITY RECEIVES ITS PAYMENT FROM THE FINANCIAL INSTITUTION OR CREDIT CARD COMPANY; ALLOWING THAT A FEE BE CHARGED UPON NOTICE OF NONPAYMENT; IMPOSING A CONVENIENCE FEE ON A PERSON PAYING BY CREDIT CARD OR

OTHER COMMERCIALLY ACCEPTABLE MEANS; ALLOWING LOCAL GOVERNMENT ENTITIES TO ENTER INTO ANY NECESSARY AGREEMENTS WITH FINANCIAL INSTITUTIONS, CREDIT CARD COMPANIES, AND STATE AGENCIES; SPECIFYING THAT FEES PAID TO FINANCIAL INSTITUTIONS OR CREDIT CARD COMPANIES MUST BE PAID FROM AN APPROPRIATE FUND OF A LOCAL GOVERNMENT ENTITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Payment of fees and taxes by credit card and other commercially acceptable means. (1) A local government entity may accept payment by credit card, debit card, charge card, or other commercially acceptable means from a person making payment to the entity of taxes or fees that are legally authorized and imposed.

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the tax or fee liability is not discharged and the person has not paid the tax or fee until the local government entity receives payment or credit from the institution responsible for making the payment or credit. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the person paying the tax or fee.

(b) Upon notice of nonpayment, the local government entity may charge the person who attempted the payment of the tax or fee an amount not to exceed the costs of processing the claim for payment of the tax or fee. The amount that the local government entity charges must be added to the tax or fee due and collected in the same manner as the tax or fee due.

(3) (a) A person who makes payments to a local government entity as provided in this section may be required to pay a convenience fee of up to 3% of the amount of the payment.

(b) The local government entity shall deposit the convenience fees collected in the appropriate fund.

(4) (a) The local government entity may negotiate and enter into agreements with and pay required fees to financial institutions or credit card companies as necessary to facilitate implementation of this section.

(b) A financial institution or credit card company may not prohibit collection of the convenience fee provided for in subsection (3).

(c) Fees paid to a financial institution or credit card company must be paid from an appropriate fund of the local government entity.

(5) A local government entity may enter into cooperative agreements with state agencies as necessary to carry out the provisions of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 6, and the provisions of Title 7, chapter 6, part 6, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 9, 2003

CHAPTER NO. 269

[SB 197]

AN ACT CLARIFYING THAT A MAYOR MAY NOT REJECT OR REFUSE TO APPOINT TO THE CITY PLANNING BOARD A COUNTY REPRESENTATIVE WHO HAS BEEN DESIGNATED BY A BOARD OF COUNTY COMMISSIONERS; AND AMENDING SECTION 76-1-223, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-223, MCA, is amended to read:

"76-1-223. County representative for city planning board. ~~As soon as~~ *When* a city council has enacted an ordinance creating a city planning board *or when a vacancy occurs in the county's membership on the city planning board*, the board of county commissioners of the county ~~wherein~~ *in which* the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. ~~In the event of the failure of~~ *The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if* the county *fails* to ~~so~~ designate ~~such member,~~ *a representative, then* the mayor may appoint *as a representative of the county* a person of ~~his~~ *the mayor's* own choosing and at ~~his~~ *the mayor's* sole discretion ~~as a representative of the county~~."

Approved April 9, 2003

CHAPTER NO. 270

[SB 213]

AN ACT INCREASING THE MAXIMUM WHEAT AND BARLEY ASSESSMENT COLLECTED BY THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 80-11-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-206, MCA, is amended to read:

"80-11-206. Maximum annual assessment on wheat and barley grown, delivered, or stored. (1) There is an annual assessment of not more than ~~10~~ *20* mills per bushel on all wheat and not more than ~~15~~ *30* mills per hundredweight on all barley grown, delivered, or stored in the state of Montana and sold through commercial channels.

(2) The assessment is levied and imposed:

(a) in the case of a sale of wheat or barley, at the time of first sale of any wheat or barley by a seller, and must be collected by the first purchaser of the wheat or barley from the seller at the time of each settlement for wheat or barley purchased;

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program other than the commodity credit corporation, and must be collected by deducting the amount of the assessment

from the proceeds of the loan at the time the loan is made by the agency or person making the loan; or

(c) in the case of wheat or barley pledged under the federal commodity credit corporation, and the assessment must be collected at the time of purchase, not at the time a lease or loan is made under the program.

(3) The assessment levied under the provisions of this part must be deducted and collected as provided by this part, whether the wheat or barley is stored in this or any other state. The assessment attaches to each transaction, but a seller is not subject to assessment more than once irrespective of the number of times the wheat or barley is the subject of a sale, pledge, mortgage, or other transaction. The assessment is imposed and attaches on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley seller parts with title to the wheat or barley or creates some interest in the wheat or barley in a pledgee, mortgagee, or other person."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 9, 2003

CHAPTER NO. 271

[HB 285]

AN ACT REVISING LAWS RELATED TO MILITARY STATUS; PROVIDING THAT A PUBLIC HIGH SCHOOL SHALL PROVIDE EQUAL ACCESS TO U.S. ARMED FORCES RECRUITERS VISITING THE CAMPUS AS OTHER RECRUITERS; PROTECTING THE ELECTION LAW RESIDENCY RIGHTS OF A RESERVE MEMBER OF THE U.S. ARMED FORCES ACTIVATED TO FEDERAL MILITARY DUTY; PROHIBITING CERTAIN ADVERSE ACTIONS RELATED TO THE PROFESSIONAL LICENSURE OF A RESERVE MEMBER OF THE U.S. ARMED FORCES WHO IS ACTIVATED TO FEDERAL MILITARY DUTY FOR AN EXTENDED LENGTH OF TIME; AMENDING SECTIONS 13-1-112, 27-12-206, 37-1-105, 37-1-136, 37-3-313, 37-3-346, 37-4-307, 37-4-406, 37-5-307, 37-6-304, 37-7-303, 37-8-431, 37-9-305, 37-10-307, 37-11-201, 37-11-308, 37-12-307, 37-13-306, 37-14-310, 37-15-308, 37-16-407, 37-17-306, 37-17-307, 37-18-307, 37-19-306, 37-20-302, 37-21-302, 37-22-304, 37-23-205, 37-24-308, 37-25-307, 37-26-201, 37-27-105, 37-28-203, 37-29-306, 37-31-322, 37-32-305, 37-34-201, 37-35-203, 37-40-304, 37-42-308, 37-43-307, 37-43-313, 37-47-307, 37-50-317, 37-51-310, 37-53-103, 37-53-203, 37-54-211, 37-54-311, 37-60-312, 37-65-306, 37-66-307, 37-67-315, 37-68-310, 37-69-307, 37-72-306, AND 50-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Access to public high school campuses — definition. (1) The access provided to recruiters for the United States armed forces by a public high school must be equal to the access granted to other recruiting groups and organizations. The access must include any directory information that may be released about students pursuant to the Family Educational Rights and Privacy Act of 1974. Parents or legal guardians have the right to inform the high school that they do not wish to have an armed forces recruiter speak to their children.

(2) For purposes of this section, "armed forces" means the United States army, air force, navy, marines, coast guard, and merchant marine, including the United States military reserves of these services, the Montana national guard, and the service academies and training programs for these services.

Section 2. Protection of professional licenses for activated military reservists — rulemaking authority — definitions. (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

Section 3. Section 13-1-112, MCA, is amended to read:

"13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) *(a)* An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place."

Section 4. Section 27-12-206, MCA, is amended to read:

"27-12-206. Funding. (1) There is a pretrial review fund to be administered by the director for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director. The fund may not become part of or revert to the

general fund of this state but is subject to auditing by the legislative auditor. Money from the assessments levied under this section must be deposited in the fund.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year that is not required for the administration of this chapter must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date that the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee of $25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of labor and industry has under 37-12-307 with regard to a chiropractic physician's annual license fee.*However, nothing in this section may be interpreted to conflict with [section 2].*"

Section 5. Section 37-1-105, MCA, is amended to read:

"37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them ~~which~~ *that* relate to the propriety of the applicants' practice of or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information, *except pursuant to [section 2],* or the filing of false information is grounds for denial or revocation of a license."

Section 6. Section 37-1-136, MCA, is amended to read:

"37-1-136. Disciplinary authority of boards — injunctions. (1) ~~Each~~ *Subject to [section 2], each* licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person

who has been enjoined and who violates the injunction is punishable for contempt of court."

Section 7. Section 37-3-313, MCA, is amended to read:

"37-3-313. Registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay to the department a registration fee as prescribed by the board.

(2) The payments for registration must be made prior to the expiration date of the registration, as set forth in a department rule, and a receipt acknowledging payment of the registration fee must be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) ~~In~~ *Except as provided in [section 2], in* case of default in the payment of the registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A ~~registered or~~ certified letter addressed to the last-known address of the person failing to comply with the requirements of registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) A registration or license fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state."

Section 8. Section 37-3-346, MCA, is amended to read:

"37-3-346. Certificate renewal — fee. (1) A physician certified to practice telemedicine shall renew the telemedicine certificate every 2 years.

(2) The physician shall complete and return an application for renewal provided by the board by a date established by board rule.

(3) The physician shall pay an application renewal fee in an amount established by board rule.

(4) This section may not be interpreted to conflict with [section 2]."

Section 9. Section 37-4-307, MCA, is amended to read:

"37-4-307. Renewal fee — default — local fees prohibited. (1) Each licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.

(3) (a) ~~In~~ *Except as provided in [section 2], in* case of default in payment of the renewal fee by a licensee, the license must be forfeited by the licensee. The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice

must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for forfeiture, the license may not be forfeited.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each renewal period that they were unpaid, plus a late penalty fee for each renewal period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter."

Section 10. Section 37-4-406, MCA, is amended to read:

"37-4-406. Renewal fee — default — forfeiture of license — local fees prohibited. (1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.

(3) ~~In~~ *Except as provided in [section 2], in* case of default in payment of the renewal fee by any licensee, the licensee shall forfeit the license.

(a) The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) The payment of the renewal fee on or before the time set for forfeiture, with a reasonable late fee set by the board, excuses the default.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each period that they were unpaid, plus a late penalty for each period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(6) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter."

Section 11. Section 37-5-307, MCA, is amended to read:

"37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall, on or before the date set by department rule, pay a renewal fee prescribed by the board to the department. At least 2 weeks before the renewal date, the department shall send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) ~~The~~ *Subject to subsection (3), the* certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee.

(3) This section may not be interpreted to conflict with [section 2]."

Section 12. Section 37-6-304, MCA, is amended to read:

"37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses must be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed on a date set by department rule.

(4) A license renewal fee set by the board must be paid on a date set by department rule.

(5) The department shall mail renewal notices no later than 60 days prior to the renewal date.

(6) ~~If~~ *Except as provided in [section 2], if* the renewal fee is not paid on or before the renewal date, the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. A certificate may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) A license revoked for nonpayment of the renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

(8) Licenses must be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 13. Section 37-7-303, MCA, is amended to read:

"37-7-303. Renewal fee. *(1)* A person licensed and registered by the board shall pay to the board on or before the license expiration date set by board rule a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to

practice pharmacy in this state. A certificate and renewal expires at the time prescribed by board rule. A ~~defaulter in~~ *person who defaults in the payment of* a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with other requirements prescribed by law.

(2) This section may not be interpreted to conflict with [section 2]."

Section 14. Section 37-8-431, MCA, is amended to read:

"37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of a license to each person to whom a license was issued or renewed. The applicant shall carefully complete and sign the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew the license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date.

(6) This section may not be interpreted to conflict with [section 2]."

Section 15. Section 37-9-305, MCA, is amended to read:

"37-9-305. Renewal of registration and license. Each holder of a nursing home administrator's registration and license shall renew it by payment of the required fee for the next subsequent period prior to the expiration date of the currently valid registration and license, *except as may be otherwise provided in [section 2]*. Renewals of registrations or licenses must be granted as a matter of course. However, if the board finds, after notice and hearing, that the applicant has acted or failed to act in a manner or under circumstances that would constitute grounds for discipline, it may not issue the renewal."

Section 16. Section 37-10-307, MCA, is amended to read:

"37-10-307. Renewal — fee. *(1)* A registered optometrist who desires to continue the practice of optometry in this state shall, before the license expiration date established by rule of the department, pay to the department a renewal fee prescribed by the board in return for which a renewal of registration must be issued. ~~If~~ *Subject to subsection (2), if* a person fails or neglects to procure a renewal of registration, the person's certificate of registration must be revoked

by the board. However, a certificate of registration may not be revoked without 90 days' notice having been given to the delinquent *person*, who within this period may renew the certificate of registration on the payment of the renewal fee with a penalty prescribed by the board.

(2) This section may not be interpreted to conflict with the provisions of [section 2]."

Section 17. Section 37-11-201, MCA, is amended to read:

"37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure;

(c) conduct written or computerized examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate; and

(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants, *subject to the provisions of [section 2]*.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."

Section 18. Section 37-11-308, MCA, is amended to read:

"37-11-308. Renewal of license — fee. A licensed physical therapist and a licensed physical therapist assistant shall, on or before the date set by department rule, apply to the department for a license renewal and pay a fee set by board rule. A license that is not renewed before the renewal date automatically lapses, *except as provided in [section 2]*. The board may, in its

discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee."

Section 19. Section 37-12-307, MCA, is amended to read:

"37-12-307. Renewal of license — fees. ~~A~~ *Except as provided in [section 2]:*

(1) a license expires on the date set by department rule and must be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee qualifies for renewal. ~~All~~

(2) all applicants for renewal who have not paid the renewal fee on or before the renewal date shall pay an additional late fee prescribed by the board."

Section 20. Section 37-13-306, MCA, is amended to read:

"37-13-306. Renewal — fee — military exemption. (1) ~~The~~ *A* license to practice acupuncture must be renewed on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on ~~forms~~ *a form* prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be ~~in the hands of~~ *received by* the secretary of the board not later than the expiration date of the license.

(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be canceled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is ~~in the hands of~~ *received by* the secretary within 30 days of the renewal date.

(3) ~~If~~ *Subject to subsection (5), if* the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon the board's records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.

(4) A licensee who allows the license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all renewal fees then accrued plus an additional fee prescribed by the board for each renewal period following the cancelling of the license.

(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the renewal fee or make application for renewal until the renewal date of the calendar period in which the person returns from military service to civilian or inactive status*, except as may be otherwise provided by the board pursuant to [section 2]*."

Section 21. Section 37-14-310, MCA, is amended to read:

"37-14-310. Renewal — fee — reissuance of license. (1) Licenses expire on the date established by rule of the department.

(2) A license must be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing information that the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

(4) This section may not be interpreted to conflict with [section 2]."

Section 22. Section 37-15-308, MCA, is amended to read:

"37-15-308. Renewal. (1) Each licensed speech-language pathologist or audiologist shall pay to the board the fee for the renewal of the license according to rules adopted by the department, *subject to the provisions of [section 2].*

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of the license and the amount of the renewal fee. This notice must be mailed to each licensed speech-language pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application ~~therefor~~ *for renewal*.

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive the person of the right to renew the license, but, *unless the person is excepted pursuant to [section 2],* the fee must be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more is subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct ~~which~~ *that* violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If ~~it~~ *the license* is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew a license within 2 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated, *except as provided in [section 2].* However, the person may reapply for and obtain a new license if the person meets the requirements of this chapter."

Section 23. Section 37-16-407, MCA, is amended to read:

"37-16-407. Renewal of license — fee — inactive status. (1) A person who practices the fitting of hearing aids and related devices shall pay to the department a fee as set by the board for a renewal of the person's license. The fee must be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The board shall impose a late fee for renewal applications received after the renewal deadline.

(2) Each applicant for license renewal shall submit evidence showing completion of 10 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if the inactive licensee:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board.

(4) This section may not be interpreted to conflict with [section 2]."

Section 24. Section 37-17-306, MCA, is amended to read:

"37-17-306. Renewal. (1) The license expires on the date set by department rule. The department shall notify each person licensed under this chapter relative to the date of the expiration and the amount of the renewal fee. This notice must be mailed to each licensed psychologist at the licensee's listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay the renewal fee by the expiration date does not deprive the person of the right to renew. However, a late fee must be assessed in accordance with board rule. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to successfully complete an examination if the board so determines.

(3) This section may not be interpreted to conflict with [section 2]."

Section 25. Section 37-17-307, MCA, is amended to read:

"37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, *except as provided in [section 2],* none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee.

(2) Fees received by the department must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 26. Section 37-18-307, MCA, is amended to read:

"37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure a certificate of registration from the department on or before the date set by department rule. The certificate must be issued by the department on the payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the licensee qualifies for renewal.

(2) Failure of a person licensed to procure a certificate of registration on or before the date set by department rule constitutes a forfeiture of the license held by the person. A person who has forfeited the license may have it restored by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of the license during the period of active duty with the armed services. However, within 1 year after release or discharge from duty in the armed services the person shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before the date set by department rule, and the same forfeiture and restoration requirements apply. *This section may not be interpreted to conflict with [section 2].*

(4) A person licensed must at all times have the person's residence and office address on file with the department."

Section 27. Section 37-19-306, MCA, is amended to read:

"37-19-306. Renewal of mortician's license — fee — suspension for nonrenewal. (1) The license fee for a mortician's license must be postmarked on or before the date set by department rule. The amount of the renewal fee must be set by the board.

(2) ~~Failure~~ *Subject to subsection (3), failure* to pay the renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board.

(3) This section may not be interpreted to conflict with [section 2]."

Section 28. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval fee — renewal of license — renewal fee. (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license.

(6) ~~If~~ *Except as provided in [section 2], if* the license renewal fee is not paid on or before the renewal date, the board may revoke the license after giving 30 days' notice to the licensee. A license may not be revoked for nonpayment of a renewal

fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 29. Section 37-21-302, MCA, is amended to read:

"37-21-302. Registered dietitian — qualifications. ~~No~~ *A* person may *not* use, in connection with ~~his~~ *the person's* name or place of business, the term "registered dietitian" or represent in any way that ~~he~~ *the person* is a registered dietitian unless ~~he~~ *the person*:

(1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or

(2) (a) has fulfilled all the requirements set forth in 37-21-301(2);

(b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and

(c) *except as provided in [section 2],* has satisfactorily completed~~, from time to time, such~~ *the* continuing education requirements as may be established by an authorized agency."

Section 30. Section 37-22-304, MCA, is amended to read:

"37-22-304. Renewal of license. (1) An application for renewal of an existing license must be made on or before the date set by department rule.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for renewal.

(3) ~~The~~ *Subject to subsection (5), the* renewal fee is increased by 10% for each month or part of a month that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(4) ~~A~~ *Subject to subsection (5), a* license not renewed within 1 year following its expiration date terminates automatically.

(5) This section may not be interpreted to conflict with [section 2]."

Section 31. Section 37-23-205, MCA, is amended to read:

"37-23-205. Renewal of license. (1) The department may adopt rules to provide for the renewal of an existing license.

(2) An application for renewal of an existing license must be made on or before the expiration date set by department rule.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for renewal.

(4) ~~The~~ *Subject to subsection (6), the* renewal fee is increased by 10% for each month or part of a month that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) ~~A~~ *Subject to subsection (6), a* license not renewed within 1 year following its expiration date terminates automatically.

(6) This section may not be interpreted to conflict with [section 2]."

Section 32. Section 37-24-308, MCA, is amended to read:

"37-24-308. Renewal of license. *(1)* Each license issued under this chapter is subject to annual renewal on the date set by department rule upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but a late renewal of a license may not be granted more than 5 years after its expiration.

(2) This section may not be interpreted to conflict with [section 2]."

Section 33. Section 37-25-307, MCA, is amended to read:

"37-25-307. Renewal of license. (1) An application for renewal of license must be made for a period and on a date set by the department.

(2) A renewal license must be issued when the applicant submits proof that requirements for continued licensure have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the license renewal date.

(4) This section may not be interpreted to conflict with [section 2]."

Section 34. Section 37-26-201, MCA, is amended to read:

"37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set nonrefundable fees, commensurate with costs, for application, examination, licensure, and other administrative services;

(6) approve naturopathic medical colleges as defined in 37-26-103;

(7) issue certificates of specialty practice;

(8) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; ~~and~~

(9) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301*; and*

(10) adopt rules to implement the provisions in [section 2]."

Section 35. Section 37-27-105, MCA, is amended to read:

"37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board ~~shall have~~ *has* the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, and revocation of licenses *consistent with the provisions in [section 2]*;

(f) the adoption of disciplinary standards for licensees;

(g) the development of standardized informed consent and reporting forms;

(h) the adoption of ethical standards for licensed direct-entry midwives;

(i) the adoption of supporting documentation requirements for primary birth attendants; and

(j) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201."

Section 36. Section 37-28-203, MCA, is amended to read:

"37-28-203. Renewal of license — application and fee. (1) ~~A~~ *Except as provided in [section 2], a* respiratory care practitioner's license expires on the date set by department rule.

(2) A licensee may renew a license by:

(a) filing an application with the board on a form approved by the board; and

(b) paying a renewal fee in an amount established by the board."

Section 37. Section 37-29-306, MCA, is amended to read:

"37-29-306. Licensing. (1) A denturist license is valid for a period established by department rule and expires on the date set by department rule. A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure. In addition, the denturist shall submit proof that the denturist holds a current cardiopulmonary resuscitation card. The license must bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentation necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) This section may not be interpreted to conflict with [section 2]."

Section 38. Section 37-31-322, MCA, is amended to read:

"37-31-322. Renewal — delinquency fee. (1) Licenses and certificates may not be issued for longer than 1 year unless otherwise provided by department rule. Licenses and certificates expire on the date set by department rule and may be renewed. Licenses and certificates may be renewed by application made on or before the renewal date and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and must be as set by the board.

(2) A fee prescribed by the board must be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline.

(3) This section may not be interpreted to conflict with [section 2]."

Section 39. Section 37-32-305, MCA, is amended to read:

"37-32-305. Fees — renewal — deposit of money collected. (1) The fee for an original electrologist license must be set by the board. The renewal is automatic, unless revoked or suspended for cause, and the renewal fee must be set by the board.

(2) The fee for an original electrologist salon license ~~fee~~ must be the same as that for cosmetology salons. The renewal fee must be the same as that for cosmetology salons.

(3) A license issued under this chapter expires on the date set by department rule and may be renewed at periodic intervals as determined by department rule. Failure to renew subjects the licensee to a late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board in administration of the chapter.

(5) This section may not be interpreted to conflict with [section 2]."

Section 40. Section 37-34-201, MCA, is amended to read:

"37-34-201. Powers and duties of ~~the~~ board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application procedure and acceptable certifications for each category of license;

(b) the establishment of license fees commensurate with actual costs;

(c) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303;

(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses *consistent with the provisions in [section 2]*;

(e) the adoption of disciplinary standards for licensees;

(f) the establishment of hearing procedures; and

(g) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation."

Section 41. Section 37-35-203, MCA, is amended to read:

"37-35-203. Renewal of license — application and fee. (1) A license expires biennially on the date set by department rule.

(2) A license holder may renew a license by:

(a) filing an application on a form prescribed by the department; and

(b) paying a renewal fee in an amount established by the department.

(3) A default in the payment of a renewal fee after the date it is due may increase the fee, as prescribed by the department by rule.

(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a licensed addiction counselor in this state.

(5) ~~A~~ *Subject to subsection (6), a* license not renewed within 1 year following its expiration date terminates automatically.

(6) This section may not be interpreted to conflict with [section 2]."

Section 42. Section 37-40-304, MCA, is amended to read:

"37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew the license by paying a renewal fee and meeting qualifications set by the board.

(3) Renewal fees are due on or before the renewal date set by department rule. ~~If~~ *Subject to subsection (4), if* the renewal fee is not paid, the license expires. Licenses ~~which~~ *that* have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

(4) This section may not be interpreted to conflict with [section 2]."

Section 43. Section 37-42-308, MCA, is amended to read:

"37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134, except that the department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal funds received to fund the administration of the program.

(2) ~~If~~ *Subject to subsection (6), if* a certificate holder does not apply for a renewal of the certificate before July 1 and remit to the department the

necessary renewal fee, the department shall suspend the certificate. ~~The~~ *Subject to subsection (6), the* department shall revoke any certificate that remains suspended for a period of more than 30 days. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension must be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through the person's own fault desires to continue as a water or wastewater plant operator, the person shall make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

(6) This section may not be interpreted to conflict with the provisions of [section 2]."

Section 44. Section 37-43-307, MCA, is amended to read:

"37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) ~~If~~ *Subject to subsection (3), if* a licensee does not apply for renewal of ~~his~~ *the* license before the first day of a license year and remit to the department the renewal fee, ~~he shall have his~~ *the* license *must be* suspended by the board. ~~If~~ *Subject to subsection (3), if* the license remains suspended for a period of more than 30 days after the first day of a license year, it ~~shall~~ *must* be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through ~~his~~ *the person's* own fault desires to engage in the business of water well drilling or monitoring well construction in this state or contracting ~~therefor~~ *for those services*, ~~he~~ *the person* ~~must~~ *shall* apply under 37-43-303. Notice of suspension ~~shall~~ *must* be given *to* a licensee when the suspension occurs.

(3) This section may not be interpreted to conflict with the provisions of [section 2]."

Section 45. Section 37-43-313, MCA, is amended to read:

"37-43-313. Disciplinary authority. (1) If the board finds grounds for disciplinary action, as provided in subsection (2), the board may by order:

(a) require a licensee to repair or reconstruct substandard wells at the licensee's expense to meet board standards;

(b) require a licensee to take further training or education;

(c) place probationary terms and conditions on a license;

(d) suspend a license for a period not to exceed 1 year; or

(e) revoke a license, specifying that the licensee may not reapply for licensure for a period of 3 years from the date of revocation.

(2) Grounds for disciplinary action include:

(a) violating the rules, construction standards, or laws established by the board and this chapter;

(b) disobeying an order from the board to repair or reconstruct a substandard well;

(c) violating probationary terms of or conditions on a license;

(d) misrepresenting facts on well log reports, license or renewal applications, or apprenticeship records or in response to board inquiries; or

(e) failing to maintain qualifications for licensure as specified in 37-43-305.

(3) This section may not be interpreted to conflict with the provisions of [section 2]."

Section 46. Section 37-47-307, MCA, is amended to read:

"37-47-307. Investigation of applicant — issuance or denial of license. (1) The department shall investigate each applicant for an outfitter's, guide's, or professional guide's license. The board shall determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for *a* license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

(4) This section may not be interpreted to conflict with [section 2]."

Section 47. Section 37-50-317, MCA, is amended to read:

"37-50-317. Certificate, license, and permit expiration — renewal fees. (1) Certificates, licenses, and permits issued by the board expire on the date set by department rule.

(2) Certificates and licenses must be renewed by the department upon payment of the periodic renewal fee set by the board and upon compliance with requirements prescribed by the board.

(3) Permits must be renewed by the department upon payment of the periodic renewal fee and upon compliance with the requirements prescribed by the board.

(4) This section may not be interpreted to conflict with [section 2]."

Section 48. Section 37-51-310, MCA, is amended to read:

"37-51-310. Renewal. (1) License fees are due and payable for the ensuing licensure period at a time prescribed by department rule. Failure to remit renewal fees before the expiration date of the licensure period, *except as provided in [section 2],* automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) A licensee who allows the license to lapse by failing to remit the fees before the expiration date may have the license reinstated by the board by:

(a) within 45 days after the expiration date, providing a satisfactory explanation to the board for the licensee's failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

(3) The board may also charge a late fee equal to twice the current renewal fee, but not less than $100, to a licensee who does not renew the license as required by subsection (1).

(4) A licensee shall submit proof of completion of continuing education within the time and in the manner required by the board. ~~If~~ *Except as provided in [section 2], if* a licensee fails to submit the proof, the board shall notify the licensee of the failure and provide the licensee the opportunity to present to the board the reasons for the failure. ~~Upon~~ *Subject to [section 2], upon* failure of the licensee to show good cause for failing to submit timely proof of completion of continuing education, the board may suspend the individual's license. After suspension, the licensee is entitled to a hearing on the suspension in accordance with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana Administrative Procedure Act."

Section 49. Section 37-53-103, MCA, is amended to read:

"37-53-103. Fees. (1) The board shall charge and collect fees fixed by this section. All fees collected under this chapter must be deposited into the state special revenue fund for the use of the board and are not refundable except as provided in this chapter.

(2) The initial fee for filing an application for registration for sale of a timeshare is $500. Any filing containing over 400 intervals must be accompanied by a fee of $5 for each additional interval.

(3) A fee for amendment of registration for the purpose of adding additional intervals during a registration period is $200 plus $5 for each interval in excess of 50 added by such amendment.

(4) The fee for an application for renewal of registration is $200.

(5) The fee for an initial application for or renewal of a license as a timeshare salesperson is $15.

(6) The fee for an initial application for or renewal of a license as a timeshare broker is $35.

(7) The fee for an amendment of registration, other than the addition of units, as required in 37-53-203(3), is $200.

(8) This section may not be interpreted to conflict with [section 2]."

Section 50. Section 37-53-203, MCA, is amended to read:

"37-53-203. Registration period — renewal. (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.

(4) This section may not be interpreted to conflict with [section 2]."

Section 51. Section 37-54-211, MCA, is amended to read:

"37-54-211. Late renewal of license. (1) ~~A~~ *Subject to subsection (3), a* license that is not renewed within 1 year of the most recent renewal date automatically terminates. A licensee may renew the license within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements for continued licensure; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform appraisal services as a licensed real estate appraiser following expiration of the license.

(3) This section may not be interpreted to conflict with [section 2]."

Section 52. Section 37-54-311, MCA, is amended to read:

"37-54-311. Late renewal of certificate. (1) ~~A~~ *Subject to subsection (3), a* certificate that is not renewed within 1 year of the most recent renewal date automatically terminates. A certificate holder may renew the certificate within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements set by law; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform appraisal services in this state following expiration of the certificate.

(3) This section may not be interpreted to conflict with [section 2]."

Section 53. Section 37-60-312, MCA, is amended to read:

"37-60-312. Renewal. (1) Licenses and identification cards issued under this chapter expire at midnight on the dates prescribed by department rule if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license or identification card.

(3) This section may not be interpreted to conflict with the provisions of [section 2]."

Section 54. Section 37-65-306, MCA, is amended to read:

"37-65-306. Renewal — fee. *(1)* A licensed architect in this state who desires to continue the practice of the profession shall, on or before the renewal date set by department rule:

~~(1)~~*(a)* pay to the department a reasonable fee as prescribed by the board; and

~~(2)~~*(b)* present evidence to the board of continued qualification for licensure.

(2) This section may not be interpreted to conflict with [section 2]."

Section 55. Section 37-66-307, MCA, is amended to read:

"37-66-307. Renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expires on the date set by department rule. Renewal may be effected on or before the renewal date by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, shall give written notice to the board, and the board shall suspend the license. The person may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter must be deposited in the state special revenue fund by the department. The money collected must be used by the department to carry out the purpose, duties, and responsibilities set forth in this chapter, subject to 37-1-101(6).

(4) This section may not be interpreted to conflict with [section 2]."

Section 56. Section 37-67-315, MCA, is amended to read:

"37-67-315. Biennial renewal — fee — statement of competency. (1) Licenses expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify each person licensed under this chapter of the date of the expiration of the person's license and the amount of the fee required for its renewal for 2 years. This notice must be mailed at least 1 month in advance of the date of the expiration of the license. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or a professional land surveyor. For renewal of a dual license as both a professional engineer and a professional land surveyor, the fee must be set by the board.

(2) ~~A~~ *Subject to subsection (5), a* license may not be renewed unless the registrant submits a statement to the effect and the board is satisfied that the licensee has maintained competency by:

(a) the continued practice of engineering or land surveying; and

(b) engaging in other activities that provide for the maintenance of competency if prescribed by board rule, such as continuing education, which may require up to 15 professional development hours as prescribed by board rule and is generally patterned after the model rules of the national council of examiners for engineering and surveying.

(3) Failure on the part of a licensee to renew the license biennially prior to the expiration date does not deprive the licensee of the right of renewal;

however, a licensee who fails to pay the renewal fee for an additional year of the biennium is considered a new applicant and is required to submit a new application.

(4) The fee for any licensee who fails to renew the license prior to the expiration date must be increased by an amount not to exceed 50% of the renewal fee. Renewal may not be completed until all fees are paid.

(5) This section may not be interpreted to conflict with [section 2]."

Section 57. Section 37-68-310, MCA, is amended to read:

"37-68-310. License renewal period — renewal of lapsed licenses. *(1)* Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board or unless the department changes the duration of the renewal period, must be renewed for a period of 3 years by the department on application for renewal made to the department on or before the renewal date set by department rule and on the payment of a renewal fee. If application for renewal is not made on or before the renewal date, an additional fee prescribed by board rule must be paid. It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. ~~A~~ *Subject to subsection (2), a* lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license.

(2) This section may not be interpreted to conflict with [section 2]."

Section 58. Section 37-69-307, MCA, is amended to read:

"37-69-307. Examination fee and renewal fee. (1) An applicant for a master plumber's license may not submit to the examinations prescribed by the board until the applicant has deposited with the department an examination fee prescribed by the board, and an applicant for a journeyman plumber's license may not submit to the examination prescribed by the board until the applicant has deposited with the department an examination fee as prescribed by the board.

(2) ~~A~~ *Subject to subsection (4), a* license when issued expires on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period established by the department by rule.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

(4) This section may not be interpreted to conflict with [section 2]."

Section 59. Section 37-72-306, MCA, is amended to read:

"37-72-306. Renewal. (1)~~A~~ *Subject to subsection (3), a* license issued under this chapter expires and is invalid after the renewal date established by the department by rule. The department shall notify each person licensed under this chapter of the date of the expiration of the person's license and the amount of the license renewal fee. The notice must be mailed to each licensed

construction blaster at the blaster's listed address at least 1 month before the expiration of the blaster's license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay the renewal fee by the expiration date does not deprive the licensee of the right to renew the licensee's license, but *subject to subsection (3),* the fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the department, and the applicant may be required to successfully complete an examination.

(3) This section may not be interpreted to conflict with [section 2]."

Section 60. Section 50-6-203, MCA, is amended to read:

"50-6-203. Rules. (1) The board, after consultation with the department of public health and human services, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary, *subject to the provisions of [section 2].*"

Section 61. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 2].

Section 62. Effective date. [This act] is effective on passage and approval.

Section 63. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002.

Ap proved April 9, 2003

CHAPTER NO. 272

[HB 220]

AN ACT REVISING AND CLARIFYING THE LAWS PROVIDING FOR RESTITUTION BY CRIMINALS TO ADDRESS COURT OPINIONS; ENSURING THAT THE DUTY TO PAY CONTINUES TO EXIST UNTIL RESTITUTION IS FULLY PAID; ALLOWING THE STATE TO CONTRACT WITH A PRIVATE ENTITY OR GOVERNMENTAL AGENCY FOR THE COLLECTION OF RESTITUTION PAYMENTS; PROVIDING FOR FULL REPLACEMENT VALUE RESTITUTION; ADDING METHODS TO ENSURE PAYMENT OF RESTITUTION; CHANGING PROCEDURES FOR SUPERVISION OF THE PAYMENT OF RESTITUTION; AMENDING SECTIONS 46-18-201, 46-18-237, 46-18-241, 46-18-242, 46-18-243, 46-18-244,

46-18-245, AND 53-30-132, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration at a county detention center or state prison, as provided in Title 45, for the offense;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any *other* penalties imposed ~~pursuant to subsection (1)~~, if *a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and* the sentencing judge finds that ~~the~~ *a* victim ~~of the offense~~, *as defined in 46-18-243,* has sustained a pecuniary loss, the sentencing judge shall*, as part of the sentence,* require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249*, whether or not any part of the sentence is deferred or suspended*.

(6) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(7) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Section 46-18-237, MCA, is amended to read:

"46-18-237. Garnishment — report by supervising authority. (1) If the department of corrections becomes aware that a ~~prisoner~~ *person* while incarcerated under the legal custody of the department of corrections *or a person supervised by the department* is entitled to receive money from any source, the ~~prisoner's~~ *person's* supervising authority may prepare a report identifying:

(a) the total costs incurred by the state or county during the ~~prisoner's~~ *person's* incarceration;

(b) the criminal sentences imposed upon the ~~prisoner~~ *person*, including:

(i) the amount of restitution, if any, ordered in each sentence;

(ii) the name and current address of each victim or other person to whom restitution is owed;

(iii) the amount of restitution paid by the ~~prisoner~~ *person*; and

(iv) the amount of restitution currently owed by the ~~prisoner~~ *person* for each sentence;

(c) the amount of any child support owed by the ~~prisoner~~ *person*.

(2) The supervising authority shall provide notice and a copy of the report to the ~~board of crime control~~ *office of victims services in the department of justice* and the county attorney for the county in which the ~~prisoner~~ *person* was sentenced, either of whom may submit the report along with a petition for garnishment to the court that sentenced the ~~prisoner~~ *person*. The court may order garnishment of the ~~prisoner's~~ *person's* money for the payment of restitution, child support, and per diem costs of incarceration owed by the ~~prisoner~~ *person*. Upon receipt of the petition, the court shall provide a copy of the report to the ~~prisoner~~ *person*, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the ~~prisoner~~ *person*.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, child support, and repayment for per diem costs owed by the ~~prisoner~~ *person*. The court shall order, up to the amount of money available, payment of an amount equal to the restitution owed by the ~~prisoner~~ *person* to the person designated under 46-18-245 to supervise the making of restitution payments, any outstanding child support payments to the department of public health and human services for disbursement to the obligee, and per diem costs owed by the ~~prisoner~~ *person*. All restitution owed by the ~~prisoner~~ *person* must be paid prior to payment of any child support payments. All child support owed by the ~~prisoner~~ *person* must be paid prior to the payment of any per diem costs."

Section 3. Section 46-18-241, MCA, is amended to read:

"46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall, *as part of the sentence,* require an offender to make full restitution to any victim ~~of the offense~~ who has sustained pecuniary loss ~~as a result of the offense~~, including a person suffering an economic loss ~~as a result of the crime~~. The duty to pay full restitution under the sentence remains with the offender *or the offender's estate* until full restitution is paid *and is a condition of any probation or parole*.

(2) *(a)* The court shall require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, if the offender is able to pay, by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5.

(b) A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid. The department may contract with a government agency or private entity for the collection of the payments for restitution and the cost of collecting the payments for restitution during the period following state supervision or state custody of the offender. The department shall adopt rules to implement this subsection (2)(b).

(c) ~~Payment~~ *In a misdemeanor case, payment of restitution and of the cost of supervising the payment of restitution* must be made to the court~~, which~~ *until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The court* shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245*, which shall disburse the restitution to the person or entity to whom the court ordered restitution to be paid*.

(3) If at any time the court finds that, because of circumstances beyond the offender's control, the offender is not able to pay any restitution, the court may order the offender to perform community service during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed."

Section 4. Section 46-18-242, MCA, is amended to read:

"46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that a victim~~of the offense~~ may have sustained a pecuniary loss~~as a result of the offense~~ or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) ~~documentation~~ *a list* of the offender's ~~financial resources and future ability to pay restitution~~ *assets*; and

(b) ~~documentation of~~ *an affidavit that specifically describes* the victim's pecuniary loss *and the replacement value in dollars of the loss*, submitted by the victim ~~or by the board of crime control if compensation for the victim's loss has been reimbursed by the state~~.

(2) When a presentence report is not authorized or requested, the court~~may receive~~ *shall accept* evidence of ~~the offender's ability to pay and~~ the victim's loss at the time of sentencing."

Section 5. Section 46-18-243, MCA, is amended to read:

"46-18-243. Definitions. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation ~~the money equivalent of loss resulting from~~

~~property taken, destroyed, broken, or otherwise harmed and~~ out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; ~~and~~

(b) the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender's criminal conduct;

(c) future medical expenses that the victim can reasonably be expected to incur as a result of the offender's criminal conduct, including the cost of psychological counseling, therapy, and treatment; and

~~(b)~~*(d)* reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee; ~~or~~

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss*;*

(v) the crime victims compensation and assistance program established under Title 53, chapter 9, part 1, to the extent that it has reimbursed a victim for pecuniary loss; and

(vi) any person or entity whom the offender has voluntarily agreed to reimburse as part of a voluntary plea bargain.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction."

Section 6. Section 46-18-244, MCA, is amended to read:

"46-18-244. Type and time of payment — defenses — *ensuring payment.* (1) The court shall specify the total amount ~~to be paid and the method and time of payment and may permit payment in installments~~*of restitution that the offender shall pay*.

(2) ~~In determining the amount, method, and time of each installment payment, the court shall consider the financial resources and future ability of the offender to pay. The court shall provide for payment to a victim of the full amount of the pecuniary loss caused by the offense. The~~ *In the proceeding for the determination of the amount of restitution, the* offender may assert any defense that the offender could raise in a civil action for the loss ~~sought to be compensated by the restitution order~~ *for which the victim seeks compensation*.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim~~;~~

~~(c) payment of up to one-third of the offender's prison earnings~~.

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services to the victim in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

(5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard.

(6) For a felony offense:

(a) during any period that the offender is incarcerated, the department of corrections shall take a percentage, as set by department rule, of any money in any account of the defendant administered by the department and use the money to satisfy any existing restitution obligation;

(b) at the beginning of any period during which the offender is not incarcerated, the offender shall sign a statement allowing any employer of the offender to garnish up to 25% of the offender's compensation and give the garnished amounts to the department of corrections to be used by the department to satisfy any existing restitution obligation; and

(c) during any period that the defendant is on probation or parole, the probation and parole officer shall set a monthly restitution payment amount by dividing the total amount of unpaid restitution by the number of remaining months of probation or parole. The probation and parole officer may adjust the monthly payment up or down by a maximum of 10%, depending on the offender's circumstances.

(7) The department of corrections shall give the department of revenue a copy of the order to pay restitution. If full restitution has not been paid, the department of revenue shall, pursuant to an agreement made under 46-18-241, intercept any state tax refunds and any federal tax refunds, as provided by law, due the offender and transfer the money to the department of corrections for a felony offense and to the sentencing court for a misdemeanor offense for disbursement to the victim. The department of revenue may charge the department of corrections a fee to recover its costs of intercepting a tax refund. The fee may not exceed the amount charged a state agency for debt collection services under Title 17, chapter 4."

Section 7. Section 46-18-245, MCA, is amended to read:

"46-18-245. Supervision of payment. ~~The~~ *For a felony offense, the court shall order the department of corrections to supervise the payment of restitution. For a misdemeanor offense, the* court may order a ~~probation officer,~~ restitution officer~~,~~ or other designated person to supervise the making of restitution and to report to the court any default in payment. If the victim *of a misdemeanor* has received compensation under Title 53, chapter 9, the court may also order an employee of the ~~board of crime control~~ *office of victims services, as defined in 53-9-103,* to supervise the making of restitution and to report to the court any default in payment."

Section 8. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status in prison work programs — prison industries and vocational training program — wages and benefits. (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the ~~net~~ *gross* wages paid to an inmate employed in a federally certified prison industries program*, to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate or, if the obligation has been fully paid or no restitution was ordered,* for transfer *quarterly* to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of

corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

Section 9. Coordination instruction. If Senate Bill No. 10 and [this act] are both passed and approved, then [section 92] of Senate Bill No. 10, amending 46-18-242, is void.

Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to offenders who have an unpaid restitution obligation on [the effective date of this act].

Ap proved April 10, 2003

CHAPTER NO. 273

[HB 287]

AN ACT REQUIRING A PERSON WHO PURPOSELY IGNITES A FIRE WITHOUT A PERMIT TO REIMBURSE THE ENTITY RESPONSIBLE FOR ANY FIRE SUPPRESSION ACTIVITIES RESULTING FROM THE ILLEGAL FIRE; AND AMENDING SECTION 7-33-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2205, MCA, is amended to read:

"7-33-2205. Establishment of fire season — permit requirements — *reimbursement of costs.* *(1)* The county governing body may in its discretion establish fire seasons annually, during which ~~no~~ *a* person may *not* ignite or set any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any forest, range, or croplands subject to the provisions of this part without having obtained an official written permit to ignite or set ~~such~~ *a* fire from the recognized protection agency for that protection area.

(2) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire."

Ap proved April 9, 2003

CHAPTER NO. 274

[HB 438]

AN ACT REVISING THE REQUIREMENTS FOR PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS WITH RESPECT TO CONSTRUCTION CONTRACTS; REVISING DEFINITIONS; PROVIDING THAT A CONSTRUCTION CONTRACT MAY PROVIDE FOR A BILLING CYCLE THAT IS OTHER THAN A MONTHLY BILLING CYCLE; PROVIDING THAT CERTAIN CONSTRUCTION CONTRACT PROVISIONS ARE AGAINST STATE POLICY AND ARE VOID AND UNENFORCEABLE; ESTABLISHING CONDITIONS UNDER WHICH A CONTRACTOR OR SUBCONTRACTOR MAY SUSPEND PERFORMANCE OR TERMINATE A CONSTRUCTION CONTRACT; AMENDING SECTIONS 28-2-2101 AND 28-2-2103, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-2-2101, MCA, is amended to read:

"28-2-2101. Definitions. As used in this part, unless the context requires otherwise, the following terms apply:

(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.

(2) "Contractor" means a person who has signed a construction contract with an owner.

(3) "Government entity" means a city, town, county, consolidated municipal-county government, school district, or other special district.

(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.

(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract. *An owner may, in the contract, designate another person to represent the owner for the purpose of overseeing the performance of the construction contract and in handling administrative tasks respecting the construction contract.*

~~(7) "Owner's representative" means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.~~

~~(8)~~*(7)* "Receipt" or "receive" means actual receipt.

~~(9)~~*(8)* "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

~~(10)~~*(9)* "Subcontractor" means a person who has contracted with a contractor or another subcontractor for the purposes of performance of all or a part of a subcontract."

Section 2. Section 28-2-2103, MCA, is amended to read:

"28-2-2103. Payment to contractor and subcontractor. (1) *(a)* ~~If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 30 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract.~~ *Except as provided in [section 2], each construction contract governed by this section must define, within the contract, a monthly billing cycle for the contractor to submit monthly progress payment requests and final payment requests to the owner. The contractor shall submit payment requests to the owner. Payment requests must be based upon actual or estimated work performed and materials supplied during the preceding monthly billing cycle. This requirement does not preclude an owner from mutually agreeing with the contractor to prepay for materials. The owner is considered to have received a payment request when the payment request is submitted to any person designated by the owner in the contract to receive the payment request.*

(b) Except as provided in [section 2], a contractor's request for payment is considered approved by the owner 21 days after receipt of the request by the owner or the person designated in the contract by the owner to receive the payment request, unless, prior to that time, the owner provides the contractor with a written statement containing specific items in the request for payment that are being disapproved by the owner.

(c) The owner may disapprove the request for payment or a portion of the request based upon a claim of:

(i) unsatisfactory job progress;

(ii) failure to remedy defective construction work or materials;

(iii) disputed work or materials;

(iv) failure to comply with material provisions of the construction contract or accompanying documents, including but not limited to payroll certifications, lien releases, warranties, material certifications, and test data;

(v) failure of a contractor to make timely payment for claims, including but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties;

(vi) damage to the owner; or

(vii) the existence of reasonable evidence that the construction contract cannot be completed for the unpaid balance of the contract sum.

(d) An owner may only withhold an amount from a payment that is sufficient to pay the direct expenses that the owner may reasonably expect will be necessary to correct any claim based on the items set out in subsection (1)(c).

(e) A written statement by an owner must be furnished to the contractor specifying a condition that is listed in subsection (1)(c) for which approval of the request for payment or a portion of the request for payment is being withheld. If an owner disapproves only a portion of a request for payment, the remainder of the request for payment must be considered approved.

(f) Except as provided in [section 2], if an owner approves all or a portion of a contractor's request for payment as provided in subsection (1)(b), the owner shall pay the contractor the approved amount within 7 days after the contractor's request for payment is approved.

(g) Upon written request of a subcontractor who has not been paid for work in accordance with the provisions of subsection (2), an owner shall notify the subcontractor of a progress payment or final payment made to the general contractor.

(h) Payment is not required under this subsection (1) unless the contractor provides the owner with a billing statement or estimate for the work performed or the material supplied in accordance with the terms of the contract.

(2) *(a)* Within ~~3 working~~ *7* days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (2) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract.

(c) Prior to submitting a monthly or final pay application to the owner, the general contractor may disapprove the subcontractor's request for payment or a portion of the request based upon a written claim of any of the conditions listed in subsection (1)(c).

(3) *(a)* Within ~~3 working~~ *7* days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (3) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract."

Section 3. Alternative billing cycle. (1) A construction contract may provide for a billing cycle other than a monthly billing cycle if the construction contract specifically sets forth another billing cycle and either of the following applies:

(a) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. Payment requests for this contract must be submitted as follows:

_____

_____

_____; or

(b) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. A written description of the other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or the owner's designated agent must provide this written description on request.

(2) An owner may change the number of days to approve a contractor's payment request to later than 21 days after the date the payment request is submitted if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later approval date defined by a specified number of days after the payment request is submitted; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Approval of Payment Request Provision

This contract allows the owner to approve the contractor's payment request within ___ days after it is received by the owner.

(3) An owner may make payments later than 7 days after the date that the contractor's request for payment is approved if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after approval; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Extended Payment Provision

This contract allows the owner to make payment within ___ days after approval of the payments.

Section 4. Construction contracts — void provisions. (1) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract for a project in this state and that makes the contract subject to the laws of another state or that requires any litigation, arbitration, or other dispute resolution proceeding arising from a dispute pertaining to the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.

(2) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract and that states that a party to the contract may not suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract as provided in 28-2-2103 is against the public policy of this state and is void and unenforceable.

Section 5. Suspension of performance — termination. (1) (a) A contractor may suspend performance under a construction contract for failure by the owner to make timely payment of the amount approved pursuant to 28-2-2103, and the contractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A contractor shall provide written notice to the owner at least 7 calendar days before the contractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A contractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (1).

(d) A construction contract may not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection (1).

(2) (a) A subcontractor may suspend performance under a construction contract if the owner fails to make timely payment of amounts approved pursuant to 28-2-2103 for the subcontractor's work and the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (2).

(d) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (2).

(3) (a) A subcontractor may suspend performance under a construction contract if the owner makes timely payment of amounts approved pursuant to section 28-2-2103 for the subcontractor's work but the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (3).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (3).

(4) (a) A subcontractor may suspend performance under a construction contract if the owner declines to approve portions of the contractor's payment request pursuant to 28-2-2103 for the subcontractor's work and the reasons for the owner's refusal to approve are not the fault of or directly related to the subcontractor's work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (4).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (4).

(5) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor.

(6) A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials, or services until the contractor or subcontractor is paid the amount that was approved, together with any costs incurred for mobilization and project rescheduling resulting from the shutdown or restartup of a project.

(7) Written notice required under this section must be considered to have been provided if either of the following occurs:

(a) the written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended; or

(b) the written notice is delivered at or sent by any means that provides written, third-party verification of delivery to the last-known business address of the party receiving notice.

Section 6. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [sections 3 through 5].

Section 7. Applicability. [This act] applies to construction contracts entered into on or after October 1, 2003.

Ap proved April 9, 2003

CHAPTER NO. 275

[HB 684]

AN ACT REPEALING THE TERMINATION DATE OF A PROVISION ALLOWING THE TRANSFER OF A REVOKED COAL MINE OPERATING PERMIT; REPEALING SECTION 5, CHAPTER 522, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 5, Chapter 522, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 9, 2003

CHAPTER NO. 276

[SB 97]

AN ACT REQUIRING THE COUNTY SUPERINTENDENT IN EACH COUNTY TO REPORT THE REVENUE AMOUNTS USED TO ESTABLISH THE LEVY REQUIREMENTS FOR THE COUNTYWIDE TRANSPORTATION AND RETIREMENT FUNDS TO THE

SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING THAT BUDGETING PROCEDURES APPLY TO COUNTY FUNDS SUPPORTING SCHOOL DISTRICT TRANSPORTATION AND RETIREMENT OBLIGATIONS; AMENDING SECTIONS 20-3-209, 20-9-101, 20-9-501, AND 20-10-146, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-209, MCA, is amended to read:

"20-3-209. Annual report. The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than the second Monday in September. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;

~~(2)~~*(3)* the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and

~~(3)~~*(4)* any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title."

Section 2. Section 20-9-101, MCA, is amended to read:

"20-9-101. Application of budget system for districts *and counties*. The school budgeting procedure and provisions of this title apply to elementary and high school districts, *to county funds supporting school district transportation and retirement obligations,* and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title."

Section 3. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final

budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education

cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(9) The levy for a community college district may be applied only to property within the district.

(10) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 4. Section 20-10-146, MCA, is amended to read:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under section 246, Chapter 574, Laws of 2001;

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; and

(viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

~~(4)~~*(5)* The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 5. Effective date — applicability. [This act] is effective on passage and approval and applies to school fiscal years beginning on or after July 1, 2003.

Ap proved April 9, 2003

CHAPTER NO. 277

[SB 150]

AN ACT REVISING AND CLARIFYING LOCAL GOVERNMENT BONDING AND ASSESSMENT LAWS; CLARIFYING REFUNDINGS CONCERNING VARIABLE RATES; PROVIDING PROTEST PROCEDURES FOR PROPERTY CREATED AS A CONDOMINIUM UNDER SPECIAL AND RURAL IMPROVEMENT DISTRICTS; REVISING THE DEFINITION OF "OWNER" FOR PURPOSES OF PROTESTING THE CREATION OR EXTENSION OF A SPECIAL OR RURAL IMPROVEMENT DISTRICT; REVISING THE PROCESS FOR PAYMENT OF IMPROVEMENTS AND MAINTENANCE OF SPECIAL AND RURAL IMPROVEMENT DISTRICTS;

CLARIFYING CONDOMINIUM PROPERTY FOR ASSESSMENT PURPOSES FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; ELIMINATING DEFINITIONS OF BOND FORMS FOR SPECIAL AND RURAL IMPROVEMENT DISTRICTS; CLARIFYING THE TYPES OF INVESTMENT SECURITIES AVAILABLE IN CERTAIN REFUNDINGS; CLARIFYING CROSSOVER REFUNDING; AMENDING SECTIONS 7-7-2304, 7-7-2316, 7-7-4304, 7-7-4316, 7-7-4502, 7-12-2109, 7-12-2120, 7-12-2161, 7-12-2168, 7-12-2171, 7-12-4110, 7-12-4174, 7-12-4203, 7-13-114, 7-13-3043, 7-14-4712, 7-14-4732, 17-5-2102, AND 20-9-412, MCA; REPEALING SECTIONS 7-12-2110 AND 7-12-4111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2304, MCA, is amended to read:

"7-7-2304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds that are to be refunded. *In determining whether the refunding bonds satisfy the savings requirements provided for in this section:*

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the ~~refunded~~ bonds *being refunded* if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county."

Section 2. Section 7-7-2316, MCA, is amended to read:

"7-7-2316. Advance refunding bonds. *(1)* The board of county commissioners may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which ~~such~~ *the* bonds mature or are subject to redemption, provided *that* the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale ~~thereof~~ *of the refunding bonds*, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. ~~Funds so~~

(2) Except as provided in subsection (3), the funds deposited ~~shall~~ *must* be invested in securities ~~which~~ *that* are general obligations of the United States or the principal and interest of which are guaranteed by the United States and ~~which~~ *that* mature or are callable at the option of the holder on ~~such~~ *those* dates and bear interest at ~~such~~ *those* rates and *are* payable on ~~such~~ *the* dates ~~as shall~~

~~be~~ *that are* required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each ~~refunded~~ bond *being refunded* to its maturity or redemption date, if called for redemption, ~~and~~ to pay the principal ~~thereof~~ *of the bond* at maturity or upon ~~such~~ *the* redemption date, and to pay any redemption premium.

(3) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(4) The escrow account ~~shall be~~ *is* irrevocably appropriated to the payment of the principal of and interest and redemption premium ~~, if any,~~ on the ~~refunded~~ bonds *being refunded.* Funds ~~to the credit of~~ *in* the sinking fund account for the payment of the ~~refunded~~ bonds *being refunded* and not required for the payment of principal of or interest ~~thereon~~ *on the bonds being refunded* due prior to issuance of the refunding bonds may be appropriated by the county to the escrow account. The county may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds *that are* refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation."

Section 3. Section 7-7-4304, MCA, is amended to read:

"7-7-4304. Interest rate on refunding general obligation bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless the refunding bonds bear interest at a rate of at least 1/2 of 1% less than the interest rate of the outstanding bonds to be refunded. *In determining whether the refunding bonds satisfy the savings requirements provided for in this section:*

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest in excess of the rate on the ~~refunded~~ bonds *being refunded* if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town.

(3) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county."

Section 4. Section 7-7-4316, MCA, is amended to read:

"7-7-4316. Advance refunding bonds. *(1)* A city or town may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which ~~such~~ *the* bonds mature or are subject to redemption, provided that *the* proceeds of the refunding bonds, less any accrued

interest or premium received upon the sale ~~thereof~~ *of the refunding bonds*, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or ~~out~~ *outside* of the state. ~~Funds so~~

(2) Except as provided in subsection (3), the funds deposited ~~shall~~ *must* be invested in securities ~~which~~ *that* are general obligations of the United States or the principal and interest of which are guaranteed by the United States and ~~which~~ *that* mature or are callable at the option of the holder on ~~such~~ *those* dates and bear interest at ~~such~~ *those* rates and *are* payable on ~~such~~ *the* dates ~~as shall be~~ *that are* required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each ~~refunded~~ bond *being refunded* to its maturity or redemption date, if called for redemption, ~~and~~ to pay the principal ~~thereof~~ *of the bond* at maturity or upon ~~such~~ *the* redemption date, and to pay any redemption premium.

(3) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (2) or in a money market fund composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(4) The escrow account ~~shall be~~ *is* irrevocably appropriated to the payment of the principal of and interest and redemption premium ~~, if any,~~ on the ~~refunded~~ bonds *being refunded.* Funds ~~to the credit of~~ *in* the sinking fund account for the payment of the ~~refunded~~ bonds *being refunded* and not required for the payment of principal of or interest ~~thereon~~ *on the bonds being refunded* due prior to issuance of the refunding bonds may be appropriated by the city or town to the escrow account. The city or town may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds *that are* refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-4201 or any other debt limitation."

Section 5. Section 7-7-4502, MCA, is amended to read:

"7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from ~~such~~ *the* computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds *being* refunded ~~thereby~~, computed to their respective stated maturity dates. *In determining whether the refunding bonds satisfy the savings requirements provided for in this section:*

(a) if the bonds proposed to be refunded bear interest at a variable rate, the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds currently in effect and over the immediately preceding 5 complete fiscal years of the issuer; or

(b) if the variable rate bonds being refunded have not been outstanding for the period of time referred to in subsection (1)(a), then the average annual interest rate on the bonds being refunded must be calculated by reference to the interest rate on the bonds being refunded currently in effect and over the total number of complete fiscal years of the issuer since the date of issuance of the bonds.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds *being* refunded ~~thereby~~ if:

(a) they are issued to refund matured principal or interest for the payment of which ~~revenues~~ *revenue* on hand ~~are~~ *is* not sufficient;

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of ~~such~~ *the* new bonds upon the ~~revenues~~ *revenue* of the undertaking must be junior and subordinate to the lien of the outstanding bonds *being* refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding; or

(c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality."

Section 6. Section 7-12-2109, MCA, is amended to read:

"7-12-2109. Right to protest creation or extension of district. *(1)* At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for ~~said~~ *the* work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. ~~Such~~ *The* protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the county clerk, who shall endorse ~~thereon~~ *on the protest document* the date of its receipt by ~~him~~ *the county clerk*.

(2) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

Section 7. Protest procedures for property created as condominium. (1) Whenever property created as a condominium is included within the boundaries of a proposed district and the proposed work or the creation of the district relates to or affects property created as a condominium, and not solely a certain unit in the condominium, the owner of the property created as a condominium that is entitled to protest under this part is collectively the owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the proposed work or against the extent or creation of the district to be assessed, or both, only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the county clerk in accordance with 7-12-2109:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the

unit owners as evidenced by the signatures of the owners are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the proposed work or against the extent or creation of the district, or both.

(3) Each holder of title to a unit in a condominium that is within a proposed district is entitled to notice of the passage of the resolution of intention as provided in this part and, if the district is created and assessments levied, assessments must be levied against the units in the condominium as provided in this part.

Section 8. Section 7-12-2120, MCA, is amended to read:

"7-12-2120. Maintenance of improvements. (1) Whenever ~~any~~ sanitary or storm sewers, lights or light systems, waterworks plants, water systems, sidewalks, or any other special improvements petitioned for or created by the state or federal government have been made, built, constructed, erected, or accomplished as provided in this part, ~~it is hereby made the duty of~~ the board of county commissioners under whose jurisdiction the district was created or supervised or directed ~~to~~ *shall* adequately and suitably maintain and preserve ~~said~~ *the* improvements and ~~to fully keep the same~~ *keep those improvements* in proper repair and operation, by contract or otherwise~~, in such way or manner as the board shall deem suitable and proper~~.

(2) The whole cost of maintaining, preserving, and repairing ~~of said~~ improvements in any improvement district ~~shall~~ *may, in the discretion of the board,* be paid by assessing the entire district in the method provided for by 7-12-2108."

Section 9. Section 7-12-2161, MCA, is amended to read:

"7-12-2161. Payment of maintenance costs — resolution for assessment and for change of boundaries — assessment for administrative costs. (1) ~~It is the duty of the~~ *The* board of county commissioners ~~to~~ *shall* estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or another time as ~~it~~ may appear necessary.

(2) ~~Before~~ *The board may, before* the first Monday in September of each year, ~~the board shall~~ pass and finally adopt a resolution levying and assessing all the property within the district with an amount equal to the whole cost of maintaining, preserving, or repairing the improvements within the district.~~The~~ *An* assessment *authorized by the board* must be proportioned as provided in 7-12-2108. *In lieu of an assessment, the board shall otherwise provide for the whole cost of maintaining, preserving, or repairing the improvements in the district.*

(3) The resolution levying assessments to defray the cost of maintenance, preservation, or repair of improvements must be prepared and certified to in substantially the same manner as a resolution levying assessments for making, constructing, and installing the improvements in the special improvement district.

(4) The board may change by resolution, not more than once a year, the boundaries of any maintenance district.

(5) The board shall include in the estimated cost of maintaining the district the lesser of $500 or 5% of the annual assessment of the district. The amount determined by the board under this subsection is to defray the costs incurred by the county in administering the maintenance district and is a cost of

maintenance. The board shall annually pay the amount determined under this subsection to the county treasurer for deposit in the county general fund."

Section 10. Section 7-12-2168, MCA, is amended to read:

"7-12-2168. Assessments and certain other charges as liens. (1) ~~Any~~ *A* special assessment made and levied to defray the cost and expenses of ~~any of~~ the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, ~~shall constitute~~ *constitutes* a lien upon and against the property upon which ~~such~~ *the* assessment is made and levied from and after the date of the passage of the resolution levying ~~such~~ *the* assessment. This lien can only be extinguished by payment of ~~such~~ *the* assessment, with all penalties, costs, and interest.

(2) ~~Any~~ *A* special assessment levied and made for any of the purposes mentioned in 7-12-2120 and 7-12-2161, together with all costs and penalties, ~~shall constitute~~ *constitutes* a lien upon and against the property upon which ~~said~~ *the* assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the ~~same, which~~ *assessment. The* lien ~~can only be~~ *is* extinguished *only* by payment of ~~such~~ *the* assessment, with all penalties, costs, and interest.

(3) For assessment purposes, whenever property created as a condominium is included within the boundaries of a district, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of an undivided ownership interest must be as set forth in the condominium declaration."

Section 11. Section 7-12-2171, MCA, is amended to read:

"7-12-2171. Details relating to rural improvement district bonds and warrants ~~— definitions of bond forms~~. (1) (a) The bonds and warrants must be drawn against either the construction or maintenance fund created for the special improvement district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the board of county commissioners. The terms determined by the board of county commissioners may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is $500,000 or less and the board of county commissioners obtains separate written opinions from underwriters of Montana rural improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below $250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates that the board prescribes. The warrants or bonds must bear the signatures of the presiding officer of the board and the county clerk and may bear the corporate seal of the county. The warrants or bonds must be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, ~~they~~ *the interest coupons* must also be registered and ~~shall~~ *must* bear the

signatures of the presiding officer of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds must be in denominations of $100 or fractions or multiples of $100, may be issued in installments, and may extend over a period not to exceed 30 years. However, if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

~~(3) As used in this part, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(a) "Amortization bonds" means the form of bonds that bear interest at a fixed rate and on which:~~

~~(i) a part of the principal must be paid each time that interest becomes payable;~~

~~(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;~~

~~(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;~~

~~(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and~~

~~(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.~~

~~(b) "Serial bonds" means a bond issue payable in semiannual or annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment.~~"

Section 12. Section 7-12-4110, MCA, is amended to read:

"7-12-4110. Protest against proposed work or district. (1) At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for ~~said~~ *the* work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both.

(2) ~~Such~~ *A* protest must be in writing, identify the property in the district owned by the protestor, and be signed by all the owners of the property. The protest must be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within ~~said~~ *the* 15-day period. ~~Said~~ *The* clerk shall endorse ~~thereon~~ *on the protest document* the date and hour of its receipt by ~~him~~ *the clerk*.

(3) (a) For purposes of this section, "owner" means, as of the date a protest is filed, the record owner of fee simple title to the property.

(b) The term does not include a tenant of or other holder of a leasehold interest in the property."

Section 13. Protest procedures for property created as condominium. (1) Whenever property created as a condominium is included within the boundaries of a proposed district and the proposed work or the creation of the district relates to or affects property created as a condominium,

and not solely a certain unit in the condominium, the owner of the property created as a condominium that is entitled to protest under this part is collectively the owners of all units having an undivided ownership interest in the common elements of the condominium.

(2) An owner of property created as a condominium may protest against the proposed work or against the extent or creation of the district to be assessed, or both, only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the clerk of the city or town council or commission in accordance with 7-12-4110:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners as evidenced by the signatures of the owners are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the proposed work or against the extent or creation of the district, or both.

(3) Each holder of title to a unit in a condominium that is within a proposed district is entitled to notice of the passage of the resolution of intention as provided in this part and, if the district is created and assessments levied, assessments must be levied against the units in the condominium as provided in this part.

Section 14. Section 7-12-4174, MCA, is amended to read:

"7-12-4174. Inclusion and assessment of unplatted, undedicated, or unsurveyed land in improvement district — *inclusion of condominium property.* *(1)* Whenever ~~any~~ *an* unplatted, undedicated, or unsurveyed lot, piece, or parcel of land that separates one platted part of the city from another platted part of ~~said~~ *the* city, lying wholly within the boundaries of any city or town and except land owned by the United States, ~~shall abut or border~~ *abuts or borders* upon any special improvement district or ~~be~~ *is* included within the boundaries of any special improvement district of ~~such~~ *a* city or town, the city or town council may ~~cause the same to be included within and made a part of such~~ *include the land within a* special improvement district in the same manner as other property ~~within such~~ *is included within the* special improvement district ~~and~~. *The special improvement district* may assess the ~~same~~ *included land* for its proportionate share of the cost of making or maintaining ~~such~~ *those* improvements in the same manner as other property within ~~such~~ *the* special improvement district.

(2) For assessment purposes, whenever property created as a condominium is included within the boundaries of any special improvement district, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration."

Section 15. Section 7-12-4203, MCA, is amended to read:

"7-12-4203. Details relating to special improvement district bonds and warrants~~— definitions of bond forms~~. (1) (a) The bonds and warrants must be drawn against the special improvement district fund created for the district and must bear interest from the date of registration until called for redemption or paid in full. Bonds or warrants sold at a private, negotiated sale may bear interest at a rate varying periodically at the time or times and on the terms determined by the governing body of the municipality. The terms determined by the governing body of the municipality may include the establishment of a maximum rate of interest or the convertibility to a fixed rate of interest.

(b) Variable rate bonds may be sold at a private negotiated sale if the principal amount of the bonds is $500,000 or less and the governing body of the municipality obtains separate written opinions from underwriters of Montana special improvement district bonds stating the bonds are not marketable through a competitive bond sale. Bonds sold in principal amounts below $250,000 do not require a marketability opinion.

(c) The interest must be payable annually or semiannually, at the discretion of the governing body of the municipality, on the dates that the governing body prescribes. The warrants or bonds must bear the signatures of the mayor and clerk and may bear the corporate seal of the city. The warrants or bonds must be registered in the office of the clerk and treasurer, and if interest coupons are attached to the warrants or bonds, they must also be registered and bear the signatures of the mayor and clerk.

(2) The bonds must be in denominations of $100 or fractions or multiples of $100, may be issued in installments, and may extend over a period not to exceed 20 years or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date that the bonds to be refunded were issued. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.

~~(3) As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:~~

~~(a) "Amortization bonds" means the form of bonds that bear interest at a fixed rate and on which:~~

~~(i) a part of the principal must be paid each time that interest becomes payable;~~

~~(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;~~

~~(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;~~

~~(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and~~

~~(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.~~

~~(b) "Serial bonds" means a bond issue payable in semiannual or annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds~~

~~maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment.~~"

Section 16. Section 7-13-114, MCA, is amended to read:

"7-13-114. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2107, ~~7-12-2110,~~ 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply under the provisions of this part unless in conflict with the provisions of this part."

Section 17. Section 7-13-3043, MCA, is amended to read:

"7-13-3043. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2107, ~~7-12-2110,~~ 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), 7-12-2169, and 7-12-2171 through 7-12-2174 pertaining to rural improvement districts apply to this part unless in conflict with the provisions of this part."

Section 18. Section 7-14-4712, MCA, is amended to read:

"7-14-4712. Procedure upon receipt of petition from all property owners within proposed district. If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement, as provided in 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-14-4711 through 7-14-4723 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, 7-12-4108 through *7-12-4110, 7-12-4112 through* 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body."

Section 19. Section 7-14-4732, MCA, is amended to read:

"7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district. (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying the ownership and making a finding of fact, shall adopt a resolution of intention to order the improvement, pursuant to the provisions of 7-12-4104 and 7-12-4117, and may adopt the resolution ordering the improvement pursuant to 7-12-4114 without the publication of the resolution of intention provided for in 7-12-4106. However, if special improvement district bonds are proposed to be issued and secured by the revolving fund, the requirements of 7-12-4106, 7-12-4108 through *7-12-4110, 7-12-4112 through* 7-12-4114, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, and 7-12-4225 must be met by the governing body.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and

maintenance of sites is signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district and is presented to the governing body, the governing body shall adopt a resolution of intention ordering the proposed improvement and publish the resolution pursuant to the provisions of 7-12-4104 and 7-12-4106."

Section 20. Section 17-5-2102, MCA, is amended to read:

"17-5-2102. Crossover refunding bonds authorized. (1) ~~Any~~ *A* public body authorized to issue refunding obligations may issue bonds pursuant to this part without regard to the limitations contained in any other law relating to:

(a) the establishment of an escrow account for the obligations to be refunded;

(b) the giving of a notice of redemption for the obligations to be refunded and redeemed; or

(c) the application of the proceeds of the refunding obligations.

(2) The proceeds of bonds, less any proceeds applied to payment of costs of issuance or refunding, must be deposited in a sinking fund account irrevocably appropriated to the payment of principal of and interest on the refunding obligations until the crossover date. The sinking fund account must be maintained as an escrow account with a suitable financial institution within or outside the state and amounts in it must be invested in securities that are direct obligations of the United States or on which the payment of the principal and interest is guaranteed by the United States. In the resolution authorizing the issuance of the bonds, the governing body may pledge to their payment any source of payment of the obligations to be refunded. In the case of general obligation bonds, property taxes must be levied and appropriated to the sinking fund account in the amounts needed, together with estimated investment income from money in the sinking fund account and any other ~~revenues~~ *revenue* available upon discharge of the obligations to be refunded, to pay when due the principal of and interest on the bonds. Funds pledged to the credit of the sinking fund for the obligations to be refunded and not required on the crossover date for the payment of principal, premium, or interest on the obligations to be refunded may be appropriated by the public body to the sinking fund account for the bonds.

(3) The public body may pay the reasonable costs and expenses of issuing bonds and of establishing and maintaining the escrow account.

(4) On the crossover date, obligations *that are* refunded pursuant to this part are no longer considered outstanding for purposes of any debt limitation if the provisions of subsection (5) are met. *Until the crossover date, the bonds do not count against any debt limitation if the provisions of subsection (5) are met. After the crossover date, the bonds must be considered outstanding for purposes of any debt limitation.*

(5) The securities in the escrow account must mature or be callable at the option of the holder on ~~such~~ *the crossover* date, bearing interest at ~~such~~ *a* rate, and payable on ~~such~~ *the* dates ~~as~~ *that are* necessary to provide sufficient funds, in addition to any cash retained in the escrow account, to pay *the following* when due:

(a) the interest that will accrue on each refunded obligation to its maturity or redemption date, if called for redemption;

(b) the principal of each refunded obligation at maturity or on the redemption date; and

(c) any redemption premium."

Section 21. Section 20-9-412, MCA, is amended to read:

"20-9-412. Issuance of refunding bonds without election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program ~~so~~ *that is* authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% a year less than the rate of interest in the bonds to be refunded or redeemed.

(4) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 20-9-408.

(5) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the district.

(6) *(a)* Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided *that* the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or ~~out~~ *outside* of the state. ~~Funds~~

(b) Except as provided in subsection (6)(c), funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and *are* payable on the dates *that are* required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each ~~refunded~~ bond *being refunded* to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(c) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (6)(b) or in a money market fund

composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(d) The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium~~, if any,~~ on the ~~refunded~~ bonds *being refunded*. Funds ~~to the credit of~~ *in* the debt service fund for the payment of the ~~refunded~~ bonds *being refunded* and not required for the payment of principal of or interest on the bonds *being refunded* due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds *that are* refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation."

Section 22. Codification instruction. (1) [Section 7] is intended to be codified as an integral part of Title 7, chapter 12, part 21, and the provisions of Title 7, chapter 12, part 21, apply to [section 7].

(2) [Section 13] is intended to be codified as an integral part of Title 7, chapter 12, part 41, and the provisions of Title 7, chapter 12, part 41, apply to [section 13].

Section 23. Repealer. Sections 7-12-2110 and 7-12-4111, MCA, are repealed.

Section 24. Effective date. [This act] is effective July 1, 2003.

Ap proved April 9, 2003

CHAPTER NO. 278

[SB 445]

AN ACT REPEALING THE TRANSITION SECTION OF THE DISTRICTING AND APPORTIONMENT PLAN THAT ASSIGNS HOLDOVER SENATORS TO NEW DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the Montana Constitution and the verbatim transcripts of the 1972 Constitutional Convention do not address the assignment of holdover senators to districts following the drawing of new legislative districts pursuant to Article V, section 14, of the Montana Constitution; and

WHEREAS, the Montana Supreme Court has consistently held that the Constitution is a limit on rather than a grant of legislative authority, beginning with State ex rel. Evans v. Stewart, 53 Mont. 18, 161 P. 309 (1916); and

WHEREAS, in spite of the lack of a constitutional limit on legislative authority, the Legislature has acquiesced in the assignment of holdover senators by the Districting and Apportionment Commission because of the fair and nonpartisan assignments that have traditionally occurred; and

WHEREAS, the districting plan submitted to the 58th Legislature for review and comment proposed to assign holdover senators on partisan basis for future partisan gain; and

WHEREAS, the Legislature enacted Senate Bill No. 258 as Chapter 4, Laws of 2003, to authorize the Legislature to assign holdover senators and prohibit the Districting and Apportionment Commission from assigning holdover

senators prior to the Districting and Apportionment Commission's adoption of its final plan.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 3 of the districting and apportionment plan of 2003, the transition provision assigning holdover senators to new legislative districts, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the districting and apportionment plan adopted by the districting and apportionment commission on February 5, 2003.

Ap proved April 9, 2003

CHAPTER NO. 279

[HB 474]

AN ACT PROVIDING THAT AN ADJUSTMENT OF THE RENTAL PRICE OF A MOTOR VEHICLE, TRAILER, OR SEMITRAILER, BASED ON THE AMOUNT REALIZED UPON THE SALE OR DISPOSITION OF THE MOTOR VEHICLE, TRAILER, OR SEMITRAILER, DOES NOT CREATE A SALE OR SECURITY INTEREST.

Be it enacted by the Legislature of the State of Montana:

Section 1. Contract rental price adjustment — not sale or security interest. In the case of a motor vehicle, trailer, or semitrailer, a transaction does not create a sale or security interest solely because it permits or requires that the rental price be adjusted either upward or downward under the agreement by reference to the amount realized upon the sale or other disposition of the motor vehicle, trailer, or semitrailer. To the extent that a conflict exists, this section supersedes any other provision of law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 1, and the provisions of Title 61, chapter 3, part 1, apply to [section 1].

Ap proved April 10, 2003

CHAPTER NO. 280

[SB 118]

AN ACT GENERALLY REVISING THE LAWS GOVERNING LICENSE PLATES; PROHIBITING, WITH EXCEPTIONS, THE DISPLAY OF PRIOR DESIGNS OF NUMBER PLATES OR CERTAIN SPECIAL LICENSE PLATES AFTER ISSUANCE OF A NEW DESIGN; DELAYING THE NEW ISSUE OF NUMBER PLATES UNTIL 2006; INCREASING LICENSE PLATE FEES; REVISING THE REPORTING REQUIREMENTS PERTAINING TO HOLDERS OF AMATEUR RADIO OPERATOR LICENSE PLATES; REVISING THE REQUIREMENTS GOVERNING QUALIFICATION, ISSUANCE, AND RENEWAL OF GENERIC SPECIALTY LICENSE PLATES; ALLOWING COLLECTION AND DISBURSEMENT OF SPONSOR DONATION FEES BY COUNTY TREASURERS AND THE DEPARTMENT

OF REVENUE; EXPANDING THE VEHICLE TYPES ELIGIBLE FOR GENERIC SPECIALTY LICENSE PLATES; MAKING THE MONTANA GENERIC SPECIALTY LICENSE PLATE ACT PERMANENT; CLARIFYING SPECIAL LICENSE PLATE TYPES THAT MAY BE USED TO PERMANENTLY REGISTER A VEHICLE; AMENDING SECTIONS 61-3-301, 61-3-321, 61-3-332, 61-3-333, 61-3-424, 61-3-465, 61-3-473, 61-3-474, 61-3-475, 61-3-476, 61-3-477, 61-3-478, 61-3-479, 61-3-480, 61-3-481, AND 61-3-562, MCA; REPEALING SECTION 21, CHAPTER 402, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) Except as otherwise provided in this chapter, a person may not operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear. A person may not display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) A person may not purchase or display on a vehicle a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county of the person's permanent residence at the time of application for registration. However, the owner of a motor vehicle requiring a license plate on a motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to ~~use~~*:*

(a) display license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute~~, or to~~*;*

(b) repaint old license plates to resemble current license plates*; or*

(c) display a prior design of number plates issued under 61-3-332(4)(a) or special license plates issued under 61-3-332(10) or 61-3-421 more than 18 months after a new design of number plates or special license plates has been issued, except as provided in 61-3-332(4)(c) and (4)(d), 61-3-448, or 61-3-468.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to the registration fee or fee in lieu of tax under 61-3-520.

(5) A person violating these provisions is guilty of a misdemeanor and *is* subject to the penalty prescribed in 61-3-601.

(6) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front and the rear bumper of a motor vehicle equipped with front and rear bumpers; or

(b) other clearly visible locations on the front and the rear exteriors of a motor vehicle."

Section 2. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, $13.75;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, $8.25;

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) ~~over~~ 2,850 pounds *and over*, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9;

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75;

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25;

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, $16.25;

(k) travel trailers, $11.75; and

(l) recreational vehicles, $3.50.

(2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(3) An additional fee of $5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of ~~$2~~ *$5* for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(8) A person qualifying under 61-3-332(10)(d) is exempt from the fees required under this section.

(9) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund."

Section 3. Section 61-3-332, MCA, is amended to read:

"61-3-332. ~~(Temporary)~~ Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (4)(c) and (4)(d) of this section, all number plates for motor vehicles must be issued for a ~~maximum~~ *minimum* period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall

manufacture the newly designed number plates for issuance after December 31, ~~1999~~ *2005*, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1,~~2000~~ *2006*, the department shall manufacture and issue new number plates ~~every~~ *after the existing plates have been used for a minimum period of* 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must

begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters “NG”. The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words “National Guard veteran” and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant’s deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national

guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100%

disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

(12) Fees collected under this section must be deposited in the state general fund. ~~(Terminates July 1, 2005 -- sec. 21, Ch. 402, L. 2001.)~~

61-3-332. (Effective July 1, 2005) Number plates. ~~(1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.~~

~~(2) In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:~~

~~(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;~~

~~(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";~~

~~(c) trucks, bearing the letter "T" or the word "TRUCK";~~

~~(d) trailers, bearing the letters "TR" or the word "TRAILER";~~

~~(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";~~

~~(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";~~

~~(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";~~

~~(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and~~

~~(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".~~

~~(3) (a) Except as provided in subsections (4)(c) and (4)(d), all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.~~

~~(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.~~

~~(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.~~

~~(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.~~

~~(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.~~

~~(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.~~

~~(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.~~

~~(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.~~

~~(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the~~

markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor

~~members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:~~

~~(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).~~

~~(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:~~

~~(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or~~

~~(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.~~

~~(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).~~

~~(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle~~

~~under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).~~

~~(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.~~

~~(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.~~

~~(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.~~

~~(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.~~

~~(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.~~

~~(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.~~

~~(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.~~

~~(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be~~

~~issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:~~

~~(i) Upon submission of a department of defense form 214(DD 214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:~~

~~(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or~~

~~(B) a symbol representing the purple heart medal.~~

~~(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.~~

~~(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.~~

~~(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.~~

~~(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.~~

~~(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.~~

~~(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.~~

~~(12) Fees collected under this section must be deposited in the state general fund.~~"

Section 4. Section 61-3-333, MCA, is amended to read:

"61-3-333. Replacing number plates. In the event of loss, mutilation, or destruction of number plates~~, and/or~~ *or* validation devices, the owner of the registered motor vehicle may obtain from the department duplicates or replacements of the number plates upon filing*a* sworn declaration showing that fact and payment of a fee of ~~$2~~ *$5*. In the event of loss, mutilation, or destruction of pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of $5."

Section 5. Section 61-3-424, MCA, is amended to read:

"61-3-424. List of *amateur* radio ~~operators' special~~ *operator license* plates — distribution to public officials. The department shall, on or before July 1 of each year, furnish to the *disaster and emergency services division of the department of military affairs and the* chief of the state highway patrol~~, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the department considers necessary,~~ an *electronic record containing a county-based,* alphabetically arranged list of the names, addresses, and license plate numbers and letters of each person to whom ~~a special~~ *an amateur radio operator* license plate or a combined license plate has been issued~~, and it~~. *It* is the duty of the ~~department, sheriffs, and chiefs of police to maintain and keep current the lists for public information and inquiry, particularly in relation to public emergencies~~ *disaster and emergency services division of the department of military affairs and the chief of the state highway patrol to retain this information for use in the event of a public emergency or other disruption of commonly used communication networks*."

Section 6. Section 61-3-465, MCA, is amended to read:

"61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of ~~$2.50~~ *$5*, when required; and

(ii) an annual scholarship donation of $20 for the benefit of the institution named in the application.

(2) Once each month, the county treasurer shall, as provided in 15-1-504, transfer to the department of revenue the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the state general fund; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month, the department of revenue shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the department of revenue by the county treasurers during the preceding month."

Section 7. Section 61-3-473, MCA, is amended to read:

"61-3-473. ~~(Temporary)~~ Definitions. As used in 61-3-472 through 61-3-481, the following definitions apply:

(1) "Generic specialty license plate" means a license plate ~~bearing~~*that bears* the name, identifying phrase, or graphic of a sponsor, approved by the department, and that is issued by the department ~~to a person who is entitled to a special certificate of registration~~.

(2) "Governmental body" means a tribal government, state agency, local government, school district, or other political subdivision within this state.

(3) "Organization" means an association, corporation, group, or other entity:

(a) recognized by the internal revenue service as tax-exempt under 26 U.S.C. 501(c)(3); and

(b) that does not have as its primary focus sectarian activities, including but not limited to activities aimed at promoting the adoption of one or more religious or political viewpoints.

~~(4) "Special certificate of registration" means the certificate of motor vehicle registration issued in accordance with 61-3-479.~~

~~(5)~~*(4)* "Sponsor" means the governmental body or organization approved by the department to promote the sale and issuance of a generic specialty license plate.

~~(6)~~*(5)* "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized Indian group or community located in Montana that is exercising self-government powers and that is recognized as being eligible for services provided by the United States to Indians because of their status as Indians. ~~(Terminates June 30, 2005 -- sec. 21, Ch. 402, L. 2001.)~~"

Section 8. Section 61-3-474, MCA, is amended to read:

"61-3-474. ~~(Temporary)~~ Responsibility for design of generic specialty license plates — numbering — rulemaking — approval — county designation by sticker — listing of plate sponsors. (1) The department shall:

(a) design the background and general format of generic specialty license plates;

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

(d) adopt rules that prescribe:

(i) the minimum and maximum number of characters that a generic specialty license plate may display;

(ii) the general placement of the sponsor's name, identifying phrase, and graphic; and

(iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, the department shall provide nonremovable stickers bearing the appropriate county

designation as provided in 61-3-332. The stickers must be affixed to the license plates in use in accordance with instructions by the department.

(4) The department shall maintain a list of the ~~organizations that it has approved as~~ sponsors *that have been approved to promote the sale and issuance* of generic specialty license plates, ~~including the name and address of a generic specialty license plate liaison for each organization~~ *the initial distribution date for sale of each sponsored generic specialty license plate, and the donation fee established by the sponsor for each sponsored generic specialty license plate.* The department shall, upon request, make copies of this list available to interested members of the public.

(5) The department may, in its discretion, revoke its previous approval of ~~an organization's~~ *a sponsor's* generic specialty license plate sponsorship if*:*

(a) the ~~organization~~ *sponsor* fails to comply with the provisions of 61-3-472 through 61-3-481 ~~or if~~*;*

(b) fewer than 400 sets of a sponsor's generic specialty license plate have been sold or renewed in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate; or

(c) the department has reliable information that the ~~organization may~~ *sponsor is* no longer ~~be~~ qualified for sponsorship under 61-3-472 through 61-3-481.

(6) (a) Upon revocation of a sponsor's generic specialty license plate sponsorship status, the issuance and sale of the sponsor's generic specialty license plates must be terminated and a donation fee may not be charged or collected upon registration renewal of a vehicle displaying previously issued generic specialty license plates affiliated with that sponsor.

(b) A person who owns a vehicle displaying valid generic specialty license plates affiliated with a sponsor whose sponsorship status has been revoked may continue to display those generic specialty license plates on the person's vehicle if the vehicle's registration is properly renewed in subsequent years and the plates remain legible.

(c) Following revocation of a sponsor's sponsorship status, the department may not issue duplicates of generic specialty license plates affiliated with that sponsor that are lost, destroyed, or mutilated. ~~(Terminates June 30, 2005 -- sec. 21, Ch. 402, L. 2001.)~~"

Section 9. Section 61-3-475, MCA, is amended to read:

"61-3-475. ~~(Temporary)~~ Qualifications and approval of organization as sponsor. (1) To qualify as a sponsor of a generic specialty license plate, an organization shall:

(a) apply, through the organization's officers, for sponsorship on a form or in a format prescribed by the department;

(b) submit proof of good standing if the organization is required to be registered with the office of the secretary of state;

(c) designate one of its members as the organization's generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the organization's sponsorship of generic specialty license plates and shall file the liaison's name, address, and telephone number with the department ~~for the purposes provided for in 61-3-474(4)~~.

(d) specify in its application the donation fee proposed by the organization for initial purchase of the organization's generic specialty license plate and for renewal of the organization's generic specialty license plate if the fee is required on renewal;

~~(d)~~*(e)* submit to the department proof that is acceptable to the department that:

(i) the organization is a nonprofit organization as demonstrated in its charter or bylaws or by an internal revenue service ruling. The department may request copies of an internal revenue service ruling to verify an organization's nonprofit status.

(ii) the primary purpose of the organization, except for an organization of military service veterans, is service to the community through specific programs that promote improving public health, education, or general welfare;

(iii) the organization's name, identifying phrase, or graphic that will be placed on the generic specialty license plate does not:

(A) invoke connotations offensive to good taste and decency;

(B) promote, advertise, or endorse a product, brand, or service provided for sale;

(C) infringe or otherwise violate a trademark, trade name, service mark, copyright, or other proprietary or property right; or

(D) obscure the generic specialty license plate letters or numbers that the department assigns as provided in 61-3-474(1)(c);

(iv) the organization's headquarters or base of operations is in this state or, if the organization is a chapter or branch of an international, national, or regional organization, the chapter or branch is in good standing and has authorization in writing from the parent organization to use the name and graphic of the parent organization; and

(v) the organization has an active telephone number listed under its name in at least one published Montana directory.

(2) The department may require a statement under oath from the officers of the organization that the organization is authorized to use the name, identifying phrase, and graphic submitted for display on a generic specialty license plate and that no infringement or violation of any property right exists, together with an agreement to defend and hold harmless the state of Montana, its employees, or its agents for any liability as a result of an infringement or violation of any property right.

(3) The department's approval or rejection of an organization's application for generic specialty license plate sponsorship must be based on the requirements provided in 61-3-472 through 61-3-481. The department shall state in writing the reasons for its rejection of an organization's application.

(4) An organization may apply for and be approved to sponsor only one generic specialty license plate design at any time. Once a minimum 4-year period has expired, an organization may apply to the department for approval of a new generic specialty license plate design along with submission of the fee required under 61-3-478(1).

(5) If the department approves the organization's new generic specialty license plate design, issuance and renewal of the previously approved generic specialty license plate must be discontinued, effective on the date of the initial

distribution of the newly approved generic specialty license plate design. ~~(Terminates June 30, 2005 -- sec. 21, Ch. 402, L. 2001.)~~"

Section 10. Section 61-3-476, MCA, is amended to read:

"61-3-476. ~~(Temporary)~~ Qualification and approval of governmental body as sponsor. To qualify for sponsorship of a generic specialty license plate, a governmental body shall:

(1) apply for sponsorship through the executive body of a tribal government, the state agency director or department head, the commission or council of a local government or political subdivision, or the board of trustees of a school district on a form or in a format approved by the department;

(2) if the governmental body is a state agency, identify the statutory authority under which it is relying to seek sponsorship of a generic specialty license plate and specify the account in which any generic specialty license plate donations must be placed;

(3) designate one of its officers or employees as the governmental body's generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the governmental body's sponsorship of generic specialty license plates and shall file the liaison's name, address, and telephone number with the department ~~for the purposes provided for in 61-3-474(4)~~. ~~(Terminates June 30, 2005 -- sec. 21, Ch. 402, L. 2001.)~~"

Section 11. Section 61-3-477, MCA, is amended to read:

"61-3-477. ~~(Temporary)~~ Generic specialty license plate liaison — responsibilities. (1) Upon the department's approval of an organization's or a governmental body's proposed sponsorship of a generic specialty license plate, the generic specialty license plate liaison designated under 61-3-475(1)(c) and 61-3-476(3) shall submit to the department the sponsor's name, identifying phrase, and graphic that will appear on the generic specialty license plate.

(2) The generic specialty license plate liaison shall*:*

(a) verify and approve in writing the prototype or mockup of the ~~sponsoring organization's~~ *sponsor's* generic specialty license plate before it may be manufactured or issued by the department*; and*

(b) confirm, in writing, the donation fee established by the sponsor for initial purchase of the sponsor's generic specialty license plate and for renewal of the sponsor's generic specialty license plate if the fee is required on renewal.

~~(3) Subject to the provisions of 61-3-479, the generic specialty license plate liaison shall determine a person's eligibility to receive a generic specialty license plate and shall provide, on behalf of the sponsor, a written certificate of eligibility to an eligible person who has paid the required donation as determined by the sponsor and as provided in 61-3-480.~~

(3) Once a sponsor's generic specialty license plate has been approved for manufacture and distribution, the donation fee established by the sponsor and confirmed by the liaison may not be changed unless a new plate design is authorized in accordance with 61-3-475. ~~(Terminates June 30, 2005 -- sec. 21, Ch. 402, L. 2001.)~~"

Section 12. Section 61-3-478, MCA, is amended to read:

"61-3-478. ~~(Temporary)~~ Generic specialty license plate sponsor fee — exception. (1) Except as provided in subsection (2), upon approval of an organization's application to sponsor a generic specialty license plate and before

a sponsor's generic specialty license plates may be manufactured, the department shall assess and the sponsor shall pay a ~~$1,200~~ *$4,000* fee to reimburse the department *of corrections for the prison industries training program* for the initial costs incurred in producing the generic specialty license plates for the ~~sponsoring organization~~ *sponsor*.

(2) In lieu of the fee required in subsection (1), a minimum of 400 applications for a ~~sponsoring organization's~~ *sponsor's* generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued. ~~(Terminates June 30, 2005 -- sec. 21, Ch. 402, L. 2001.)~~"

Section 13. Section 61-3-479, MCA, is amended to read:

"61-3-479. ~~(Temporary) Special certificate of registration and issuance~~ *Issuance* of generic specialty license plates — qualifications. (1) ~~The~~ *(a) Except as provided in subsection (1)(b), the* department shall issue a ~~special certificate of registration and~~ *set of* generic specialty license plates to a person who applies ~~if the person presents written certification, in a form prescribed by the department, from the sponsoring organization indicating that the person is eligible to receive the generic specialty license plates~~ *for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480*.

~~(2) If the sponsor is a governmental body that has a written agreement with the county treasurer pursuant to 61-3-480, the department shall issue a special certificate of registration and generic specialty license plates to an eligible person who applies if the person pays the donation specified by the governmental body to the county treasurer at the time of application.~~

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the department of revenue and required under 15-1-504 as of the initial distribution date for the sale of the sponsor's plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor's generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

~~(3)~~*(2)* A ~~special certificate of registration and~~ *set of* generic specialty license plates may be issued ~~only~~ for ~~a light~~ *any* vehicle *, except a trailer of any size, a motorcycle, or a quadricycle*.

~~(4) The department may issue a special certificate of registration and generic specialty license plates to joint owners of a motor vehicle if one of the owners is determined by the sponsor to be eligible and if the eligible owner's name appears on the vehicle's special certificate of registration.~~

~~(5)~~*(3)* (a) Except as provided in 61-3-472 through 61-3-481 *and 61-3-562*, a person who receives ~~a special certificate of registration and~~ generic specialty license plates is subject to the same rules and laws as those that govern number plates.

(b) Except as provided in 61-3-472 through 61-3-481 *and 61-3-562*, the department is subject to the same rules and laws ~~as~~ *that* govern the issuance of number plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to ~~the maximum 4-year limitation provided in 61-3-332(3)(a)~~ *any maximum issuance or use limitation that may be imposed on number plates*. ~~(Terminates June 30, 2005 -- sec. 21, Ch. 402, L. 2001.)~~"

Section 14. Section 61-3-480, MCA, is amended to read:

"61-3-480. ~~(Temporary)~~ Fees for generic specialty license plates — disposition. (1) In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of ~~$10~~ *$15 and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor*.

(2) The county treasurer shall, upon receipt of the ~~fee~~ *fees*:

(a) deposit ~~$2~~ *$5* of the *$15 administrative* fee in the county general fund; ~~and~~

(b) notwithstanding any other provisions of Title 7, Title 17, or this title and unless otherwise provided in 61-3-479(1)(b), accept the donation fee paid by the plate purchaser; and

(c) as provided in 15-1-504, once each month, transmit to the department of revenue for distribution:

~~(b)~~*(i)* ~~remit $8~~ *$10* of the *$15 administrative* fee to the state general fund*; and*

(ii) all donation fees provided for in subsections (1) and (3), along with a schedule showing the number and type of generic specialty license plates issued and total donations received for the benefit of each sponsor of a generic specialty license plate issued or renewed, to each respective sponsor.

~~(2) An applicant for a generic specialty license plate sponsored by a state agency shall pay to the county treasurer the donation required by the state agency. The county treasurer shall remit the entire amount of the donation to the department of revenue for deposit in either the state general fund or the state special revenue fund to the credit of the sponsoring state agency.~~

(3) If ~~an additional~~ *the* donation *fee* is required by a ~~state agency for~~ *sponsor upon* renewal of generic specialty license plates ~~sponsored by the state agency~~, the ~~additional donation~~ *fee* must be paid to the county treasurer upon renewal *of registration* and ~~remitted to the state agency~~ *transmitted to the department of revenue* as prescribed in subsection (2).

~~(4) The county treasurer shall also collect from an applicant any donation required by a sponsoring local government, school district, or political subdivision if a written agreement exists between the county treasurer and the sponsoring local government, school district, or political subdivision. The agreement must:~~

~~(a) authorize the collection of the donations by the county treasurer;~~

~~(b) specify the amount of donation required for issuance and renewal of the generic specialty license plates; and~~

~~(c) provide for the disbursement of the revenue.~~

(4) Once each month, the department of revenue shall distribute to the generic specialty license plate liaison designated by a sponsor under 61-3-475(1)(c) or 61-3-476(3) an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month. ~~(Terminates June 30, 2005 — sec. 21, Ch. 402, L. 2001.)~~"

Section 15. Section 61-3-481, MCA, is amended to read:

"61-3-481. ~~(Temporary)~~ Generic specialty license plates — restrictions on use. (1) Generic specialty license plates may be issued by the department ~~only~~ in conjunction with the registration of ~~a light~~ *any* vehicle, *except a trailer of any size, a motorcycle, or a quadricycle*. The department may not issue generic specialty license plates without the motor vehicle having been registered.

(2) Generic specialty license plates may be used only as the official number plates for a motor vehicle. ~~(Terminates June 30, 2005 - sec. 21, Ch. 402, L. 2001.)~~"

Section 16. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) ~~The~~ *Except as provided in subsection (1)(c), the* owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b);

(iii) the former county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, *special* license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406; *and*

~~(vi) if applicable, the amateur radio operator license plate fee under 61-3-422;~~

~~(vii) if applicable, the annual scholarship donation fee under 61-3-465; and~~

~~(viii)~~*(vi)* senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(c) The following series of license plates may not be used for purposes of permanent registration of a vehicle:

(i) Montana national guard license plates issued under 61-3-332(10)(a)(i);

(ii) reserve armed forces license plates issued under 61-3-332(10)(b);

(iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(10)(g);

(iv) amateur radio operator license plates issued under 61-3-422;

(v) collegiate license plates issued under 61-3-465; and

(vi) generic specialty license plates issued under 61-3-479.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)"

Section 17. Repealer. Section 21, Chapter 402, Laws of 2001, is repealed.

Section 18. Effective dates. (1) Except as provided in subsections (2) through (4), [this act] is effective July 1, 2003.

(2) [Sections 2, 4, and 6] are effective January 1, 2004.

(3) [Section 1] is effective October 1, 2003.

(4) [Sections 3, 5, 9, 11, 12, 19, and this section] are effective on passage and approval.

Section 19. Applicability. (1) [Sections 2, 4, and 6] apply to the registration of motor vehicles and the display of license plates issued after December 31, 2003.

(2) [Sections 7, 8, and 13 through 16] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003.

(3) [Sections 3, 5, 9, 11, and 12] apply to applications for sponsorship of a generic specialty license plate submitted to the department on or after [the effective date of sections 3, 5, 9, 11, and 12].

Ap proved April 10, 2003

CHAPTER NO. 281

[SB 211]

AN ACT ELIMINATING THE JUNK VEHICLE DISPOSAL FEE; AMENDING SECTIONS 75-10-513 AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-513, MCA, is amended to read:

"75-10-513. Disposal of junk vehicles — ~~fees and~~ records. (1) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program,

~~it shall pay a disposal fee of $2 for each vehicle submitted, and~~ the vehicle is then the property of the state.

(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If a certificate of ownership is received for a junk vehicle on the list, that certificate of ownership must accompany the list. The department of justice shall issue a receipt for the certificate of ownership if requested by the licensed facility, and the receipt may serve as an instrument for reclaiming the certificate of ownership if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department."

Section 2. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of money collected. All money received from the sale of ~~the~~ junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees ~~and fees collected as motor vehicle disposal fees~~ must be remitted to the department of revenue, as provided in 15-1-504. The money must be used for the control, collection, recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 10, 2003

CHAPTER NO. 282

[SB 292]

AN ACT EXEMPTING FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977 HOUSING PROVIDED BY THE MONTANA UNIVERSITY SYSTEM AND OTHER POSTSECONDARY EDUCATION INSTITUTIONS; AND AMENDING SECTION 70-24-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-104, MCA, is amended to read:

"70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service, *including all housing provided by the Montana university system and other postsecondary institutions*;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to ~~his~~ *the purchaser's* interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement ~~which~~ *that* includes hunting, fishing, or agricultural privileges, along with the use of the dwelling unit."

Ap proved April 10, 2003

CHAPTER NO. 283

[HB 160]

AN ACT APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Natural resource damage program appropriation. There is appropriated to the department of justice from the coal severance tax permanent fund a loan of up to $650,000 as needed for the biennium ending June 30, 2005, for the purpose of conducting the natural resource damage assessment and litigation and pursuing the state of Montana's remaining natural resource damage claims and any appeals through the natural resource damage litigation program. Any recovery in the litigation for assessment, litigation, and enforcement costs, up to the amount expended pursuant to this section, must be deposited in the coal severance tax permanent fund.

Section 2. Loan agreement. In order to make the loan authorized in [section 1], the board of investments shall enter into a contract with the department of justice, pledging the amount recovered in the litigation to the repayment of the loan to the fullest extent allowable under the law. The contract must provide that the loan repayment be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loan authorized in [section 1] may not be made until the contract required by this section has become effective.

Section 3. Three-fourths vote required. Because [section 1] appropriates money from the coal severance tax permanent fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 4. Effective dates. (1) [Sections 2 and 3 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 2003.

Ap proved April 11, 2003

CHAPTER NO. 284

[HB 417]

AN ACT REPEALING THE SMALL POWER PRODUCTION LAWS; REPEALING SECTIONS 69-3-601, 69-3-602, 69-3-603, AND 69-3-604, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 69-3-601, 69-3-602, 69-3-603, and 69-3-604, MCA, are repealed.

Section 2. Saving clause. [This act] does not affect rights and duties that matured, contracts that were entered into, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date — notification to code commissioner. (1) [This act] is effective on the effective date of the repeal of 16 U.S.C. 824a-3.

(2) The public service commission shall, within 15 days of the effective date of the repeal of 16 U.S.C. 824a-3, notify the code commissioner, certifying that the repeal has occurred.

Section 4. Applicability. [This act] applies to a petition filed with the commission on or after [the effective date of this act].

Ap proved April 11, 2003

CHAPTER NO. 285

[HB 445]

AN ACT PROVIDING THAT A ROCKY MOUNTAIN DOUBLE CARRYING BALED HAY MAY NOT EXCEED 88 FEET OF COMBINED TRAILER LENGTH; AMENDING SECTION 61-10-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

"61-10-124. Special permits — fees. (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an

overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. ~~A~~ *Except as provided in subsection (2)(g), a* Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is $125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A Rocky Mountain double carrying baled hay may not exceed 88 feet of combined trailer length.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of

vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) the combined trailer length may not exceed 95 feet;

(c) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(d) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(e) the combination must have a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(f) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(g) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a “nondivisible load” is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment."

Section 2. Contingent voidness. If the department of transportation receives notice that the increase in the combined trailer length that is allowed for a Rocky Mountain double carrying baled hay will threaten federal highway funding, then [this act] is void. The department shall notify the code commissioner that the department has received a notice and the date upon which the notice was received.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 11, 2003

CHAPTER NO. 286

[HB 546]

AN ACT INCREASING FROM 2 YEARS TO 10 YEARS THE MAXIMUM INCARCERATION FOR THE OFFENSE OF FAILURE TO PROVIDE SUPPORT FOR 6 MONTHS OR FAILURE TO PROVIDE SUPPORT IN A CUMULATIVE AMOUNT EQUAL TO OR IN EXCESS OF 6 MONTHS' SUPPORT; AMENDING SECTION 45-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-621, MCA, is amended to read:

"45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if the person fails to provide support that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if the person has:

(i) left the state without making reasonable provisions for the support of a spouse, child, or other dependent; or

(ii) been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure a person's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined *an amount* not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined *an amount* not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed ~~2~~ *10* years*, all but 2 years of which must be suspended, with the person placed on probation for the remainder of the imprisonment term,* or both.

(c) A person convicted of aggravated nonsupport shall be fined *an amount* not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty or nolo contendere, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of ~~2 years or, in the case of aggravated nonsupport, for a period of~~ 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) is forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the offender to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the offender has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the offender.

(12) When a payment of public assistance money has been made for the benefit of a child by the department of public health and human services under the provisions of Title 53, a representative of the department may sign a

criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The offender, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the offender's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject an offender referred by the sentencing court."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 11, 2003

CHAPTER NO. 287

[HB 617]

AN ACT REVISING THE METAL MINE RECLAMATION LAWS; PROHIBITING AN INCREASE IN A MINE RECLAMATION BOND UNTIL A MINE OPERATING PERMIT MODIFICATION IS COMPLETE; AMENDING SECTION 82-4-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to conform to the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

~~(4)~~*(5)* During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

~~(5)~~*(6)* Applications for major amendments must be processed in the same manner as applications for new permits.

~~(6)~~*(7)* Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

~~(7)~~*(8)* If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to permits and permit amendments that were approved by the department of environmental quality after September 30, 1995.

Ap proved April 11, 2003

CHAPTER NO. 288

[HB 678]

AN ACT ESTABLISHING A DECLARATORY RULING PROCESS UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AUTHORIZING THE BOARD OF SUPERVISORS OF A CONSERVATION DISTRICT TO ISSUE DECLARATORY RULINGS; PROVIDING FOR JUDICIAL REVIEW OF A DECLARATORY RULING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Jurisdiction — declaratory ruling — standards — judicial review. (1) (a) The supervisors shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the supervisors under this part.

(b) The supervisors' determination pursuant to subsection (1)(a) must be made in accordance with rules established under 75-7-117, prior to the filing of a petition under subsection (2).

(2) (a) A person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling.

(b) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(c) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(d) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors.

(3) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedure Act.

(4) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the data, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the supervisors;

(c) affected by error of law; or

(d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.

(5) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.

(6) This section may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors under 75-7-112 or 75-7-113 granting, denying, or conditioning a written consent. Review of a final action by the supervisors pursuant to 75-7-112 or 75-7-113 is exclusively provided for in 75-7-121.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 7, part 1, and the provisions of Title 75, chapter 7, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability — applicability. (1) [This act] applies retroactively, within the meaning of 1-2-109, to all notices of a project pending before a conservation district on [the effective date of this act].

(2) [Section 1] does not apply retroactively to a declaratory ruling proceeding that was initiated before [the effective date of this act].

Ap proved April 11, 2003

CHAPTER NO. 289

[SB 66]

AN ACT REDUCING THE YEARS OF SERVICE REQUIRED BEFORE MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', HIGHWAY PATROL OFFICERS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS MAY PURCHASE MILITARY SERVICE; PROVIDING THAT MEMBERS OF THE JUDGES' RETIREMENT SYSTEM MAY PURCHASE MILITARY SERVICE; PROVIDING THAT ANY VESTED MEMBER OF THE SYSTEM MAY PURCHASE THE SERVICE; AMENDING SECTIONS 19-3-503, 19-6-801, 19-7-803, 19-7-804, 19-8-901, 19-9-403, AND 19-13-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-503, MCA, is amended to read:

"19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection (2) and subject to 19-3-514, a member ~~with at least 10 years of service credit~~ *with at least 5 years of membership service* may, at any time prior to retirement, file a written application with the board to purchase service credit for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 2. Section 19-6-801, MCA, is amended to read:

"19-6-801. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-6-805, ~~a~~ *an eligible* member ~~with at least 15 years of service credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's

active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service:

(a) a member *with at least 15 years of service credit and* who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.

(b) a member *with at least 5 years of membership service and* who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 3. Section 19-7-803, MCA, is amended to read:

"19-7-803. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-7-805, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.~~"

Section 4. Section 19-7-804, MCA, is amended to read:

"19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service under this section, a member shall pay the actuarial cost of the service in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

~~(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.~~

~~(4)~~*(3)* Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits."

Section 5. Section 19-8-901, MCA, is amended to read:

"19-8-901. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-8-906, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.

(2) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 6. Section 19-9-403, MCA, is amended to read:

"19-9-403. Application to purchase military service. (1) Except as otherwise provided in this section and subject to 19-9-406, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.

~~(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)~~*(3)* A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan."

Section 7. Section 19-13-403, MCA, is amended to read:

"19-13-403. Application to purchase military service. (1) (a) Except as otherwise provided in this section and subject to 19-13-406, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits.

(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

~~(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(3)~~*(2)* A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.~~"

Section 8. Application to purchase military service credit. (1) Except as otherwise provided in this section and subject to [section 9], a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase up to 5 years of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits.

(2) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.

(3) A member is not eligible to purchase military service under this section if the member:

(a) has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

(b) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(c) is eligible to receive credit for that service in any other retirement system or plan.

Section 9. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service under 19-5-409 and [section 8].

Section 10. Codification instruction. [Sections 8 and 9] are intended to be codified as an integral part of Title 19, chapter 5, part 4, and the provisions of Title 19, chapter 5, part 4, apply to [sections 8 and 9].

Section 11. Effective date. [This act] is effective July 1, 2003.

Ap proved April 11, 2003

CHAPTER NO. 290

[SB 77]

AN ACT EXTENDING UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS THROUGH DECEMBER 2005; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection (7), these universal system benefits charge rates must remain in effect ~~until~~ *through* ~~July 1, 2003~~ *December 31, 2005*.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and

submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 11, 2003

CHAPTER NO. 291

[SB 135]

AN ACT REVISING THE LAWS RELATING TO THE SCHOOL GUARANTEE ACCOUNT; PROVIDING THAT INTEREST PAYMENTS ON THE COAL SEVERANCE TAX LOAN TO PURCHASE MINERAL PRODUCTION RIGHTS MUST BE PAID MONTHLY ON THE CURRENT OUTSTANDING LOAN BALANCE; PROVIDING THAT THE TRUST LAND ADMINISTRATION ACCOUNT DOES NOT RECEIVE A PORTION OF THE MINERAL ROYALTIES PURCHASED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH THE COAL SEVERANCE TAX LOAN; AMENDING SECTIONS 20-9-622 AND 77-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-622, MCA, is amended to read:

"20-9-622. Guarantee account. (1) There is a guarantee account in ~~a subfund of~~ the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsections (2) and (3), the guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall ~~annually~~ *monthly* transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is *currently* outstanding ~~in the prior year~~.

(3) The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533."

Section 2. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108~~,~~ the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands; and

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands *and other than those purchased pursuant to 17-6-340*, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). *Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.*

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 11, 2003

CHAPTER NO. 292

[SB 145]

AN ACT PROVIDING THAT A MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE MEMBERSHIP SERVICE AND

SERVICE CREDIT FOR VERIFIABLE SERVICE AS A VOLUNTEER IN A UNITED STATES SERVICE PROGRAM; AND AMENDING SECTION 19-3-514, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purchase of federal volunteer service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase membership service and service credit for up to 5 years of the member's service as a volunteer in a United States service program, such as the peace corps, or successful completion of a term of service in a national service position as described in the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq.

(2) Purchase of membership service and service credit under this section is subject to the board's verification of the member's volunteer service.

(3) To purchase this membership service and service credit, the member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

Section 2. Section 19-3-514, MCA, is amended to read:

"19-3-514. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, ~~and~~ 19-3-513*, and [section 1]*.

(2) A member who has purchased service *credit* under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service *credit* under 19-3-513 must receive credit for the full months of service purchased on or before January 1, 1990."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, part 5, and the provisions of Title 19, chapter 3, part 5, apply to [section 1].

Ap proved April 11, 2003

CHAPTER NO. 293

[SB 188]

AN ACT REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO INCLUDE LICENSED ELECTRICAL CONTRACTORS AND LICENSED MASTER PLUMBERS IN THE STANDARD PREVAILING WAGE SURVEY; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention

to make it the person's home. Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by *electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and* Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the

survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(14) "Work of a similar character" means work on private commercial projects as well as work on public projects."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 11, 2003

CHAPTER NO. 294

[SB 220]

AN ACT REVISING THE PUBLIC SERVICE COMMISSION DISTRICTS FOR THE PURPOSE OF POPULATION EQUALITY; PROVIDING FOR TRANSITION; AND AMENDING SECTION 69-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-104, MCA, is amended to read:

"69-1-104. Public service commission districts. In this state there are five public service commission districts, with one commissioner elected from each district, distributed as follows:

(1) first district: Blaine, *Cascade,* Chouteau, Daniels, Dawson, Fergus, Garfield, ~~Glacier, Golden Valley,~~ Hill, *Judith Basin,* Liberty, McCone, ~~Musselshell,~~ Petroleum, Phillips, ~~Pondera, Prairie,~~ Richland, Roosevelt, Sheridan, Toole, Valley~~, and Wibaux~~, *and Wibaux* Counties;

(2) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, *Prairie,* Rosebud, ~~Stillwater, Sweet Grass,~~ Treasure, and Yellowstone Counties;

(3) third district: *Beaverhead,* Broadwater, ~~Cascade,~~ *Deer Lodge, Gallatin, Golden Valley,* Jefferson, ~~Judith Basin, Lewis and Clark,~~ *Madison,* Meagher, ~~Teton,~~ *Musselshell, Park, Silver Bow, Stillwater, Sweet Grass,* and Wheatland Counties;

(4) fourth district: ~~Beaverhead, Deer Lodge, Gallatin,~~ Granite, ~~Madison, Park,~~ *Lincoln, Mineral, Missoula,* Powell, Ravalli, and ~~Silver Bow~~ *Sanders* Counties;

(5) fifth district: Flathead, ~~Lake,~~ *Glacier, Lake, Lewis and Clark,* ~~Lincoln, Mineral, Missoula, and Sanders~~ *Pondera, and Teton* Counties."

Section 2. Transition. For the purposes of the 2004 election, the secretary of state shall declare which district a sitting commissioner represents for any public service commissioner whose district is not up for election and shall use as criteria the residence of the respective commissioner on [the effective date of this act].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Ap proved April 11, 2003

CHAPTER NO. 295

[SB 249]

AN ACT REVISING AND CLARIFYING THE PURPOSE FOR WHICH GENERAL OBLIGATION BONDS MAY BE ISSUED FOR FINANCING AND ACQUIRING INFRASTRUCTURE IMPROVEMENTS AND EQUIPMENT FOR AEROSPACE TRANSPORTATION AND TECHNOLOGY PROJECTS; PROVIDING THAT AN AGREEMENT MAY PROVIDE THE PROJECT DEVELOPER WITH THE RIGHT OF FIRST REFUSAL FOR THE PURCHASE OF REAL PROPERTY SECURED BY THE BONDS AT FAIR MARKET VALUE PLUS REIMBURSEMENT TO THE STATE FOR ANY COSTS INCURRED IN THE ISSUANCE OF THE BONDS; AMENDING SECTION 5, CHAPTER 269, LAWS OF 1999, SECTION 1, CHAPTER 6, SPECIAL LAWS OF MAY 2000, AND SECTION 1, CHAPTER 589, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1, Chapter 589, Laws of 2001, is amended to read:

"**Section 1.** Section 1, Chapter 6, Special Laws of May 2000, is amended to read:

"**Section 1.** Section 5, Chapter 269, Laws of 1999, is amended to read:

"**Section 5. Authorization of bonds.** (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $20 million ~~for aerospace transportation and technology infrastructure development projects, as defined in 7-15-4283, except as provided in subsection (2) of this section,~~ in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, ~~and upon the authority granted to the board by this section~~ *for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 and equipment for aerospace transportation and technology projects recommended by the department of commerce in accordance with the authority granted to the board by this section*. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) ~~For purposes of the general obligation bonds authorized in this section, 7-15-4288(5) and (7) are excluded from the definition of aerospace transportation and technology infrastructure development projects. Bond proceeds are appropriated to the department of commerce for assisting in funding authorized aerospace transportation and technology infrastructure development projects.~~ The department *of commerce* may request the board of examiners to issue the bonds for *one or more* specified projects ~~for a single or~~

~~multiple entities~~ *in one or more series*, but the total amount of bonds issued may not exceed $20 million. *Bond proceeds are appropriated to the department, and the department is authorized to acquire or construct the infrastructure improvements or acquire the equipment, to contract with the city or county in which a project is located, to contract with a certified community lead organization, as defined in 90-1-116, or to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement or the acquisition of equipment upon a determination that it is in the best interest of the project. The plans and specifications for the infrastructure and equipment to be financed from the proceeds of the bonds must be approved by and be acceptable to the department following a review of the plans and specifications of the infrastructure by the architecture and engineering division of the department of administration, but the design and acquisition or construction of the infrastructure and the acquisition of equipment for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18.* ~~The portions of aerospace transportation and technology infrastructure development projects that are~~ *Infrastructure and equipment* financed with bond proceeds ~~are~~ *are* owned by the state, and ~~may be leased to the local government creating the tax increment financing district or to the entity for whom the project is created at a fair value, taking into consideration job creation and overall tax revenue generated by the project~~ *the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the use of the infrastructure and equipment at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement may provide the project developer with the right of first refusal for the purchase of real property secured by the bonds at fair market value plus reimbursement to the state for any costs incurred in the issuance of the bonds. Fair market value must be determined by a certified appraiser.* For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) It is the intent of the legislature that debt service payments for the bonds authorized by this section will be covered by the totality of the taxes generated by the aerospace transportation and technology ~~infrastructure~~ development projects to be calculated by an economic impact analysis of the projects on state tax revenue. *Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to construct and implement the project based upon audited financial statements.* When requesting the board ~~of examiners~~ to issue the bonds, the department ~~of commerce~~ shall present to the department of administration for presentation to the board ~~of examiners~~ the following:

(a) evidence satisfactory to the board that each aerospace transportation and technology ~~infrastructure~~ development project has committed itself to locate its project in Montana ~~and has acquired a site for the project~~; and

(b) a certificate signed by the director of the office of budget and program planning that the tax revenue to be received by the state from each aerospace transportation and technology~~infrastructure~~ development project *over the term of the bonds* will be sufficient to pay the principal *amount* of ~~and interest on~~ *and interest on* the bonds *issued to assist with the specific project*.

(4) For the purposes of this section, "equipment" means machinery used in the design, manufacture, repair, and maintenance of aerospace transportation and technology projects."""

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 11, 2003

CHAPTER NO. 296

[HB 6]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from the renewable resource grant and loan state special revenue account. (1) There is appropriated to the department of natural resources and conservation $4 million from the amount that is available in the renewable resource grant and loan state special revenue account. Up to $220,932 of this amount is to be used for emergency projects, and $100,000 is to be used for project planning grants to be awarded by the department over the course of the biennium.

(2) The remaining funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2003 report to the 58th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects further down the priority list that would not otherwise receive funding. For each of the grant projects listed after the city of Troy project in subsection (3), grant funds may not be received until sufficient funds are available for that purpose. Any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Scobey, City of	
(Wastewater System Improvements)	$100,000
Dawson County	
(Yellowstone River Floodplain Management)	75,000*
Flathead Basin Commission	
(Ashley Creek Headwater Restoration)	99,700

Missoula, City of	
(Rattlesnake Neighborhood Sewer Collection System)	100,000
North Powell Conservation District	
(Blackfoot River Habitat, Water Quality and Restoration)	62,600
Montana Department of Agriculture	
(Monitoring Well Network for the Assessment of Ag Chemicals)	100,000
Paradise Valley Irrigation District*	
(Hillside Lateral)	100,000
Ramsay County Water and Sewer District	
(Water System Improvements)	100,000
Missoula County	
(Mullen Road Corridor Sewer Project - Phase I)	100,000
Park County	
(North Park County Water Resources Protection Plan)	75,000
Sheaver's Creek Water and Sewer District	
(Water System Improvements)	100,000
Stanford, Town of	
(Water System Improvements)	100,000
Hamilton, City of	
(Water Distribution Improvements)	100,000
Park County-Cooke City Water District	
(Water System Improvements)	100,000
Milk River Joint Board of Control*	
(St. Mary Siphon Expansion Joint Replacement)	100,000
Buffalo Rapids Irrigation District	
(Refit of Glendive Pumping Plant)	100,000
Mill Creek Irrigation District	
(Mill Lake Dam Rehabilitation)	100,000
Montana Department of Natural Resources and Conservation	
(Seepage Monitoring Project - DNRC Dams)	97,646
Sidney Water Users Irrigation District	
(Increasing Irrigation Efficiency)	100,000
Stillwater County	
(Yellowstone River Floodplain Management)	75,000*
Yellowstone County	
(Yellowstone River Floodplain Management)	75,000*
Worden Ballantine Yellowstone County Water and Sewer District	
(Water Distribution System Improvements)	100,000

Ryegate, Town of	
(Water System Improvements)	100,000
Malta Irrigation District*	
(Replacement and Modification of Check Structures)	100,000
Judith Basin County	
(Geyser Water System Improvements)	100,000
Sheridan, Town of	
(Water System Improvements)	100,000
Pablo-Lake County Water and Sewer District	
(Wastewater Treatment System Improvements)	100,000
Fort Belknap Irrigation District*	
(Sugar Factory Lateral Project)	100,000
Montana Department of Natural Resources and Conservation	
(North Fork of the Smith River Dam Rehabilitation)	100,000
Conrad, City of	
(Raw Water Intake and Pump Station Improvements)	100,000
Lewis and Clark County Water Quality Protection District	
(Ground Water Sustainability in North Hills Area, Helena)	50,000
Power-Teton County Water and Sewer District	
(Water System Improvements)	100,000
Phillips County Green Meadows Water and Sewer District	
(Water System Improvements)	100,000
Chinook Division Irrigation Joint Board of Control*	
(Fresno Dam - Gate Leaf Seals)	100,000
Upper/Lower River Road Water and Sewer District	
(Water System Improvements)	100,000
Gallatin Local Water Quality District	
(Dedicated Monitoring Well Network for the Gallatin Valley)	50,000
Troy, City of	
(Water System Improvements)	100,000
Montana Department of Corrections	
(Rehabilitation of Prison Ranch Dam)	80,000
Fort Shaw Irrigation District	
(Water Quality and Quantity Improvement - Phase III)	89,122
Richland County Conservation District	
(Irrigation Potential of Ground Water)	50,000
Pablo-Lake County Water and Sewer District	
(Water Distribution Improvements)	100,000

Cut Bank, City of	
(Water System Improvement)	100,000
Pleasant View Homesites County Water and Sewer District	
(Water System Improvements)	100,000
Gardiner-Park County Water District	
(Water System Improvements)	100,000

(4) The department of natural resources and conservation may determine the dollar portions for each project identified with an asterisk (*).

(5) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(6) The funding provided to the projects approved in this section and identified with an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding required for the settlement of the Fort Belknap/Montana Water Right Compact.

(7) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2005 biennium pursuant to 17-7-302.

Section 2. Condition of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 58th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 58th legislature for the 2005 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior biennia are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan state special revenue account.

Section 5. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 8. Effective dates. (1) [Sections 2 through 7 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 2003.

Ap proved April 14, 2003

CHAPTER NO. 297

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 57TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
BUFFALO RAPIDS IRRIGATION DISTRICT	
Refit of Glendive Pumping Plant	$1,315,000

MILL CREEK IRRIGATION DISTRICT	
Mill Lake Dam Rehabilitation	572,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
North Fork of the Smith River Dam Rehabilitation	557,000
HILL COUNTY	
Beaver Creek Dam Outlet Works Repair	500,000

Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the following renewable resource projects that were approved by the 57th legislature in Chapter 266, Laws of 2001, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2003. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) GROUP A: The interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan	Amount
LOCKWOOD WATER AND SEWER DISTRICT	
Wastewater Collection and Treatment Works	$3,300,000

(3) GROUP B: The interest rate for the project in this group is 2.25% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Nevada Creek Dam Rehabilitation	$494,041

(4) GROUP C: The interest rate for the projects in this group will be 4.5% on the first $250,000, 2.25% on the next increment of the loan up to $500,000, and 0% on the amount of the loan over $500,000. The department of natural resources and conservation will then determine an average rate for the full term of the loan, which may be up to 20 years.

Loan	Amount
LOWER WILLOW CREEK DRAINAGE DISTRICT	
Lower Willow Creek Dam Rehabilitation	$1,350,000
MALTA IRRIGATION DISTRICT	
Repair and Modification of Dodson Diversion Dam	2,274,950

(5) GROUP D: The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
CANYON CREEK IRRIGATION DISTRICT	
Canyon Lake Dam and Wyant Lake Dam Restoration Project	$300,000

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 7]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $11,729,290, of which $10,662,991 is to be used to finance the projects approved in [sections 1 and 2] and up to $1,066,299 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Condition of loans. (1) Disbursement of funds under [sections 1 through 7] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriation established. For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 7] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2003.

Ap proved April 14, 2003

CHAPTER NO. 298

[HB 124]

AN ACT CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE DEPARTMENT OF JUSTICE ON BEHALF OF THE MONTANA LAW ENFORCEMENT ACADEMY; PROVIDING FOR A SURCHARGE UPON CERTAIN CRIMINAL CONVICTIONS TO FUND LAW ENFORCEMENT ACADEMY OPERATIONS; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department of justice account established. (1) There is an account in the state special revenue fund to be used by the department of justice on behalf of the Montana law enforcement academy, established in 44-10-103.

(2) Money in the account created in subsection (1) must be appropriated by the legislature for the purposes provided in Title 44, chapter 10, part 2, including use as matching funds for grants to be sought under 44-10-202(10).

Section 2. Surcharges upon certain criminal convictions — exception. (1) Except as provided in subsection (2), all courts of limited

jurisdiction, except small claims courts, shall impose a $10 surcharge on a defendant who is convicted of criminal conduct under state statute or who forfeits bond.

(2) A court may not waive payment of the surcharge unless the court determines that the defendant is unable to pay the surcharge. Inability to pay must be supported by a sworn statement from the defendant demonstrating financial inability to pay without substantial hardship in providing for personal or family necessities. The statement is not admissible in the proceeding unless offered for impeachment purposes and is not admissible in a subsequent prosecution for perjury or false swearing.

(3) The surcharge imposed by this section is not a fee or a fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the department of revenue for deposit in the account created in [section 1].

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 44, chapter 10, part 2, and the provisions of Title 44, chapter 10, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 3, chapter 1, part 3, and the provisions of Title 3, chapter 1, part 3, apply to [section 2].

Section 4. Effective date — applicability. (1) [This act] is effective July 1, 2003.

(2) [Section 2] applies to:

(a) a defendant convicted on or after July 1, 2003; and

(b) proceedings filed on or after July 1, 2003.

Ap proved April 14, 2003

CHAPTER NO. 299

[HB 186]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LICENSING AND REGULATION OF MOTOR VEHICLE DEALERS; AUTHORIZING WITHDRAWAL OF DEALER AND DEMONSTRATOR PLATES AND 20-DAY PERMITS IN CERTAIN CONDITIONS; REQUIRING DEALERS TO PAY OFF OUTSTANDING BALANCES ON TRADE-IN OR CONSIGNED VEHICLES WITHIN A CERTAIN PERIOD; REQUIRING A SECURED PARTY WHO HAS BEEN PAID IN FULL TO DELIVER A RELEASE WITHIN A CERTAIN PERIOD; REMOVING THE REQUIREMENT THAT A DEALER LICENSE BE LIMITED TO A 1-YEAR TERM AND ALLOWING THE LICENSE TO REMAIN VALID UNTIL SUSPENDED, REVOKED, OR CANCELED UPON SURRENDER; INCREASING BOND REQUIREMENTS FOR NEW AND USED MOTOR VEHICLE DEALERS, RECREATIONAL VEHICLE DEALERS, TRAILER DEALERS, WHOLESALERS, AND AUTO AUCTIONS TO $50,000 AND FOR MOTORCYCLE DEALERS TO $15,000; REVISING THE REPORTING REQUIREMENTS CONCERNING DEALER PLATES; CLARIFYING THE GRACE PERIOD FOR DEALER AND DEMONSTRATOR PLATE USAGE; REVISING DEALER RECORDKEEPING REQUIREMENTS; REVISING

THE PERIOD OF SUSPENSION OF A DEALER LICENSE; LIMITING THE EXEMPTION FROM REGISTRATION LAWS AND SPECIAL TRANSFER PRIVILEGES FOR DEALERS WHO FAIL TO FILE AN ANNUAL REPORT AND PAY ANNUAL FILING AND REGISTRATION FEES BEFORE CERTAIN DATES; ALLOWING A LICENSED AUTO AUCTION TO USE AUTO AUCTION LICENSE PLATES TO TRANSPORT VEHICLES BOTH TO AND FROM AUCTION TO A POINT OF STORAGE OR DELIVERY IN THIS STATE; CLARIFYING THE REQUIREMENT FOR DEALERS TO CARRY AND MAINTAIN GENERAL LIABILITY INSURANCE; REQUIRING INSURANCE CARRIERS TO NOTIFY THE DEPARTMENT OF JUSTICE UPON CANCELLATION OR TERMINATION OF A DEALER'S GENERAL LIABILITY INSURANCE POLICY; REPLACING THE ANNUAL LICENSE RENEWAL REQUIREMENT WITH THE REQUIREMENT TO FILE AN ANNUAL REPORT AND PAY CERTAIN FEES; REQUIRING CERTAIN USED MOTOR VEHICLE DEALERS TO CERTIFY TO THE RETAIL SALE OF AT LEAST 12 VEHICLES IN THE PRIOR YEAR OR PAY AN ADDITIONAL REGISTRATION FEE OF $25; PROHIBITING THE DEPARTMENT OF JUSTICE FROM RENEWING DEALER OR DEMONSTRATOR PLATES FOR A DEALER WHO HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; PROHIBITING THE DEPARTMENT OF JUSTICE FROM TRANSFERRING TITLE TO A DEALER WITHOUT REGISTERING THE VEHICLE WHEN THE DEALER HAS NOT FILED AN ANNUAL REPORT OR PAID REQUIRED FEES BY A CERTAIN DATE; REQUIRING THE DEPARTMENT OF JUSTICE TO INITIATE ADMINISTRATIVE ACTION TO REVOKE A DEALER'S LICENSE WHEN THE DEALER FAILS TO FILE AN ANNUAL REPORT AND PAY FEES BY A CERTAIN DATE; INCREASING THE DEALER AND WHOLESALER DEMONSTRATOR PLATE FEE TO $5; CLARIFYING REQUIREMENTS FOR USE OF DEMONSTRATOR PLATES; REVISING REQUIREMENTS FOR THE CONTESTED CASE HEARING PROCESS TO CANCEL OR TERMINATE A MOTOR VEHICLE FRANCHISE; INCREASING THE FEE FOR TRANSIT PLATES TO $10 AND LIMITING THE NUMBER OF SETS OF TRANSIT PLATES THAT MAY BE ISSUED TO A TRANSPORTER OF NEW MOTOR VEHICLES, UNLESS NEED FOR ADDITIONAL PLATES IS DEMONSTRATED; AMENDING SECTIONS 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-107, 61-4-111, 61-4-120, 61-4-123, 61-4-124, 61-4-125, 61-4-129, 61-4-206, AND 61-4-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Privileges incident to license — withdrawal upon certain conditions. (1) The privileges of a dealer licensed under the provisions of this part to use and display a set of dealer plates or a demonstrator plate on a motor vehicle held for sale by the dealer and to issue a 20-day permit, under the authority of 61-4-111 or 61-4-112, upon the sale of a vehicle by the dealer are specifically conditioned on the dealer's satisfaction of the bond requirements of 61-4-101(7) and the general liability insurance coverage requirements of 61-4-123, without interruption or lapse.

(2) If the department is notified or determines that a dealer's bond or general liability insurance has lapsed or been canceled, all dealer plates, demonstrator plates, and 20-day permits assigned or issued to the dealer are subject to immediate withdrawal and confiscation, upon demand, by the department or a

compliance specialist, upon behalf of the department, and may not be returned to the dealer until the bond and general liability insurance requirements have been satisfied.

(3) A dealer whose privileges are withdrawn under this section may otherwise engage in the dealer's business operations during the period of withdrawal.

(4) If the lapse of bond or general liability insurance is not corrected with 30 days, the department may initiate administrative action to suspend or revoke the dealer's license under 61-4-105(2).

Section 2. Obligation of dealer to pay off liens on motor vehicles accepted in trade or consignment — duties of dealer and secured party. (1) (a) If a dealer accepts a vehicle in trade from a retail customer as part of the sale of another vehicle and there is an outstanding loan balance owing on the traded vehicle, the dealer shall remit payment to the secured party to whom the balance on the traded vehicle is owed in an amount sufficient to satisfy the perfected security interest on the traded vehicle by the earlier of the following dates:

(i) 21 days from the date of acceptance of the vehicle in trade; or

(ii) 15 days from the date of the receipt by the dealer of payment in full from the sale of the traded vehicle.

(b) If a dealer accepts a vehicle from an owner for sale upon consignment and there is an outstanding loan balance owing on the consigned vehicle, the dealer shall remit payment to the secured party to whom the balance on the consigned vehicle is owed in an amount sufficient to satisfy the perfected security interest on the consigned vehicle within 15 days from the date of the receipt by the dealer of payment in full for sale of the consigned vehicle.

(2) A secured party who has been paid in full by a dealer in accordance with the terms of this section shall forward to the department a properly executed release within:

(a) 15 business days after the business day on which the funds are received when the funds are in cash, cashier's check, certified check, teller's check, or other certified source of funds;

(b) 18 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a local originating depository institution; or

(c) 21 business days after the business day on which the funds are received when the funds are in the form of a check drawn on a nonlocal originating depository institution.

(3) For purposes of this section, "business day" means a weekday, excluding any weekday upon which a legal holiday falls.

Section 3. Section 61-4-101, MCA, is amended to read:

"61-4-101. Dealer's license — types of licenses and terms — plates — bonds — zoning. (1) Except as provided in 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, new or used recreational vehicle, trailer (except a trailer having an unloaded weight of less than 500 pounds), motorcycle, quadricycle, or special mobile equipment that is

not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person ~~whom~~ it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

(i) new motor vehicle;

(ii) used motor vehicle;

(iii) new recreational vehicle;

(iv) used recreational vehicle;

(v) trailer or special mobile equipment; or

(vi) motorcycle or quadricycle.

(b) ~~For each type of dealer's license authorized, the~~ *The* department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles.

~~(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.~~

(d) Subject to the provisions of 61-4-124, a dealer's license issued by the department is valid until:

(i) voluntarily returned to the department for surrender and cancellation upon the cessation of the dealer's business operations; or

(ii) suspended or revoked for a violation of this chapter or any other laws relating to the sale of motor vehicles.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (4)(a), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired ~~garage~~ *general* liability insurance, naming the department as a certificate holder of the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and of a permanent nonresidential building that will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business permitting agency.

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles; and

(iii) verification that the applicant otherwise meets the requirements of part 2 of this chapter; and

(i) if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of $5 and one or more of the following license fees based on the type of dealer's license being sought:

(a) $25 for a new motor vehicle dealer's license;

(b) $25 for a used motor vehicle dealer's license;

(c) $25 for a new or used recreational vehicle dealer's license; or

(d) $25 for a motorcycle or trailer dealer's license.

(7) The applicant for a dealer's license shall also file with the application a bond of ~~$35,000~~ *$50,000* for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of ~~$10,000~~ *$15,000*. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location if all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually."

Section 4. Section 61-4-102, MCA, is amended to read:

"61-4-102. Dealer's license numbers — assignment, numbering, and limitation of dealer plates — restriction of use — fees. (1) Upon the licensing of a dealer, the department shall assign to the dealer a distinctive serial license number as a dealer and furnish the dealer with one or more sets of numbered dealer plates in accordance with the provisions of this section.

(2) (a) Dealer plates designed by the department must be similar to the numbered plates furnished to owners of motor vehicles under 61-3-332, but they must bear:

(i) the license number assigned to the dealer;

(ii) an abbreviation for the vehicle type of the dealer's license issued, as follows:

(A) the letter "D" for a new motor vehicle dealer;

(B) the letters "UD" for a used motor vehicle dealer; or

(C) the letters "RV" for a new or used recreational vehicle dealer; and

(iii) the actual number of sets of dealer plates issued to the dealer.

(b) Dealer plates may not be issued to a motorcycle or trailer dealer or a wholesaler.

(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer's license type abbreviation, the dealer's license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.

(4) (a) In addition to the fees required under the provisions of 61-4-101 and 61-4-124, an applicant for a dealer's license shall pay an annual fee of $25~~,~~ for each set of numbered dealer plates requested and issued.

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer's sales incrementally meet or exceed the requirements of the formula established in subsection (4)(b)(ii). However, the aggregate number of sets of dealer plates issued to a dealer under this subsection (4)(b)(iii) may not exceed the combined number allowed under subsections (4)(b)(i) and (4)(b)(ii).

(5) (a) A dealer is authorized to use and display dealer plates on a motor vehicle held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection (5):

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by 61-4-123(2), on a vehicle bearing dealer plates is prima facie evidence that the vehicle is offered for bona fide sale by the dealer.

(6) Dealer plates may not be used or displayed on vehicles used for hire, lease, or rental.

(7) (a) A dealer is accountable for each set of numbered dealer plates issued and, *except as provided in subsection (7)(b),* shall file ~~a quarterly~~ *an annual* report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

~~(b) A dealer who fails to submit an accountability report within 30 days of the end of the calendar quarter may be subject to the imposition of a civil penalty under 61-4-105.~~

(b) Upon reassignment of one or more sets of dealer plates to another person, within 15 days of the reassignment, the dealer shall notify the department, in a manner prescribed by the department, of the name, address, and occupation of the person to whom the plates were assigned.

(8) *(a)* All numbered dealer plates expire on December 31 of the year of issue and ~~are subject to renewal in accordance with the provisions of 61-4-124 and this section~~ *must be renewed annually*.

(b) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 5. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. *(1) (a)* A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the *date of purchase, sale, or consignment and the* name and address of ~~the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be~~ *:*

(i) the person from whom the dealer or wholesaler acquired the vehicle's ownership or, if consigned, possessory interest in the vehicle;

(ii) the person to whom the dealer or wholesaler assigned the vehicle; and

(iii) a secured party with a perfected security interest in the vehicle to which the dealer or wholesaler's interest is subordinate, if any.

(b) The *vehicle* description ~~in the case of motor vehicles~~ must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, or special mobile equipment.

(2) The dealer or wholesaler must also have a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it has been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold.

(3) All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4),

must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Section 6. Section 61-4-105, MCA, is amended to read:

"61-4-105. Criminal penalty — civil penalty imposed by agency. (1) Except as provided in 61-4-143, a person violating the provisions of this part is guilty of a misdemeanor and subject to a fine in an amount of not less than $250 and not more than $500. For the purposes of this section, every sale of a motor vehicle in violation of the provisions of this part is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Except as provided in 61-4-143, a person violating the provisions of this part may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed $1,000 for each violation;

(b) suspension of the motor vehicle dealer, wholesaler, or auto auction license not to exceed ~~5 working~~ *7* days;

(c) revocation ~~or denial~~ of the motor vehicle dealer, wholesaler, or auto auction license; or

(d) any combination of subsections (2)(a) through (2)(c)."

Section 7. Section 61-4-107, MCA, is amended to read:

"61-4-107. Cease and desist order. (1) When the department has reasonable cause to believe, from information furnished to it or from an investigation made by it, that a person is engaged in any business regulated by this part without being licensed as required *or if a dealer licensed under this part is conducting an off-premises sale without a permit, as required by 61-4-123(4)*, it shall immediately issue and serve upon the person, *in person or* by certified mail, a cease and desist order requiring the person to cease and desist from further engaging in that business *or from conducting an off-premises sale without a permit*. If the person fails to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court shall proceed in the action as in other actions for injunctions.

~~(2) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the certificates of ownership are not held in the offeror's name, in any calendar year is prima facie evidence that the offeror is engaged in the business of dealing motor vehicles and must be licensed under this chapter.~~

~~(3)~~*(2)* When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a law enforcement officer, that a dealer or wholesaler has been improperly licensed, has used a dealer's license in a manner other than as authorized in this title, has provided a material misstatement of fact in an application for a license, is not qualified as a dealer or wholesaler under the requirements of this title, or has engaged in criminal conduct that renders the dealer or wholesaler unfit for licensure, the department may revoke the dealer's or wholesaler's license."

Section 8. Section 61-4-111, MCA, is amended to read:

"61-4-111. Used motor vehicles — transfer to and from dealers. (1) ~~A~~ *Except as provided in 61-4-124(6), a* licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:

(a) is exempt from registration under 61-3-201(2) when applying for a certificate of ownership; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of ownership; however, when the allotted number of dealer reassignment sections on a certificate of ownership has been completed, ownership of the vehicle may not be transferred until an application for a certificate of ownership has been submitted by the dealer to the department and a new certificate of ownership has been issued.

(2) Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of the vehicle a 20-day permit in a form to be prescribed by the department and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There must be imprinted on the permit in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". One copy of the permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer's file. It is unlawful for the dealer to issue more than one permit per vehicle sale.

(b) Within 4 working days following the date of delivery of the vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the certificates are then in the dealer's possession), with an application for registration executed by the new owner in accordance with the provisions of 61-3-322, and a copy of the permit affixed to the vehicle by the dealer. The department, upon receipt of the documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration, together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202. Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first-class mail, in which event they are considered to have been delivered at the time of mailing.

(c) If the dealer is unable to forward the certificate of ownership or certificate of registration within the time set forth in subsection (2)(b) because the certificate is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle is considered to have passed to the purchaser as of the date of the delivery of the vehicle to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111."

Section 9. Section 61-4-120, MCA, is amended to read:

"61-4-120. Application for auto auction license — general regulations. (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of ~~$35,000~~ *$50,000* and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in

a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles *to and* from a point of storage or a point of delivery in this state *and* to *and from* the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number and engine number, if any; and

(ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206."

Section 10. Section 61-4-123, MCA, is amended to read:

"61-4-123. Dealer requirements and restrictions. (1) A dealer may not offer for sale, trade, or consignment any vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a vehicle of a type for which the dealer is not licensed.

(2) A dealer may not display at the dealer's established place of business or any approved off-premises sale location a vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the vehicle or is conspicuously displayed within the vehicle in a fashion that is readily readable by a customer.

(3) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle offered for sale at any geographic location other than that of the dealer's established place of business as listed on the dealer's license.

(4) (a) A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the

off-premises display and sale is in compliance with local zoning ordinances. Except for recreational vehicle dealers, an off-premises display and sale must be conducted within the county of the dealer's licensed location. The display and sale may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more vehicles inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one vehicle at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the vehicle is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the vehicle is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days.

(5) If more than one dealer displays vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) *(a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any vehicle bearing a set of dealer plates or a demonstrator plate that is offered for demonstration or loan to, or otherwise may be operated by, a customer in the regular course of the dealer's business operations.*

~~(a)~~*(b)* ~~It is the responsibility of the~~ *A* dealer ~~to~~ *must* ensure that the department is named as a certificate holder on any ~~garage~~ *general* liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

~~(b)~~*(c)* This subsection (8) does not relieve a dealer of the mandatory vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6

inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Section 11. Section 61-4-124, MCA, is amended to read:

"61-4-124. ~~License renewal — fee — dealer's license suspension~~ *Annual report — filing and registration fees — grace period for dealer and demonstrator plates — restrictions imposed upon failure to file.* (1) On or before December 31 of each year, a dealer shall ~~apply to the department for renewal of the dealer's license for an additional 1-year period.~~

~~(2) (a) To qualify for renewal, a dealer shall submit a completed application, in a form prescribed by the department, updating prior submitted information~~ *submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes* concerning owner identity, other ownership ~~interest~~ *interests*, felony conduct, ~~garage~~ *general* liability insurance *status*, and surety bond filings, as originally required under 61-4-101, *that may have occurred in that calendar year* and ~~providing~~ *to provide* any other relevant information requested by the department.

~~(b)~~*(2) (a)* The department may ~~also~~ require a ~~renewal applicant~~ *dealer* to submit one or more current photographs of the dealer's established place of business or the signage for the business *with the dealer's annual report*.

~~(c)~~*(b)* If a dealer seeks to change the geographic location of the dealer's established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.

(3) Except as provided in subsection (4)(c), ~~a license renewal application~~ *the annual report* must be accompanied by a $5 ~~application~~ *filing* fee and one or more of the following ~~license~~ *dealer registration* fees, ~~depending~~ *based* on the type of license ~~renewal being sought~~ *held by the dealer*:

(a) $25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer's license; and

(b) $25 for a motorcycle or trailer dealer's license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used motor vehicle dealer ~~seeking license renewal~~ shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles during the ~~expiring license term~~ *calendar year for which the annual report is filed*. A used motor vehicle dealer licensed for less than a full calendar year in the ~~expiring license term~~ *year for which the report is filed* shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle ~~a~~ *for each* calendar month or portion of a calendar month~~, for which~~ *that* the ~~expiring~~ license was in effect.

(b) The minimum retail sales requirements of this subsection (4) do not apply to a dealer ~~seeking to renew~~ *filing an annual report for* a used motor vehicle dealer's license and either a new motor vehicle dealer's license or a new recreational vehicle dealer's license.

(c) *(i) A used motor vehicle dealer who cannot certify, under penalty of law, to the number of retail sales required under subsection (4)(a) in a calendar year for which the report is filed must pay a fee of $25 in addition to the filing and registration fees required in subsection (3).*

~~(i)~~*(ii)* ~~To qualify for renewal, a~~ *A* used motor vehicle dealer who is also a qualified tow truck operator, as defined in 61-8-903, ~~shall~~ *and who, in the*

dealer's annual report, cannot certify, under penalty of law, to the retail sale of five or more used motor vehicles during the ~~expiring license term or~~ *calendar year for which the report is filed, shall* pay a fee of $25 in addition to the ~~application and license fee~~ *filing and registration fees* required in subsection (3).

~~(ii)~~*(iii)* A ~~renewal applicant~~ *dealer* licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales *reporting* requirements of subsection (4)(a), as well as the ~~additional renewal or the~~ lower minimum sales requirements of this subsection (4).

~~(iii) If a used motor vehicle dealer also qualified as a tow truck operator loses the status of a qualified tow truck operator under 61-8-903, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).~~

~~(iv) If a used motor vehicle dealer also licensed as a motor vehicle wrecking facility ceases to do business as a wrecking facility and surrenders the wrecking facility license to the department of environmental quality, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).~~

~~(d) A dealer who fails to meet the retail sales requirements for license renewal under subsection (4)(a) is not eligible for license renewal and may not submit an application for another used motor vehicle dealer's license or a wholesaler's license for a period of 12 months from the expiration of the dealer's most recent license term.~~

(5) A dealer whose ~~completed renewal application~~ *annual report* is received by the department on or before December 31 of the ~~expiring license term~~ *calendar year* may~~, if necessary, continue dealership operations and~~ display or use dealer or demonstrator plates ~~under the expired license~~ *assigned and registered for the prior calendar year* through the last day of February of the following year.

(6) (a) On or after January 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not renew dealer or demonstrator plates for a dealer who has not filed the annual report and paid the fees due under this section.

(b) On or after March 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not issue or transfer a title under the provisions of 61-4-111(1) to or from a dealer who has not filed the annual report and paid the fees, and the department shall initiate an administrative action under the provisions of 61-4-105(2) to revoke the dealer's license unless the dealer voluntarily surrenders the license, along with any previously assigned dealer and demonstrator plates, to the department for cancellation."

Section 12. Section 61-4-125, MCA, is amended to read:

"61-4-125. Wholesaler's license. (1) (a) The department is authorized to issue a wholesaler's license to any person ~~whom~~ it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a vehicle only to a dealer, an auto auction, or another wholesaler. Retail sale of vehicles by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".

(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (2)(a), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership or wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, *the applicant* shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired ~~garage~~ *general* liability insurance, naming the department as a certificate holder under the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year.

(d) the street address of the permanent nonresidential building or office where business records will be kept and will be made available for inspection by the department; and

(e) a bond of ~~$35,000~~ *$50,000* filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is $5, and the license fee is $25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is ~~$3~~ *$5*. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.

(5) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler shall submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who ~~fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most recent license term~~ *cannot, under penalty of law, certify the number of vehicle sales required under subsection (5)(c) shall pay a fee of $25 in addition to the fees required in subsection (3).*

(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through the last day of February of the following year."

Section 13. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) A dealer or wholesaler may purchase demonstrator plates at a fee of ~~$3~~ *$5* a plate. Demonstrator plates must be issued for each vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates.

(2) (a) New and used motor vehicle or recreational vehicle demonstrator plates may be used *on a vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2) that is*:

(i) ~~to demonstrate~~ *being demonstrated and offered for sale,* for not more than 72 hours~~, a vehicle held for sale,~~ when operated by an individual holding a valid operator's license;

(ii) ~~on vehicles~~ owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) ~~on vehicles~~ being tested for repair;

(iv) ~~on vehicles~~ being moved to or from a dealer's place of business for sale;

(v) ~~on vehicles~~ being moved to or from service and repair facilities before sale; and

(vi) ~~on vehicles~~ being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer demonstrator plates may be used:

(i) on units being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes being hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer's license plates of the dealer owning the motor vehicle; and

(v) on units being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(c) A vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the vehicle.

(3) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year, as provided in 61-4-124(5)."

Section 14. Section 61-4-206, MCA, is amended to read:

"61-4-206. Objections — hearing. (1) A person who receives or is entitled to receive a copy of a notice provided for in 61-4-205(4) may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If an objection is not filed within 15 days from the date the notice was received, the proposed action must be approved.

(2) If a timely objection has been filed, the department shall *appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6. Within 30 days of the order of appointment, the hearings officer shall* enter an order fixing the time~~, which must be within 30 days of the date of the order, and place of a hearing on the objection~~ *for a scheduling conference for the contested case* and shall send *to the parties* by certified mail with return receipt requested a copy of the *scheduling conference order and the* notice provided for in 61-4-205(4).

~~(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.~~

~~(4)~~*(3)* Upon hearing or upon objection to the establishment of a new motor vehicle dealership, the franchisor has the burden of proof to establish that good cause exists to terminate, not continue, or not establish the franchise.

~~(5)~~*(4)* The rules of evidence for a hearing provided for in subsection (2) are the same as those found in Title 2, chapter 4. The department shall reasonably apportion all costs *related to the contested case hearing* between the parties.

~~(6)~~*(5)* The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing must be conducted pursuant to Title 2, chapter 4.

~~(7)~~*(6)* A transcript of the testimony of each witness taken at the hearing must be made and preserved. Within ~~30~~ *60* days after the hearing, the

department shall make written findings of fact and conclusions and enter a final order.

~~(8)~~*(7)* Any party to the hearing before the department may appeal pursuant to Title 2, chapter 4.

~~(9)~~*(8)* The franchise agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."

Section 15. Section 61-4-301, MCA, is amended to read:

"61-4-301. Permit and transit plates for new vehicles being transported by driveaway or towaway methods — used mobile homes. (1) (a) A person, firm, partnership, or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, or foreign countries or provinces by the driveaway or towaway methods, where the vehicles being driven, towed, or transported by the saddle-mount, towbar, or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state and shall pay, upon filing the application, a fee of $100. Upon processing of the application, that department shall issue an annual permit to the applicant.

(b) A person moving used mobile homes from a point outside the state to a point inside the state may apply to the department for the permit authorized pursuant to subsection (1)(a).

(2) *(a)* The permitholder may also apply to the department of justice for ~~a sufficient number of distinctive transit plates or devices~~ *five sets of transit plates* showing the permit number for identification of the vehicles being transported by the permitholder, and the plates or devices may be used on a vehicle being driven, towed, or transported by and under the control of the permitholder. ~~That~~ *The* department shall collect the additional sum of ~~$1~~ *$10* for each ~~pair~~ *set* of transit plates or devices applied for and issued.

(b) A permitholder may apply for and receive more than five sets of transit plates in a calendar year if the permitholder can demonstrate, to the satisfaction of the department, that additional sets of plates are needed based on the number of trip fees reported in Montana in the previous calendar year. The department shall collect $10 for each additional set of transit plates issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering 61-4-301 through 61-4-308.

(4) The permit and transit plates or devices expire on December 31 of each year."

Section 16. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61 apply to [sections 1 and 2].

Section 17. Effective date. [This act] is effective January 1, 2004.

Section 18. Applicability. [This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004.

Ap proved April 14, 2003

CHAPTER NO. 300

[HB 195]

AN ACT INCREASING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OR DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-2-302, 61-5-208, 61-8-421, 61-8-442, 61-8-714, 61-8-722, AND 61-8-733, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program — department to contract with private entities — participation by offending drivers. (1) (a) The department shall establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(b) The rules must:

(i) provide for the local program courses to be operated by private entities;

(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;

(iii) establish the criteria that private entities must meet in order to be certified by the department; and

(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b);

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation ~~or~~, *except that* if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, ~~have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208~~ *the person is not eligible to participate in the driver rehabilitation and improvement program*; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license; or

(c) subject to suspension as provided in 61-11-204(3).

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).

(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.

(9) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(10) (a) Except as provided in *subsections (2)(b)(i) and* (10)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(11) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 2. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — probationary license — ignition interlock device ~~required~~ *allowed* on ~~second or subsequent~~ *first* offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for ~~the~~ *a first* offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for ~~the~~ *a first* offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and ~~, upon issuance of any restricted~~ *may not issue a* probationary license during the period of revocation ~~, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device~~. If the 1-year *revocation* period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If ~~a~~ *the* person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a *first* violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 3. Section 61-8-421, MCA, is amended to read:

"61-8-421. Forfeiture procedure. (1) A motor vehicle forfeited under 61-8-733 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the owner was not convicted of a ~~third~~ *second* or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

Section 4. Section 61-8-442, MCA, is amended to read:

"61-8-442. Driving under the influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device ~~discretionary on first offense~~. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may ~~restrict~~ *for* a ~~defendant~~ *person convicted of a first offense under 61-8-401 or 61-8-406 and granted a probationary license restrict the person* to driving only a motor vehicle equipped with a functioning ignition interlock device *during the period that the person is granted a probationary license* and require the ~~defendant~~ *person* to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available; *and*

(b) the ~~defendant's~~ *person's* blood alcohol concentration at the time of the arrest was 0.18% or greater~~; and~~.

~~(c)~~*(2)* ~~the~~ *If a* ~~defendant has not been previously~~ *person is* convicted of a *second or subsequent* violation of 61-8-401 or 61-8-406, *in addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court shall order that each motor vehicle owned by the person at the time of the offense be either:*

(a) seized and subjected to the forfeiture procedure provided under 61-8-421; or

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning ignition interlock device and require the person to pay the reasonable cost of leasing, installing, and maintaining the device if the court determines that approved ignition interlock devices are reasonably available.

~~(2)~~*(3)* Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

~~(3)~~*(4)* The duration of a restriction imposed under this section must ~~run parallel to the time period for suspension of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must~~ be monitored by the department."

Section 5. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and shall be punished by a fine of not less than ~~$100~~ *$300* or more than ~~$500~~ *$1,000*. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the ~~defendant's~~ *person's* physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the ~~defendant~~ *person*.

(2) On a second conviction, the person shall be punished by a fine of not less than ~~$300~~ *$600* or more than ~~$500~~ *$1,000* and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. ~~Three~~ *The imposition or execution of the first 5* days of the imprisonment sentence may not be suspended ~~unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being~~. Except for the initial ~~3~~ *5* days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the ~~defendant~~ *person*.

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than ~~$500~~ *$1,000* or more than ~~$1,000~~ *$5,000*. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the ~~defendant~~ *person*."

Section 6. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) A person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than ~~$100~~ *$300* or more than ~~$500~~ *$1,000*.

(2) On a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ *5 days*, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than ~~$300~~ *$600* or more than ~~$500~~ *$1,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended*.

(3) On a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~48 consecutive hours~~ *10 days*, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than ~~$500~~ *$1,000* or more than ~~$1,000~~ *$5,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended*."

Section 7. Section 61-8-733, MCA, is amended to read:

"61-8-733. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — forfeiture of vehicle. (1) On the ~~third~~ *second* or subsequent conviction of a violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed by law, shall order ~~the~~ *that each* motor vehicle owned ~~and operated~~ by the person at the time of the offense ~~to~~ be *either* seized and subjected to the procedure provided under 61-8-421 *or equipped with an ignition interlock device as provided under 61-8-442*.

(2) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought."

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to persons sentenced for offenses committed on or after [the effective date of this act].

Ap proved April 14, 2003

CHAPTER NO. 301

[HB 230]

AN ACT PROVIDING THAT AN EMPLOYER MAY PAY WAGES DUE IN THE ENSUING PAY PERIOD WHEN AN EMPLOYEE SUBMITS A TIMESHEET AFTER THE EMPLOYER'S DEADLINE FOR PROCESSING TIMESHEETS FOR A PARTICULAR PAY PERIOD; ELIMINATING ARCHAIC LANGUAGE

PROVIDING THAT WAGES OWED TO EMPLOYEES WHO ARE ABSENT FROM WORK ON THE REGULAR PAY DATE MUST BE PAID AT ANY TIME AFTER THE DATE OF REGULAR PAYMENT AND PROVIDING THAT THE LAW IS INAPPLICABLE TO CERTAIN EMPLOYEES WHO BY CUSTOM RECEIVE WAGES MONTHLY; AMENDING SECTION 39-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-204, MCA, is amended to read:

"39-3-204. Payment of wages generally. (1) Except as provided in ~~subsection (4)~~ *subsections (2) and (3)*, every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and ~~no~~ *a* person for whom labor has been performed may *not* withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or other deductions provided for by law.

~~(2) If at the time of payment of wages any employee is absent from the regular place of labor, the employee is entitled to payment at any time thereafter.~~

~~(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives wages earned at least once monthly.~~

~~(4)~~*(2)* Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.

(3) If an employee submits a timesheet after the employer's established deadline for processing employee timesheets for a particular time period and the employer does not pay the employee within the 10-day period provided for in subsection (1), the employer may pay the employee the wages due in the ensuing pay period. An employer may not withhold payment of the employee's wages beyond the next ensuing pay period. If there is not an established time period or time when wages are due and payable, the pay period is presumed to be semimonthly in length."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to timesheets filed on or after [the effective date of this act].

Ap proved April 14, 2003

CHAPTER NO. 302

[HB 293]

AN ACT PROHIBITING RACIAL PROFILING; REQUIRING LAW ENFORCEMENT AGENCIES TO ADOPT A DETAILED WRITTEN POLICY THAT CLEARLY DEFINES THE ELEMENTS CONSTITUTING RACIAL

PROFILING AND THAT PROHIBITS RACIAL PROFILING; REQUIRING THE POLICY TO INCLUDE A PROCEDURE FOR INVESTIGATING COMPLAINTS OF RACIAL PROFILING; REQUIRING A LAW ENFORCEMENT AGENCY TO TAKE APPROPRIATE ACTION AGAINST A PEACE OFFICER VIOLATING THE POLICY AGAINST RACIAL PROFILING; DEFINING "RACIAL PROFILING"; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Racial profiling prohibited — definitions. (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling. The policy must include a procedure that the law enforcement agency will use to address complaints concerning racial profiling. The policy must be available for public inspection during normal business hours.

(4) If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

(5) For the purposes of this section, the following definitions apply:

(a) "Peace officer" has the meaning provided in 46-1-202.

(b) "Racial profiling" means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 2, and the provisions of Title 44, chapter 2, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved April 14, 2003

CHAPTER NO. 303

[HB 419]

AN ACT REQUIRING A RAILROAD CORPORATION TO ERECT SIGNS IN ADVANCE OF A CROSSING AT WHICH A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; REQUIRING THE HORN AND BELL TO BE SOUNDED FOR AT LEAST 15 SECONDS PRIOR TO A LOCOMOTIVE OCCUPYING A CROSSING IF THE TRAIN IS STOPPED WITHIN A CERTAIN DISTANCE OF THE CROSSING; CLARIFYING THE MEANING

OF THE PHRASE "PUBLIC HIGHWAY, PUBLIC ROAD, OR PUBLIC RAILROAD CROSSING" FOR THE PURPOSES OF DETERMINING WHEN A LOCOMOTIVE HORN AND BELL MUST BE SOUNDED; AMENDING SECTION 69-14-562, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-562, MCA, is amended to read:

"69-14-562. Regulation of safety on railroads. (1) A railroad corporation within this state is guilty of a misdemeanor and upon conviction is subject to the penalties provided in subsection (2) if the corporation:

(a) neglects to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

(b) runs a train over an unsafe bridge, trestlework, or aqueduct;

(c) fails to have a locomotive in use by it equipped with a properly functioning horn and bell;

(d) permits a locomotive to approach a public highway, public road, or public railroad crossing without causing the locomotive horn and bell to be sounded at a point 1,320 feet from the crossing~~, the~~*; or* ~~horn and bell to be sounded from the specified point until the crossing is reached. If the owner or permitholder of a private crossing makes a written request to the railroad corporation to have the locomotive horn and bell sounded at the private crossing, the railroad shall comply with the request. The owner or permitholder is not subject to any liability as a result of not making a request.~~

(e) willfully fails to make any report required by law.

(2) For the purposes of subsection (1)(d):

(a) the horn and bell must be sounded from the specified point until the crossing is occupied, but if a train has stopped within 1,320 feet of a crossing, the horn and bell must be sounded for a minimum of 15 seconds prior to the train occupying the crossing;

(b) the railroad corporation shall erect and maintain a sign at a minimum of 1,320 feet in advance of a crossing at which the horn and bell are required to be sounded to notify the locomotive crew in advance of a crossing that requires the locomotive horn and bell to be sounded;

(c) if the owner or permitholder of a private crossing makes a written request to the railroad corporation to have the locomotive horn and bell sounded at a private crossing, the railroad shall comply with the request, but the owner or permitholder is not subject to any liability as a result of not making a request; and

(d) the phrase "public highway, public road, or public railroad crossing" means that the easement, right-of-way, or fee title for the public highway, public road, or public railroad crossing is held in the name of a federal, state, tribal, or local government entity on both sides of the crossing and that the easement, right-of-way, or fee title is recorded in the office of the clerk and recorder in the county where the crossing is located.

~~(2)~~*(3)* Upon conviction of the offenses provided in subsection (1), a railroad corporation is subject to a fine of:

(a) $1,000 for the first offense;

(b) $2,000 for the second violation of the same provision; and

(c) not less than $5,000 or more than $10,000 for subsequent violations of a provision for which it has twice been found guilty."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 14, 2003

CHAPTER NO. 304

[HB 456]

AN ACT SUBSTITUTING THE TERM "PREDOMINANT AGGRESSOR" FOR THE TERM "PRIMARY AGGRESSOR" IN THAT PART OF THE PARTNER OR FAMILY MEMBER ARREST STATUTE THAT RELATES TO MUTUAL AGGRESSION; AND AMENDING SECTION 46-6-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant — arrest of ~~primary~~ *predominant* aggressor. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) (a) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the ~~primary~~ *predominant* aggressor. If, based on the officer's evaluation, the officer determines that one person is the ~~primary~~ *predominant* aggressor, the officer may arrest only the ~~primary~~ *predominant* aggressor. A determination of who the ~~primary~~ *predominant* aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:

(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;

(ii) the relative severity of injuries received by each person;

(iii) whether an act of or threat of violence was taken in self-defense;

(iv) the relative sizes and apparent strength of each person;

(v) the apparent fear or lack of fear between the partners or family members; and

(vi) statements made by witnesses."

Ap proved April 14, 2003

CHAPTER NO. 305

[HB 482]

AN ACT PROVIDING THAT A PROVISION IN A CONSTRUCTION CONTRACT THAT REQUIRES ONE PARTY TO THE CONTRACT TO INDEMNIFY ANOTHER PARTY TO THE CONTRACT, OR THE OTHER PARTY'S OFFICERS, EMPLOYEES, OR AGENTS, FOR THE OTHER PARTY'S LIABILITY, LOSSES, DAMAGES, OR COSTS IS VOID AS AGAINST THE PUBLIC POLICY OF THIS STATE; AUTHORIZING A CONSTRUCTION CONTRACT TO CONTAIN A PROVISION REQUIRING A PARTY TO A CONTRACT TO PURCHASE A PROJECT-SPECIFIC INSURANCE POLICY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Construction contract indemnification provisions. (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract, or the other party's officers, employees, or agents, for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including any agreement to supply labor, materials, or equipment for an improvement to real property.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [section 1].

Section 3. Effective date — applicability. [This act] is effective July 1, 2003, and applies to construction contracts entered into or renewed on or after July 1, 2003.

Ap proved April 14, 2003

CHAPTER NO. 306

[HB 494]

AN ACT REVISING THE LAWS GOVERNING LICENSURE OF PHYSICIANS; PROVIDING FOR TEMPORARY LICENSURE OF PERSONS IN AN APPROVED RESIDENCY PROGRAM UPON CERTAIN CONDITIONS; AND AMENDING SECTIONS 37-3-304 AND 37-3-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-304, MCA, is amended to read:

"37-3-304. Practice authorized by temporary certificate. *(1)* ~~The~~ *A* temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate ~~and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board~~, authorizes the holder to perform one or more of the acts ~~embraced~~ *listed* in 37-3-102(6) in a manner reasonably consistent with ~~his~~ *the holder's* training, skill, and experience, subject~~, nevertheless,~~ to all specifications, conditions, and limitations imposed by the board.

(2) A temporary certificate may not be issued for a period that exceeds 1 year. However, except as provided in subsection (3), a temporary certificate may be renewed, at the board's discretion, for additional 1-year periods, but may not be renewed more than five times.

(3) A person meeting the requirements of 37-3-305(5) may be granted a limited temporary certificate for a period of 3 months, which may be extended at the board's discretion upon a showing of good cause for a period not to exceed 3 months."

Section 2. Section 37-3-305, MCA, is amended to read:

"37-3-305. Qualifications for licensure. (1) Except as provided in ~~subsection~~ *subsections* (4) *and (5)*, a person may not be granted a physician's license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program;

(d) has had a completed application file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved postgraduate program of at least 2 years or, in the opinion of the board, has had experience or training that is at least the equivalent of a 2-year postgraduate program; and

(d) is able, in the opinion of the board, to communicate in the English language.

(4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with the Montana family practice residency program; and

(c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.

(5) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;

(c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;

(d) makes application to the department on a form prescribed by the board; and

(e) pays a fee set by the board, as provided in 37-3-308."

Ap proved April 14, 2003

CHAPTER NO. 307

[HB 501]

AN ACT REVISING THE PROVISIONS RELATED TO LICENSURE OF RADIOLOGIC TECHNOLOGISTS; PROVIDING FOR APPROVAL BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS OF A LICENSED RADIOLOGIC TECHNOLOGIST TO PERFORM THE FUNCTIONS OF A RADIOLOGIST ASSISTANT UNDER SUPERVISION OF A RADIOLOGIST; DEFINING TERMS; AND AMENDING SECTIONS 37-14-102 AND 37-14-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-14-102, MCA, is amended to read:

"37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1738.

(2) "Department" means the department of labor and industry.

(3) "General supervision" means the procedure is furnished under the radiologist's overall direction and control. However, the radiologist's presence is not required at the site during the performance of the procedure.

~~(3)~~*(4)* "License" means an authorization issued by the department to perform x-ray procedures on persons.

~~(4)~~*(5)* "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, osteopathy, or chiropractic.

~~(5)~~*(6)* "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

~~(6)~~*(7)* "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

~~(7)~~*(8)* "Permit" means an authorization that may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

~~(8)~~*(9)* "Radiologic technologist" means a person, other than a licensed practitioner, who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be used in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

(10) "Radiologist" means a person who is licensed to practice medicine under Title 37, chapter 3, and who is board eligible or board certified by the American board of radiology.

(11) "Radiologist assistant" means an advanced-level licensed radiologic technologist who works under the general supervision of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment."

Section 2. Section 37-14-301, MCA, is amended to read:

"37-14-301. Limitation of license authority — exemptions. (1) ~~No~~ *A* person may *not* perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe ~~such~~ examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry~~, provided such~~ *if the* person is certified by the board of dentistry as having passed an examination testing~~his~~ *the person's* proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed to limit or affect in any respect the practice of their respective professions by ~~duly~~ licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe ~~such~~ *x-ray* procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a ~~duly~~ licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. ~~Such injections~~ *Injections* must be for diagnostic studies only and not for therapeutic purposes. ~~The~~ *Except as provided in [section 3],* permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection."

Section 3. Radiologist assistant — scope of practice — board approval. (1) A person licensed under this chapter who has completed an advanced academic program encompassing a nationally recognized radiologist assistant curriculum or certification and who has a radiologist-directed clinical preceptorship certificate may practice as a radiologist assistant upon approval by the board.

(2) (a) The specific duties allowed for a radiologist assistant may be defined by the board by rule. The rules must be consistent with guidelines adopted by the American college of radiology, the American society of radiologic technologists, the American registry of radiologic technologists, and subsection (2)(b).

(b) The rules must specify the functions that a radiologist assistant may perform in connection with diagnostic procedures under the general supervision of a radiologist, including radiology procedures, invasive procedures, procedures as delegated by a radiologist, and the types of injection of contrast media and radioactive isotopes (radio-nuclide) material allowed.

(c) A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

(3) A radiologist assistant may also be referred to as a "radiology practitioner assistant".

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 37, chapter 14, part 3, and the provisions of Title 37, chapter 14, part 3, apply to [section 3].

Ap proved April 14, 2003

CHAPTER NO. 308

[HB 555]

AN ACT CHANGING THE AMOUNT THAT MAY BE CHARGED FOR A PAST-DUE LOAN PAYMENT FROM 5 PERCENT OF THE AMOUNT PAST DUE TO THE GREATER OF 5 PERCENT OF THE AMOUNT PAST DUE OR $15; AND AMENDING SECTION 32-5-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-301, MCA, is amended to read:

"32-5-301. Charges, refunds, penalties, filing fees. (1) A licensee or holder of a supplementary license under this part may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled.

For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be *the greater of* 5% of the amount past due *or $15*, and that amount may be charged only once.

(5) (a) The licensee may include in the principal amount of any loan:

(i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan; or

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) Further or other charges may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee may not collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis.

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;

(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or

(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.

(9) A prepayment charge may not be collected if:

(a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;

(b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or

(c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy."

Ap proved April 14, 2003

CHAPTER NO. 309

[HB 579]

AN ACT PROVIDING THAT THE PARTIES TO A DIVORCE OR SEPARATION IN WHICH A TEMPORARY INJUNCTION IS SOUGHT MUST BE INFORMED BY THE COURT AT THE HEARING ON THE INJUNCTION THAT THE INJUNCTION MIGHT LIMIT OR RESULT IN LIMITS ON THE RIGHTS OF ONE OR BOTH PARTIES RELATING TO FIREARMS UNDER STATE AND FEDERAL LAW; CLARIFYING THAT A PARTY AGAINST WHOM AN INJUNCTION IS SOUGHT IS ENTITLED TO NOTICE AND HEARING; PROVIDING THAT A PERSON CHARGED WITH AN OFFENSE MUST BE INFORMED BY THE COURT THAT CONVICTION MAY RESULT IN THE LOSS OF VARIOUS RIGHTS REGARDING FIREARMS UNDER STATE AND FEDERAL LAW; AND AMENDING SECTIONS 40-4-121 AND 46-7-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-121, MCA, is amended to read:

"40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201~~(12)~~, for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities

be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201~~(12)~~, or applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.

(2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family support order or by independent motion accompanied by affidavit, either party may request *that* the court ~~to~~ issue a temporary injunction for any of the following relief:

(a) restraining a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and~~,~~ if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;

(c) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(d) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(e) enjoining a party from removing a child from the jurisdiction of the court;

(f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

(g) providing other injunctive relief proper in the circumstances; and

(h) providing additional relief available under Title 40, chapter 15.

(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:

(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered.

However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(4) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

(5) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

(6) *The party against whom a temporary injunction is sought must be served with notice and a copy of the motion and is entitled to a hearing on the motion.* A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(7) At the time of the hearing, the court shall*:*

(a) inform both parties that the temporary injunction may contain a provision or provisions that limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject one or both parties to state or federal laws that limit their rights relating to firearms; and

(b) determine whether good cause exists for the injunction to continue for 1 year.

(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary family support in amounts and on terms just and proper in the circumstance.

(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of a temporary family support order, upon entry of the decree of dissolution; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown."

Section 2. Section 46-7-102, MCA, is amended to read:

"46-7-102. Duty of court. (1) The judge shall inform the defendant:

(a) of the charge or charges against the defendant;

(b) of the defendant's right to counsel;

(c) of the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may obtain pretrial release;

(e) of the defendant's right to refuse to make a statement and the fact that any statement made by the defendant may be offered in evidence at the defendant's trial; ~~and~~

(f) that conviction may result in the loss of various rights regarding firearms under state and federal law; and

~~(f)~~*(g)* of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony.

(2) The judge shall admit the defendant to bail as provided by law."

Ap proved April 14, 2003

CHAPTER NO. 310

[HB 580]

AN ACT PROVIDING THE PUBLIC SERVICE COMMISSION WITH EXPEDITED COMPLAINT AUTHORITY FOR INTERCONNECTION AND EXCHANGE ACCESS DISPUTES; PROVIDING AN EXPEDITED COMPLAINT PROCESS AND PROCEDURES; AMENDING SECTION 69-3-832, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-832, MCA, is amended to read:

"69-3-832. Interconnection — jurisdiction. In addition to the authority granted to the commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the purposes of implementing 69-3-831, 69-3-833 through 69-3-839, *[sections 2 and 3],* and this section, over all telecommunications carriers."

Section 2. Expedited complaint proceeding — commission authority. (1) The commission may conduct expedited complaint proceedings involving interconnection arrangements that include but are not limited to exchange access services between telecommunications carriers.

(2) The provisions of the Montana Administrative Procedure Act do not apply to petitions for an expedited complaint proceeding under [section 3] and this section.

Section 3. Expedited complaint proceeding — procedure. (1) (a) A party that petitions the commission for an expedited complaint proceeding shall file with the commission, at the same time as it submits the petition, the following:

(i) a statement that the petitioner has attempted in good faith to resolve the petitioner's disagreement with the respondent prior to petitioning the commission to initiate an expedited complaint proceeding;

(ii) a description of facts, including relevant documentation, of the issues in dispute and the position of each of the parties with respect to those issues; and

(iii) a statement that the petitioner has informed the respondent of the petitioner's intent to file a petition for expedited complaint proceeding at least 10 days prior to filing the petition with the commission.

(b) The petitioner shall provide a copy of the petition and any associated documentation to the other party or parties not later than the day on which the commission receives the petition.

(c) The commission shall limit its consideration during an expedited complaint proceeding to those issues set forth by the parties in the petition and the response to the petition.

(2) A nonpetitioning party may respond to the other party's petition and provide any additional information within 25 days after the commission receives the petition.

(3) (a) The commission may appoint a hearings examiner, who shall file with the commission a proposed decision within the time set by order of the commission.

(b) (i) On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall include the affidavit or motion as a part of the record in the case.

(ii) The affidavit for disqualification must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not more than 10 days after the date of the appointment of the hearings examiner.

(iii) The commission may disqualify the hearings examiner and appoint another hearings examiner.

(4) Participation in the expedited complaint proceeding must be limited to the petitioning party, named respondents, and the Montana consumer counsel.

(5) Unless otherwise agreed to by the parties, the commission or the hearings examiner shall, within 10 days of the filing of the petition, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the petition. The schedule must include discovery deadlines and a hearing date.

(6) (a) The hearing must be conducted pursuant to the Montana Rules of Evidence and the parties:

(i) are entitled to be heard;

(ii) may present evidence material to the issues; and

(iii) may cross-examine witnesses appearing at the hearing.

(b) Parties must be allowed to conduct discovery pursuant to the schedule determined by the hearings examiner or the commission, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(7) The commission or the hearings examiner may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being heard and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission or the hearings examiner shall regulate the course of the hearing

and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues.

(8) The commission shall issue a final order on the petition not later than 120 days from the date that the petition for expedited complaint proceeding was filed with the commission.

(9) If the hearings examiner becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(10) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an expedited complaint proceeding, after issuance of notice of hearing, may not communicate with any party or party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

(11) As part of its final order, the commission may order relief that is justified under the circumstances. The commission may order the payment of monetary damages, by one party or parties to another party or parties, not to exceed $10,000.

Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 2 and 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 14, 2003

CHAPTER NO. 311

[HB 591]

AN ACT PROVIDING FOR TERM PERMIT FEES FOR CERTAIN OVERWEIGHT VEHICLE LOADS; AND AMENDING SECTION 61-10-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-125, MCA, is amended to read:

"61-10-125. Other fees. (1) There is charged for a single trip permit for a load that is over the gross allowable load provided for by the formula in 61-10-107(1) but that does not exceed axle limits set forth in 61-10-107(1):

(a) $10 for distances to and including 100 miles;

(b) $30 for distances from 101 to 199 miles; and

(c) $50 for distances over 200 miles traveled.

(2) (a) There is charged a fee of:

(i) $200 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight;

(ii) $500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 10,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iii) $750 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 15,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight;

(iv) $1,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 20,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight and no tandem axle exceeding 15,000 pounds in excess axle weight;

(v) $1,500 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 25,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

(vi) $2,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 30,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

(vii) $4,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 40,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation.

(b) The fees provided in subsection (2)(a) are annual fees but may be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually. However, if the fee is paid other than annually, there is an additional fee of $10 each time a fee is paid.

(c) A permit issued under this subsection (2) is valid for a period of no less than 1 calendar quarter and no more than 1 calendar year.

(d) The department *of transportation* or its agent may not issue a term permit for loads that exceed 10,000 pounds in excess axle weight unless the person applying for the term permit has obtained approval from the department *of transportation*, through a weight analysis, for the configuration of the vehicle.

(3) There is charged for a permit to move a load that exceeds the single axle, tandem axle, or axle group limits set forth in 61-10-107(1) the following fee based upon the sum of excess in axle or axle group weights:

Total Excess Axle Weight (pounds)	Calculated Cost of 25 Miles of Travel (dollars)
5,000	3.50
10,000	7.00
15,000	10.50
20,000	14.00
25,000	17.50
30,000	21.00
35,000	24.50
40,000	28.00
45,000	31.50
50,000	35.00
55,000	38.50

60,000 ..... 42.00
65,000 ..... 45.50
70,000 ..... 49.00
75,000 ..... 52.50
80,000 ..... 56.00
85,000 ..... 59.50
90,000 ..... 63.00
95,000 ..... 66.50
100,000 ..... 70.00
over 100,000 ..... 70.00 + 3.50 per 5,000 lbs. or part of 5,000 lbs. in excess of 100,000 lbs.

(4) For purposes of subsection (3):

(a) mileage must be rounded off in units of 25 miles and mileage in excess of a 25-mile increment must be assessed at the next higher 25-mile increment; and

(b) weight must be rounded off in 5,000-pound increments and weight in excess of a 5,000-pound increment must be assessed at the next higher 5,000-pound increment.

(5) A vehicle must be licensed to the maximum allowable weight authorized under 61-10-107 before an overweight permit may be issued."

Ap proved April 14, 2003

CHAPTER NO. 312

[HB 637]

AN ACT PROHIBITING UNSOLICITED ADVERTISEMENTS THROUGH FACSIMILE TRANSMISSION; AND PROVIDING THAT A VIOLATION OF THIS PROHIBITION IS A VIOLATION OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions — unsolicited advertisement through facsimile transmission prohibited — violation. (1) As used in this section, the following definitions apply:

(a) "Telephone facsimile machine" means equipment that has the capacity to:

(i) transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line onto paper; or

(ii) transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(b) "Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or service that is transmitted to a person without that person's prior express invitation or permission.

(2) (a) Except as provided in subsection (2)(b), a person may not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

(b) The prohibition contained in subsection (2)(a) does not pertain to a facsimile transmission containing public safety information that is sent by a law enforcement or public safety entity.

(3) A violation of this section is a violation of Title 30, chapter 14, part 1.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [section 1].

Ap proved April 14, 2003

CHAPTER NO. 313

[SB 180]

AN ACT MAKING PERMANENT THE PROVISION THAT ALLOWS AN INDIVIDUAL WHO LEAVES WORK OR IS DISCHARGED BECAUSE OF CIRCUMSTANCES RESULTING FROM DOMESTIC VIOLENCE TO RECEIVE UNEMPLOYMENT BENEFITS; REPEALING SECTION 4, CHAPTER 520, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 4, Chapter 520, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 14, 2003

CHAPTER NO. 314

[SB 283]

AN ACT REVISING LAWS RELATING TO VENUE IN FAMILY LAW CASES; REQUIRING MONTANA RESIDENCE FOR 90 DAYS PRECEDING THE FILING OF AN ACTION FOR DISSOLUTION OF MARRIAGE; ALLOWING MEDIATION AGREEMENTS TO BE ADMISSIBLE AS EVIDENCE IF AFFIRMED BY THE PARTIES; AND AMENDING SECTIONS 25-2-118, 40-4-104, AND 40-4-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-2-118, MCA, is amended to read:

"25-2-118. Residence of defendant. (1) Except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them reside at the commencement of the action.

(2) If none of the defendants reside in the state, the proper place of trial for a contract action is as provided in 25-2-121(1)(b) or (2) and the proper place of trial for a tort action is as provided in 25-2-122(2) or (3).

(3) The proper place ~~of trial for~~ *of trial for* an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner *or the respondent* has resided during the 90 days preceding the ~~commencement~~ *filing* of the action."

Section 2. Section 40-4-104, MCA, is amended to read:

"40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, *as provided in 25-2-118,* or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days preceding the ~~making of the findings~~ *filing of the action*;

(b) the court finds that the marriage is irretrievably broken, which findings must be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) that there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for parenting, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects."

Section 3. Section 40-4-305, MCA, is amended to read:

"40-4-305. Mediation agreement. An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, ~~and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement~~ *before the agreement is finalized. An agreement reached in mediation is not admissible as evidence in any action unless the agreement has been affirmed by the parties in a signed, written agreement. The signed, written agreement is governed by 40-4-201*."

Ap proved April 14, 2003

CHAPTER NO. 315

[SB 302]

AN ACT CHANGING THE WAY UNDIVIDED OWNERSHIP INTERESTS IN PROPERTY ARE ASSESSED FOR PROPERTY TAX PURPOSES; PROVIDING THAT THE OWNERS OF UNDIVIDED INTERESTS MAY BE ASSESSED SEPARATELY UPON REQUEST; PROVIDING THAT PAYMENT OF THE TOTAL PROPERTY TAX DUE BY A SINGLE OWNER MAY BE PAYMENT ON BEHALF OF ALL OF THE OWNERS OR THAT A PAYING CO-OWNER MAY, AFTER 3 YEARS OF PAYMENTS AND NOTICES TO THE NONPAYING CO-OWNER, TAKE A PROPERTY TAX LIEN ON THE

NONPAYING CO-OWNER'S INTEREST; PROVIDING THAT NONPAYMENT BY A SEPARATELY ASSESSED CO-OWNER SUBJECTS ONLY THE NONPAYING CO-OWNER'S INTEREST TO A TAX SALE; AND AMENDING SECTIONS 15-7-138 AND 15-16-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Common undivided ownership interest — separate assessment — property tax payments. (1) Except as provided in subsection (2), payment of all property taxes on a parcel by any co-owner is considered payment by all owners, whether or not the property is assessed and taxed separately to co-owners or to a single owner. Any payment by a co-owner in excess of the amount assessed to the co-owner must be the total amount due on the parcel or a partial payment amounting to a year of deficiency, as provided in 15-16-102(5)(a). The nonpayment of taxes by a co-owner who is separately assessed and taxed subjects only the interest of the nonpaying co-owner to a tax sale.

(2) (a) A co-owner may receive a tax lien on property in which the co-owner has an undivided interest if:

(i) the co-owner pays the proportional amount of taxes on that co-owner's interest and on another co-owner's interest;

(ii) the paying co-owner has notified the nonpaying co-owner of the property tax payments and annually demands reimbursement in writing by certified mail, return receipt requested, addressed to the nonpaying co-owner's last-known mailing address; and

(iii) the paying co-owner has paid the property taxes for 3 consecutive years without reimbursement.

(b) Upon proof that a co-owner has complied with the provisions of this subsection (2), the paying co-owner is considered the purchaser of a tax lien on the ownership interest of the nonpaying co-owner and the county treasurer shall prepare a tax sale certificate with the paying co-owner as the purchaser. The certificate shall conform to the provisions of 15-17-212, except the certificate need not contain the information required in 15-17-212(1)(a) and (1)(b). The treasurer shall comply with the provisions of 15-17-212(2) regarding the certificate.

(c) For the purposes of this subsection (2), if there are more than two co-owners, single and multiple paying co-owners can receive a tax lien on the undivided interests of single and multiple nonpaying co-owners.

Section 2. Section 15-7-138, MCA, is amended to read:

"15-7-138. Notice of classification and appraisal to single address for owners of undivided interest. (1) (a) *(i)* Subject to subsection (2), in the case of multiple, undivided interests in a parcel of land, the department shall send the notice of classification and appraisal required by 15-7-102 to a single owner of the land, as provided in this section.

(ii) For multiple undivided interests that are mining claims, upon request of all the owners, the department shall send the notice of classification and appraisal required by 15-7-102 and separate assessments to each owner of an undivided interest.

(iii) Requests for separate assessment and receipt of separate notice under subsection (1)(a)(ii) are limited to mining claims as the multiple undivided

interests existed on or prior to April 30, 2001. Additional division of interests after April 30, 2001, may not result in additional separate assessments.

(b) Except as provided in subsection (1)(c), the owners of the land shall provide to the department the name and address of the owner to whom the notice is to be sent and shall notify the department of a change in name or address. If an address is not provided, then the department shall send the notice to the address to which previous notices were sent.

(c) In the case of multiple, undivided interests in a parcel of land created after April 30, 2001, the department shall send the notice to the name and address shown on the recorded document creating the multiple, undivided interests in the land. If more than one name and address is shown on the document, the department shall send the notice to the first name and address shown on the document.

(2) A copy of the notice must be sent to other persons upon request of an owner of the land. If a parcel of land is located within the boundaries of a federally recognized Indian reservation, each individual fee patent, even when it is an undivided interest, will be treated as a separate assessment and receive a separate notice of classification and appraisal."

Section 3. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) *(a)* A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full~~taxable~~ *tax* years~~, provided that~~ *if* taxes for both halves of the current tax year have been

paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(b) A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the requirements of subsection (5)(a) is not a partial payment.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 17, and the provisions of Title 15, chapter 17, apply to [section 1].

Ap proved April 14, 2003

CHAPTER NO. 316

[SB 329]

AN ACT PROVIDING FOR JUVENILE DETENTION OR JUVENILE CORRECTIONS OFFICER AND ADMINISTRATOR STANDARDS, CERTIFICATION, AND TRAINING; PROVIDING THAT TRAINING BE UNDER THE AUSPICES OF THE BOARD OF CRIME CONTROL AND THE MONTANA LAW ENFORCEMENT ACADEMY; EXTENDING THE TIME PERIOD FOR RECEIVING TRAINING FROM 6 MONTHS TO 1 YEAR FOR PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, JUVENILE DETENTION AND JUVENILE CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS; AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Juvenile detention or juvenile corrections officer training. A juvenile detention or juvenile corrections officer shall, in the first year of employment, complete a basic training course as required in 44-4-301. The training must be done under the auspices of the Montana law enforcement academy but does not have to occur at the academy.

Section 2. Section 44-4-301, MCA, is amended to read:

"44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board may:

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, *juvenile detention center administrators, juvenile detention or*

juvenile corrections officers, public safety communications officers, probation and parole officers, corrections officers, and commercial vehicle inspectors; and

(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, *juvenile detention center administrators, juvenile detention or juvenile corrections officers,* public safety communications officers, probation and parole officers, corrections officers, and commercial vehicle inspectors.

(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of motor carrier services division officers appointed under 61-12-201, and establish minimum standards for law enforcement, ~~and~~ detention officer, *and juvenile detention or juvenile corrections officer* training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

(6) The board shall establish minimum standards for training corrections officers and commercial vehicle inspectors.

(7) It is the duty of the appointing authority to cause each probation and parole officer, corrections officer, *juvenile detention or juvenile corrections officer,* and commercial vehicle inspector appointed under its authority whose term of employment commenced after September 30, 1999, to attend and successfully complete within ~~6 months~~ *1 year* of employment, an appropriate basic course certified by the board. The appointing authority may terminate a probation and parole officer's, corrections officer's, *juvenile detention or juvenile corrections officer's,* or commercial vehicle inspector's employment for failure to:

(a) meet the minimum standards established by the board; or

(b) satisfactorily complete the appropriate basic course."

Section 3. Section 44-4-302, MCA, is amended to read:

"44-4-302. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Commercial vehicle inspector" means a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005.

(2) "Corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a prison or juvenile correctional facility.

(3) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(4) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(5) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(6) "Juvenile detention center" means a detention facility as defined in 41-5-103.

(7) "Juvenile detention officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of juveniles under the jurisdiction of the youth court and who performs tasks related to the operation of a juvenile detention center.

(8) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

(9) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.(Terminates June 30, 2003—sec. 3, Ch. 160, L. 2001.)

44-4-302. (Effective July 1, 2003) Definitions. As used in this part, the following definitions apply:

(1) "Commercial vehicle inspector" means a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005.

(2) "Corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a prison or juvenile correctional facility.

(3) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(4) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(5) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(6) "Juvenile detention center" means a detention facility as defined in 41-5-103.

(7) "Juvenile detention or juvenile corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of juveniles under the jurisdiction of the youth court or the department of corrections and who performs tasks related to the operation of a juvenile detention center or a juvenile correctional facility.

~~(6)~~*(8)* "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

~~(7)~~*(9)* "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time that a person is held in temporary detention may not exceed 96 hours."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2003.

Ap proved April 14, 2003

CHAPTER NO. 317

[SB 331]

AN ACT GENERALLY REVISING THE LAWS APPLYING TO THE PRACTICE OF NURSING; ELIMINATING THE REQUIREMENT THAT THE PRACTICE OF NURSING APPLIES ONLY TO THOSE PRACTICING FOR COMPENSATION; AMENDING SECTIONS 37-8-102, 37-8-431, AND 37-8-443, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(5) "Practice of nursing" embraces ~~two classes of nursing service and activity, as follows:~~ *the practice of practical nursing and the practice of professional nursing.*

(6) (a) "Practice of practical nursing" means the performance ~~for compensation~~ of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse,

dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

~~(b)~~*(7)* "Practice of professional nursing" means the performance ~~for compensation~~ of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection ~~(5)(b)~~ *(7)*:

~~(i)~~*(a)* "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

~~(ii)~~*(b)* "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 2. Section 37-8-431, MCA, is amended to read:

"37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of a license to each person to whom a license was issued or renewed. The applicant shall carefully complete and sign the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee ~~so as~~ *in order* to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew the license and on payment of the current renewal fee prescribed by the board.

~~(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.~~

~~(5)~~*(4)* The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date."

Section 3. Section 37-8-443, MCA, is amended to read:

"37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person, ~~(~~including a corporation, association, or individual~~)~~, to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid ~~or abet therein~~ *in the sale of or in fraudulently obtaining or furnishing a nursing diploma, license, or record*;

(b) practice nursing, as defined by this chapter, under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

~~(c) practice professional nursing unless duly licensed to do so;~~

~~(d) practice practical nursing unless duly licensed to do so;~~

~~(e)~~*(c)* use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless ~~duly~~ licensed to ~~so~~ practice;

~~(f)~~*(d)* practice nursing during the time the person's license is suspended, revoked, or on inactive status;

~~(g)~~*(e)* conduct a school of nursing or a course unless the school or course has been approved by the board;

~~(h)~~*(f)* otherwise violate any provision of this chapter.

(2) ~~Such~~ *A* misdemeanor, *as provided in subsection (1)* is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail, or ~~by~~ both ~~such fine and imprisonment~~.

(3) ~~The several district~~ *District* courts within their respective county jurisdictions may hear, try, and determine ~~such~~ *a* misdemeanor and impose ~~in full~~ the *prescribed* punishment and fines ~~prescribed~~. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation."

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved April 14, 2003

CHAPTER NO. 318

[SB 409]

AN ACT REVISING LAWS RELATED TO STATE LANDS; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONDUCT CERTAIN INVENTORIES AND ASSESSMENTS; AUTHORIZING THE DEPARTMENT TO CONDUCT LEASE PLANNING; ELIMINATING DUPLICATIVE ENVIRONMENTAL REVIEWS; AMENDING SECTIONS 77-1-121 AND 77-3-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in August 1996, President Clinton announced an agreement between the federal government and Crown Butte Mines, Incorporated, that

resulted in Crown Butte abandoning further development efforts of a gold mine near Yellowstone National Park in exchange for unspecified federal assets; and

WHEREAS, in October 1997, Congress passed legislation providing $65 million to purchase the Crown Butte holdings and authorizing the transfer of $10 million of federal mineral properties or the federal mineral rights to the State of Montana as compensation for the economic opportunity lost to the people of Montana as a result of the Crown Butte agreement; and

WHEREAS, the State of Montana notified Secretary of the Interior Babbitt on February 24, 1999, of the State of Montana's selection of certain mineral tracts; and

WHEREAS, the federal government on April 10, 2002, transferred to the State of Montana the mineral title to certain mineral tracts containing 7,623 acres of federal minerals and 533 million tons of federal coal; and

WHEREAS, the property interests acquired from the federal government in the Crown Butte land exchange are a unique asset of the State of Montana, in that those assets represent a concentrated ownership of state mineral interests, rather than isolated properties; and

WHEREAS, the concentrated state mineral ownership dictates that the state take a proactive approach to the leasing and development of the property interests acquired from the federal government in the Crown Butte land exchange; and

WHEREAS, development of the property interests acquired from the federal government in the Crown Butte land exchange presents a tremendous opportunity to create hundreds of new high quality jobs, generate significant long-term sources of revenue for Montana schools, create additional electrical generation capacity to help meet the growing demand for electricity, and promote associated economic benefits and opportunities; and

WHEREAS, given the proximity of the property interests acquired from the federal government in the Crown Butte land exchange to the Northern Cheyenne Indian Reservation, the State of Montana should continue to work with the Northern Cheyenne in facilitating the development of the state coal interests acquired from the federal government in the Crown Butte land exchange; and

WHEREAS, the State of Montana recognizes the opportunities to export coal to coal-fueled generating plants in order to address Montana's current flat coal export market and the projected decline in coal severance tax revenue; and

WHEREAS, the State of Montana recognizes the need to develop new sources of electric power for Montana's consumers, industry, state institutions, rural cooperatives, and export to sustain economic stability and growth; and

WHEREAS, the State of Montana and the Northern Cheyenne have worked together and negotiated the Otter Creek Settlement Agreement, and the state recognizes the importance of involving the Northern Cheyenne in cultural resource inventories and assessments; and

WHEREAS, the State of Montana recognizes that developing coal-based electrical generation using the property interests in coal resources acquired from the federal government in the Crown Butte land exchange to serve the long-term power needs of both Montana and the western United States and recognizes that the development of coal-based electrical generation and

necessary transmission infrastructure provide the opportunity for other development consistent with Montana's economic development policy.

Be it enacted by the Legislature of the State of Montana:

Section 1. Inventories and assessments. (1) The department may, in consultation with appropriate state agencies and the Northern Cheyenne tribe, conduct resource inventories and assessments of all or parts of the property interests acquired from the federal government in the Crown Butte land exchange to assist in the leasing, promotion, and development of those property interests. Those inventories and assessments include but are not limited to:

(a) cultural resource inventories and assessments;

(b) coal resource inventories and assessments;

(c) market analysis of the mineral resources; or

(d) any other inventories and assessments required by law or that the department determines are necessary.

(2) The department may place all or parts of the property interests acquired from the federal government in the Crown Butte land exchange up for lease in accordance with the procedures provided for in Title 77.

(3) Nothing in this section prevents the department from receiving applications to place the tracts for lease prior to the completion of inventories and assessments, and the department may lease the property interests acquired from the federal government in the Crown Butte land exchange in accordance with the applicable provisions of Title 77.

(4) Nothing in this section is intended to alter, diminish, or impair the Otter Creek settlement agreement between the state of Montana and the Northern Cheyenne tribe, and nothing in this section prevents the state from cooperating with the Northern Cheyenne tribe to enforce air and water quality standards through government-to-government reciprocity agreements.

Section 2. Planning of lease actions. (1) The department shall manage the property interests acquired from the federal government in the Crown Butte land exchange consistent with 77-3-102 and consult with the private surface owners and the private mineral owners that control the coal property interests that are located in a checkerboard arrangement with the mineral interests acquired from the federal government in the Crown Butte land exchange in the planning of leasing actions.

(2) Consistent with Title 77, the department's leasing actions must:

(a) attain the fair market value and optimize the monetary return to the public school fund; and

(b) facilitate and encourage timely development of the property interests acquired from the federal government in the Crown Butte land exchange.

Section 3. Section 77-1-121, MCA, is amended to read:

"77-1-121. Environmental review *compliance* — exemptions. (1) ~~The~~ *Except as provided in subsection (2), the* department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 only if the department is actively proposing to issue a sale, exchange, right-of-way, easement, placement of improvement, lease, license, or permit, or is acting in response to an application for an authorization for such a proposal.

(2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.

~~(2)~~*(3)* Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board chooses not to take any action, even though either may have the authority to take an action.

~~(3)~~*(4)* The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

(a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;

(b) development or adoption of zoning regulations;

(c) review of a proposed subdivision pursuant to Title 76, chapter 3;

(d) actions related to annexation;

(e) development or adoption of plans or reports on extension of services; and

(f) other actions that are related to local planning."

Section 4. Section 77-3-301, MCA, is amended to read:

"77-3-301. Coal leases authorized. ~~The~~ *In response to an application or on its own initiative, the* board may lease in ~~such~~ *a* manner ~~as~~ *that* it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal ~~therein~~, upon the terms and conditions ~~herein stated~~ *provided in this section* and subject to ~~such~~ *the* rules ~~as~~ *that* the board prescribes."

Section 5. Notification to tribal government. The secretary of state shall send a copy of [this act] to the Northern Cheyenne tribal government.

Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1 and 2].

Section 7. Effective date. [This act] is effective on passage and approval.

Ap proved April 14, 2003

CHAPTER NO. 319

[HB 20]

AN ACT BENEFITING MULE DEER AND ELK BY ALLOWING THE ANNUAL ISSUANCE OF ONE MULE DEER LICENSE AND ONE ELK LICENSE THROUGH A COMPETITIVE AUCTION OR LOTTERY; ALLOWING THE AUCTION OR LOTTERY TO BE CONDUCTED BY A WILDLIFE CONSERVATION ORGANIZATION AND ALLOWING THE

RETENTION OF 10 PERCENT OF SALE PROCEEDS BY THE WILDLIFE CONSERVATION ORGANIZATION TO COVER EXPENSES; AND DEDICATING THE REMAINING AUCTION OR LOTTERY PROCEEDS TO THE BENEFIT OF MULE DEER AND ELK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Auction or lottery of mule deer license. (1) The commission may issue one male mule deer license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of mule deer may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mule deer. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of mule deer.

Section 2. Auction or lottery of elk license. (1) The commission may issue one male elk license each year through a competitive auction or lottery. The commission shall promulgate rules for the use of the license and conduct of the auction or lottery. A wildlife conservation organization that focuses on the conservation of elk may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

(2) All proceeds remaining from the auction or lottery, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of elk. The proceeds from the auction or lottery must be used in addition to any other funds that the department uses for the management of elk.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [sections 1 and 2].

Ap proved April 15, 2003

CHAPTER NO. 320

[HB 87]

AN ACT PROHIBITING THE USE OF A PUNCHCARD VOTING SYSTEM IN AN ELECTION AFTER DECEMBER 31, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Punchcard voting systems prohibited. A punchcard voting system may not be used in an election after December 31, 2003.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 17, part 1, and the provisions of Title 13, chapter 17, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 321

[HB 123]

AN ACT REDUCING THE MINIMUM AGE FOR PURCHASE OF A TRAPPER'S LICENSE FROM 13 YEARS OF AGE TO 12 YEARS OF AGE; REDUCING THE MAXIMUM AGE FOR PURCHASE OF A YOUTH TRAPPING LICENSE TO LESS THAN 12 YEARS OF AGE AND ELIMINATING THE LICENSE FEE; CLARIFYING THAT THE FISH, WILDLIFE, AND PARKS COMMISSION REGULATES TRAPPING; AMENDING SECTIONS 87-2-601, 87-2-603, AND 87-2-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-601, MCA, is amended to read:

"87-2-601. Class C—trapper's license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is ~~13~~ *12* years of age or older, upon making application and payment of a fee of $20 to the department, may receive a Class C license ~~which shall authorize~~ *that authorizes* the holder ~~thereof~~ to trap fur-bearing animals and hunt bobcat, wolverine, and Canada lynx within the state ~~of Montana~~ at ~~such~~ *the* times and in ~~such~~ *the* manner ~~as may be lawful so to do under the laws of the state~~ *provided by law* and the regulations of the ~~department~~ *commission* and at ~~such~~ *the* places ~~as~~ *that* may be designated in ~~said~~ *the* license."

Section 2. Section 87-2-603, MCA, is amended to read:

"87-2-603. Class C-2—nonresident trapper's license. (1) ~~Any~~ *A* person not a resident, as defined in 87-2-102, who is ~~13~~ *12* years of age or older, upon making application ~~to the department~~ and ~~paying~~ *payment of* a fee of $250 to the department, is entitled to a nonresident trapper's license that authorizes the holder to trap and snare predatory animals and nongame wildlife within the state. ~~Such~~ *The* trapping or snaring is permitted only after October 15 of each license year~~,~~ *and* in ~~such~~ *the* manner ~~as may be lawful under the laws of the state~~ *provided by law* and the rules of the commission~~,~~ and at ~~such~~ *the* places ~~as~~ *that* may be designated in the license.

(2) ~~Any~~ *A* person not a resident whose state of residence does not sell nonresident trapper's licenses to Montanans may not be issued a Class C-2 license under subsection (1)."

Section 3. Section 87-2-605, MCA, is amended to read:

"87-2-605. Class C-3—youth trapping license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, who is 6 years of age or older and less than ~~13~~ *12* years of age, upon making application ~~and payment of a fee of $3~~ to the department, may receive a Class C-3 license~~, which~~ *that* authorizes the holder to trap fur-bearing animals, the trapping of which has not been restricted by the commission, within the state ~~of Montana~~ at ~~such~~ *the* times and in ~~such~~ *the* manner ~~as may be lawful under the laws of the state~~ *provided by law* and the regulations of the ~~department~~ *commission*~~,~~ and at ~~such~~ *the* places ~~as~~ *that* may be designated in the license."

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved April 15, 2003

CHAPTER NO. 322

[HB 127]

AN ACT GENERALLY REVISING CONSUMER PROTECTION AND UNFAIR TRADE PRACTICES LAWS; DEFINING "CONSUMER" AND DELETING THE DEFINITION OF "NATIONAL ADVERTISING"; CLARIFYING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT OF 1973; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY BRING AN ACTION TO RESTRAIN UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN LEWIS AND CLARK COUNTY WITHOUT CONSENT OF THE PARTIES; INCREASING THE MINIMUM DAMAGES FOR UNLAWFUL ACTS TO $500; INCREASING THE MAXIMUM CIVIL FINE FOR UNLAWFUL ACTS TO $10,000; MANDATING THAT THE DEPARTMENT HOLD A HEARING TO DECIDE IF A COST SURVEY SHOULD BE PERFORMED; DELETING PROVISIONS RELATING TO CERTAIN REBATES; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION'S OBLIGATION TO ENFORCE CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS IS PERMISSIVE RATHER THAN MANDATORY; INCREASING THE MAXIMUM PENALTY FOR A VIOLATION OF A DEPARTMENT ORDER UNDER THE UNFAIR TRADE PRACTICES LAWS TO $10,000; INCREASING THE RECOVERY FOR A PERSON BRINGING AN ACTION UNDER THE UNFAIR TRADE PRACTICES LAWS AND PROVIDING FOR ATTORNEY FEES AND COSTS FOR PREVAILING PARTIES; PROVIDING THAT A VIOLATION OF CERTAIN PROVISIONS OF THE UNFAIR TRADE PRACTICES LAWS MAY BE A FELONY RATHER THAN A MISDEMEANOR; GENERALLY REVISING LAWS REGARDING PERSONAL SOLICITATION SALES; REVISING THE DEFINITION OF "PERSONAL SOLICITATION"; ELIMINATING THE DISCLOSURE OBLIGATION EXEMPTION FOR NONPROFIT ORGANIZATIONS; INCREASING THE BUYER'S RECOVERY UNDER REVOKED PERSONAL SOLICITATION SALES; AMENDING SECTIONS 30-14-102, 30-14-105, 30-14-111, 30-14-131, 30-14-133, 30-14-142, 30-14-211, 30-14-219, 30-14-220, 30-14-222, 30-14-223, 30-14-224, 30-14-501, 30-14-502, 30-14-503, AND 30-14-506, MCA; REPEALING SECTION 30-14-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

~~(1)~~*(2)* "Department" means the department of administration created in 2-15-1001.

~~(2)~~*(3)* "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart,

photograph, mechanical transcription, or other tangible document or recording~~, wherever situate~~.

~~(3)~~*(4)* "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

~~(4) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.~~

(5) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, ~~and~~ any property, tangible or intangible, real, personal, or mixed, ~~and~~ *or* any other article, commodity, or thing of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this state."

Section 2. Section 30-14-105, MCA, is amended to read:

"30-14-105. Exemptions. ~~Nothing in this~~ *This* part ~~shall~~ *does not* apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission *or the state auditor* ~~acting under statutory authority of this part or the United States~~; *or*

(2) acts ~~done by the~~ *of a* retail ~~merchants~~ *merchant*, publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station or advertising agency in the publication or dissemination of an advertisement~~,~~ when the *merchant, publisher*, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement ~~and did not have a direct financial interest in the advertised product or service;~~.

~~(3) national advertising.~~"

Section 3. Section 30-14-111, MCA, is amended to read:

"30-14-111. Department to restrain unlawful acts. (1) Whenever the department has reason to believe that ~~any~~ *a* person is using, has used, or is about to knowingly use any method, act, or practice declared by 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an action in the name of the state against ~~such~~ *the* person to restrain by temporary or permanent injunction or temporary restraining order the use of ~~such~~ *the unlawful* method, act, or practice~~,~~ upon ~~the~~ giving ~~of~~ appropriate notice to that person.

(2) The notice must state generally the relief sought and be served in accordance with 30-14-115 at least 20 days before the hearing of the action ~~where~~ *in which* the relief ~~to be~~ sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) ~~The~~ *An* action *under this section* may be brought in the district court *in the county* in which ~~such~~ *a* person resides or has ~~his~~ *the person's* principal place of business or~~, with consent of the parties, may be brought~~ in the district court of Lewis and Clark County.

(4) ~~The courts are~~ *A district court is* authorized to issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part~~, and such injunctions shall be issued without bond~~*, and an injunction must be issued without bond*."

Section 4. Section 30-14-131, MCA, is amended to read:

"30-14-131. Restoration — *court orders.* *(1)* The court may *enter* ~~make such additional~~ orders or judgments ~~as may be~~ necessary to restore to ~~any~~ *a* person any ~~moneys~~ *money* or property, real or personal, ~~which~~ *that* may have been acquired by means of any practice in this part declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

(2) The court may enter any other order or judgment required by equity to carry out the provisions of this part."

Section 5. Section 30-14-133, MCA, is amended to read:

"30-14-133. Damages — notice to public agencies — attorney fees — prior judgment as evidence. (1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ *A consumer who* suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual ~~but not~~ *but not* a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, *or service provider* resides or has ~~his~~ *its* principal place of business or is doing business to recover actual damages or ~~$200~~ *$500*, whichever is greater. *An individual claim may be brought in justice's court.* The court ~~may, in its discretion,~~ *may, in its discretion,* award up to three times the actual damages sustained and may provide ~~such~~ *any other* equitable relief ~~as~~ *that* it considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) ~~of this section~~, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of ~~such~~ *the* judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action. *A person who brings an action on the person's own behalf without an attorney may receive attorney fees at the judge's discretion.*

(4) Any permanent injunction, judgment, or order of the court made under 30-14-111 ~~shall be~~ *is* prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 30-14-103."

Section 6. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) ~~A~~ *In addition to any fine that a person might be subject to under subsection (2), a* person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil fine of not more than $10,000 for each violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause must be continued, and in those cases, the department, acting in the name of the state, may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil fine of not more than ~~$1,000~~ *$10,000* for each violation. *The*

fine provided for in this subsection is in addition to any liability that a person might be subject to under subsection (1).

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined *an amount* not more than $5,000, imprisoned for not more than 1 year, or both, in the discretion of the court. ~~Nothing in this~~ *This* subsection ~~limits~~ *does not limit* any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that the conduct was a violation of 30-14-103."

Section 7. Section 30-14-211, MCA, is amended to read:

"30-14-211. Establishing cost survey. (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, ~~establish the cost survey provided for in 30-14-210. When petition for a cost survey has been so presented to the department, the department shall,~~ as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established and, if so, upon the matter of establishing ~~such~~ *the* cost survey. The hearing ~~shall~~ *must* be held at the office of the department and upon ~~that~~ notice ~~which~~ *that* the department may require by rule. However, notice of the hearing ~~shall~~ *must* be published for at least 2 successive weeks in the daily newspaper or newspapers ~~as~~ *designated by* the department ~~may designate~~ as *the* most commonly circulated in the counties ~~to be~~ affected by the cost survey. The notice ~~shall~~ *must* further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by ~~it~~ *the department* as provided in this section. If the department determines that a cost survey should be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts ~~thereof~~ *of a particular trade or business*, to be affected, determine ~~and delimit~~ the particular area within which the trade or business will be affected, and find and determine the probable cost of doing business or overhead expense, stated in percentage of invoice or replacement cost ~~which~~ *that* would probably be incurred by the most efficient person in the trade or business within the area.

(3) If the department determines that the probable cost of doing business or overhead expense stated in percentage of invoice or replacement cost ~~which~~ *that* would probably be incurred by the most efficient person in the trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined ~~shall~~ *must* be presumed to be the actual cost of doing business and overhead expense of any person in the trade or business and within the area affected by the cost survey."

Section 8. Section 30-14-219, MCA, is amended to read:

"30-14-219. Recovery on illegal contracts forbidden. A contract, express or implied, made by a person in violation of any of the provisions of 30-14-205 through *30-14-214 or 30-14-216 through* 30-14-218 is an illegal contract ~~and no~~ *upon which a* recovery ~~thereon~~ may *not* be had."

Section 9. Section 30-14-220, MCA, is amended to read:

"30-14-220. Enforcement by department. (1) The department ~~shall~~ *may* prevent a person from violating any of the provisions of this part.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this part, the department shall immediately direct the person giving the notice either to appear before the director of the department or to make a written reply to show probable cause of a violation. If probable cause is shown, the department ~~shall:~~ *may*

~~(a)~~ make its own investigation~~;~~.

~~(b) within 60 days of the finding of probable cause make a written report of its investigation; and~~

~~(c) mail a copy of its findings to the person initially giving notice of a violation.~~

(3) (a) If the department, after an investigation, has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this part ~~and~~ *or* if it appears to the department that a proceeding by it would be in the interest of the public, it ~~shall~~ *may* issue and serve upon the person a complaint stating the charges and containing a notice of a hearing, ~~at a place~~ *the location of the hearing,* and ~~upon a day~~ *the date of the hearing, which may* not *be* less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) ~~The~~ *A* person ~~so complained against~~ *who is the subject of a complaint* may appear at the ~~place and time so fixed~~ *hearing* and show cause why an order should not be entered by the department requiring ~~such~~ *the* person to stop the violation of the law charged in the complaint.

(d) Any person may ~~make application~~ *apply* and upon *showing* good cause ~~shown may~~ be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding ~~shall~~ *must* be reduced to writing and filed with the department.

(f) If upon *the conclusion of* the hearing the department ~~believes~~ *determines* that the act or conduct in question is prohibited by this part, it shall make findings of fact in writing and issue and cause to be served on the person charged an order requiring ~~such~~ *the* person to stop the ~~acts~~ *act* or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, a report or an order made or issued by it under this section.

(4) A court reviewing an order of the department may issue ~~such~~ writs ~~as~~ *that* are ancillary to its jurisdiction or *that* are necessary in its judgment to prevent injury to the public or to competitors pending the outcome of the suit.

(5) To the extent that the order of the department is affirmed, the court shall ~~thereupon~~ issue its own order ~~commanding obedience to~~ *requiring compliance with* the terms of the order of the department.

(6) Proceedings under this section ~~shall~~ *must* be given precedence over other civil cases pending in the district court and ~~shall~~ *must* be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to the state a penalty of not more than ~~$1,000~~ *$10,000* for each violation.

(8) The remedies and method of enforcement of this part provided for in this section are concurrent and in addition to the other remedies provided in this part."

Section 10. Section 30-14-222, MCA, is amended to read:

"30-14-222. Injunctions — damages — production of evidence. (1) Any person~~, if~~ *who is or will be* injured ~~thereby~~, *the department,* or the attorney general may maintain an action to enjoin ~~a continuance of~~ an act *that is* in violation of 30-14-205 through *30-14-214 or 30-14-216 through* 30-14-218 and for the recovery of damages. If ~~in such action~~ the court finds that the defendant is violating or has violated any of the provisions of 30-14-205*, 30-14-214 or 30-14-216* through 30-14-218, it shall enjoin the defendant ~~from a continuance thereof~~. It is not necessary to allege or prove actual damages to the plaintiff.

(2) *(a)* In addition to ~~such~~ injunctive relief, the plaintiff is entitled to recover from the defendant *the greater of* three times the amount of actual damages sustained *or $1,000*.

(b) In addition to any amount recovered pursuant to subsection (2)(a), a plaintiff who proves a violation of 30-14-209 is entitled to $500 a day for each day that a violation of 30-14-209 occurred.

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of ~~any such~~ *the* defendant may be brought into court and introduced into evidence by reference. ~~No information so~~ *Information* obtained *pursuant to this subsection* may *not* be used against the defendant as a basis for ~~a misdemeanor~~ prosecution under 30-14-205 through *30-14-214, 30-14-216 through* 30-14-218, ~~and~~ *or* 30-14-224.

(4) In an action brought by a party other than the state, the prevailing party is entitled to attorney fees and costs."

Section 11. Section 30-14-223, MCA, is amended to read:

"30-14-223. ~~Department to institute~~ *Department's institution of* suit. Upon the ~~third~~ violation of any of the provisions of 30-14-205*, 30-14-214 or 30-14-216* through 30-14-218 by any business, the department ~~shall~~ *may* institute ~~proper suits or quo warranto proceedings~~ *a proceeding* in a court of competent jurisdiction for the forfeiture of ~~its~~ *the business's* charter, rights, franchises or privileges, and powers exercised by ~~such~~ *the* business and to permanently enjoin it from transacting business in this state. If in ~~such action~~ *the proceeding* the court finds that the business is violating or has violated any of the provisions of 30-14-205*, 30-14-214 or 30-14-216* through 30-14-218, ~~it~~ *the court* shall enjoin the business from doing business in this state permanently or for ~~such~~ *a period of* time ~~as~~ *that* the court orders or *the court* shall annul the charter or revoke the franchise of ~~such~~ *the* business."

Section 12. Section 30-14-224, MCA, is amended to read:

"30-14-224. Penalties. (1) ~~Except as otherwise provided in this section, a~~ *A* person, whether as principal, agent, officer, or director, who *purposely or knowingly* violates any of the provisions of ~~30-14-206 through 30-14-218~~ *30-14-207 through 30-14-214 or 30-14-216 through 30-14-218* is guilty of ~~a misdemeanor~~ *an offense* for each ~~single~~ violation and upon conviction ~~thereof~~

~~shall~~ *may* be fined *an amount* not ~~less than $100 or~~ more than ~~$1,000~~ *$10,000* ~~or~~ *or* imprisoned for a term not to exceed ~~6 months~~ *2 years~~, or both~~, or both*.

(2) A violation of 30-14-205 is punishable by imprisonment ~~in the county jail~~ for a period *of* not ~~less than 24 hours or~~ more than ~~1 year~~ *5 years* ~~or by~~, *and the offender may be subject to a* fine *in an amount* not exceeding $25,000~~, or both~~.

(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the *convicted* person ~~so convicted~~. ~~In such case no~~ *A* new license may *not* be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with ~~him~~ *that person* in ~~such~~ *that* business for a period of ~~1 year~~ *5 years*."

Section 13. Section 30-14-501, MCA, is amended to read:

"30-14-501. Purpose. The purpose of this part is to afford ~~consumers~~ *persons* subjected to high pressure personal solicitation sales tactics a cooling-off period."

Section 14. Section 30-14-502, MCA, is amended to read:

"30-14-502. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller ~~who regularly engages in transactions of the same kind~~ to sell goods or services ~~which are primarily for personal, family, or household purposes,~~ when either the seller or a person acting for ~~him~~ *the seller* contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer, *prior to the attempted sale,* personally knows the identity of the seller, the name of the business, firm, or organization ~~he~~ *that the seller* represents, and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor engaged in both the delivery and the sale of the newspaper; ~~or~~

(d) an attempted sale of an insurance policy*; or*

(e) an attempted sale of more than $5,000 of goods or services that are not primarily for personal, family, or household purposes.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for ~~him~~ *the seller~~,~~ ~~provided~~ if* the buyer is required to give consideration in excess of $25 in cash or credit ~~therefor~~.

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including *an* assignee of a seller."

Section 15. Section 30-14-503, MCA, is amended to read:

"30-14-503. Disclosure obligation. Before any personal solicitation, each seller shall, at the time of initial contact or communication with the potential

buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization ~~he~~ *that the seller* represents, *and* the identity or kinds of goods or services ~~he~~ *that the seller* wishes to demonstrate or sell~~, and that he wishes to demonstrate or sell the identified goods or services~~. When the initial contact is made in person, the seller shall also show the potential buyer an identification card ~~which~~ *that* clearly states the seller's name and the name of the business or organization ~~he~~ *that the seller* represents. The disclosures required by this section ~~shall~~ *must* be made before asking any questions or making any statements except an initial greeting. ~~Nonprofit organizations are exempt from the requirements of this section.~~ *Failure to provide the information required by this section may be punished by a civil fine of not more than $1,000 for each violation.*"

Section 16. Section 30-14-506, MCA, is amended to read:

"30-14-506. Repayment to buyer — retention of goods by buyer — *court award, costs, and attorney fees.* (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the ~~down payment~~ *downpayment* includes goods traded in, the goods ~~shall~~ *must* be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the ~~cash down payment~~ *downpayment* or goods tendered as ~~down payment~~ *downpayment*, ~~he~~ *the seller* ~~shall be~~ *is* liable to the buyer for the entire ~~down payment~~ *downpayment*, and if the buyer is successful in ~~his~~ *a court* action ~~therefor~~ *for recovery*, the court shall also award ~~him~~ *the buyer* ~~$100~~ *$500* plus reasonable ~~attorneys'~~ *attorney* fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered ~~to him~~ by the seller and ~~shall have~~ *has* a lien on the goods ~~in his possession~~ or control for any recovery to which ~~he~~ *the buyer* may be entitled."

Section 17. Repealer. Section 30-14-215, MCA, is repealed.

Section 18. Coordination instruction. (1) If House Bill No. 571 and [this act] are both passed and approved, then subsection (1) of 30-14-133 in [section 4 of House Bill No. 571] is amended to read:

"(1) ~~Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby~~ *A consumer who* suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an individual but not a class action under the rules of civil procedure in the district court of the county in which the seller, ~~or~~ lessor, *or service provider* resides or has ~~his~~ *its* principal place of business or is doing business to recover actual damages or ~~$200~~ *$500*, whichever is greater. *An individual claim may be brought in justice's court.* The court may, in its discretion, award up to three times the actual damages sustained and may provide ~~such~~ *any other* equitable relief ~~as~~ *that* it considers necessary or proper."

(2) If House Bill No. 571 and [this act] are both passed and approved, then [section 5] of House Bill No. 571, amending 30-14-142, is void.

(3) If House Bill No. 571 and [this act] are both passed and approved, then [section 8] of House Bill No. 571, amending 30-14-220, is void.

Section 19. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 323

[HB 203]

AN ACT GENERALLY REVISING LAWS GOVERNING BALLOT MEASURES; REVISING THE DEFINITION OF "SIGNATURE GATHERER"; CLARIFYING THAT PETITIONS FOR BALLOT MEASURES ARE TO BE CIRCULATED BY SIGNATURE GATHERERS; PROVIDING REQUIREMENTS FOR INTERNET POSTING OF PETITIONS FOR BALLOT MEASURES; REQUIRING PETITIONS FOR BALLOT MEASURES TO INCLUDE THE INITIALS OF THE PERSON SIGNING THE PETITION AND THE DATE WHEN THE FIRST SIGNATURE WAS GATHERED; CONFORMING REQUIREMENTS FOR SIGNATURES FOR INITIATIVE MEASURES AND INITIATIVES FOR CONSTITUTIONAL AMENDMENTS TO CONSTITUTIONAL REQUIREMENTS FOR GATHERING SIGNATURES IN ONE-HALF OF THE COUNTIES; REVISING REQUIREMENTS FOR SUBMISSION OF PETITION SHEETS FOR BALLOT MEASURES FOR VERIFICATION OF SIGNATURES; REQUIRING CERTIFICATION OF SIGNATURES ON PETITIONS FOR BALLOT MEASURES BY THE SIGNATURE GATHERER; AUTHORIZING THE SECRETARY OF STATE TO REJECT PETITIONS FOR BALLOT MEASURES SUBMITTED FOR TABULATION OF SIGNATURES THAT DO NOT MEET STATUTORY REQUIREMENTS; AMENDING SECTIONS 13-27-111, 13-27-201, 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-301, 13-27-302, 13-27-303, 13-27-304, AND 13-27-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-111, MCA, is amended to read:

"13-27-111. Definitions. As used in 13-27-112, 13-27-113, and this section, unless otherwise indicated by the context, the following definitions apply:

(1) "Commissioner" means the commissioner of political practices provided for in 13-37-101.

(2) "Paid signature gatherer" means a signature gatherer who is compensated in money for the collection of signatures.

(3) "Person" has the meaning provided in 13-1-101, but does not include a candidate and includes a political committee.

(4) "Signature gatherer" means an individual who collects ~~or intends to collect~~ signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention."

Section 2. Section 13-27-201, MCA, is amended to read:

"13-27-201. Form of petition generally. (1) A petition for the initiative, *for* the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not

interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition sheets may not exceed 8 1/2 x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet, the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. The text of the measure must be in the bill form provided in the most recent issue of the bill drafting manual furnished by the legislative services division. If sheets are circulated in sections, the complete text of the measure must be attached to each section.

(3) An internet posting of petition language must include a statement that the petition language and format may not be modified. An internet posting must include an affidavit in substantially the same form as prescribed by the secretary of state pursuant to 13-27-302."

Section 3. Section 13-27-202, MCA, is amended to read:

"13-27-202. Recommendations — approval of form required. (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative services division for review.

(b) The legislative services division staff shall review the text for clarity, consistency, and any other factors that the staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the legislative services division staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative services division shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the county election administrator. The secretary of state shall refer a copy of the petition sheet to the attorney general for approval. The secretary of state and attorney general shall each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The attorney general shall also review the petition as to its legal sufficiency. If the attorney general determines that the petition is legally deficient, the attorney general shall notify the secretary of

state of that fact and provide a copy of the determination to the secretary of state and to the petitioner within the time provided in 13-27-312(8). The petition may not be given final approval by the secretary of state unless the attorney general's determination is overruled pursuant to 13-27-316. As used in this section, "legal sufficiency" means that the petition complies with the statutory prerequisites to submission of the proposed measure to the electors and that the text of the proposed measure complies with constitutional requirements governing submission of ballot measures to the electorate. Review of a petition for legal sufficiency does not include consideration of the merits or application of the measure if adopted by the voters. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative services division unless the material not submitted to the legislative services division is a substantive change not suggested by the legislative services division.

(4) (a) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the petition.

(b) The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection of the form of the petition within 28 days after submission of the petition sheet.

(c) If an action is filed challenging the validity of the petition, the secretary of state shall immediately notify the person who submitted the petition sheet.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated *by a signature gatherer* in the form of the sample prepared by the secretary of state. The petition may be circulated *by a signature gatherer* upon approval of the form of the petition by the secretary of state and the attorney general pending a final determination of its legal sufficiency."

Section 4. Section 13-27-204, MCA, is amended to read:

"13-27-204. Petition for initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of ~~34 legislative representative districts~~ *one-half of the counties* sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., 20..., general election ballot:

(Title of measure written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on

this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, residence address, ~~legislative representative district number~~ *county of residence*, ~~and~~ *and* printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 5. Section 13-27-205, MCA, is amended to read:

"13-27-205. Petition for ~~the~~ referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ...., Senate (House) Bill Number .... will appear on the next general election ballot. If a majority of voters vote for this measure at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ...., passed by the legislature on ..... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) on this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person must sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registry card, or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, residence address, legislative representative district number, ~~and~~ *and* printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 6. Section 13-27-206, MCA, is amended to read:

"13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there will be a constitutional convention:

PETITION TO PLACE INITIATIVE NO.____, CALLING FOR A CONSTITUTIONAL CONVENTION, ON THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature shall call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., 20..., general election ballot:

(Title of the initiative written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must also contain spaces for the signature, residence address, legislative representative district number, ~~and~~ *and* printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 7. Section 13-27-207, MCA, is amended to read:

"13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO.____ ON THE ELECTION BALLOT

(a) If 10% of the voters in each of ~~40 legislative districts~~ *one-half of the counties* sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ....., 20..., general election ballot:

(Title of the proposed constitutional amendment written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, residence address, ~~legislative representative district number~~ *county of residence*, ~~and~~ *and* printed last name *and first and middle initials* of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 8. Section 13-27-301, MCA, is amended to read:

"13-27-301. Submission of petition sheets — withdrawal of signatures. (1) Signed sheets or sections of petitions ~~shall~~ *with original signatures must* be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 9 months and no later than 4 weeks before the final date for filing the petition with the secretary of state.

(2) If it is impractical to submit signed sheets or sections of petitions with original signatures by the deadline provided in subsection (1), a copy or facsimile may be submitted to the proper county official by the deadline. Signed sheets or sections of petitions with original signatures must be submitted within 7

calendar days after the deadline. Failure to submit signed sheets or sections of petitions with original signatures within 7 calendar days will invalidate the signed sheets or sections submitted by copy or facsimile.

~~(2)~~*(3)* Signatures may be withdrawn from a petition for constitutional amendment, constitutional convention, initiative, or referendum up to the time of final submission of petition sheets as provided in subsection (1). The secretary of state shall prescribe the form to be used by an elector desiring to have ~~his~~ *the elector's* signature withdrawn from a petition."

Section 9. Section 13-27-302, MCA, is amended to read:

"13-27-302. Certification of signatures. An affidavit, in substantially the following form, must be attached to each sheet or section submitted to the county official:

I, (name of person who ~~circulated this petition~~ *is the signature gatherer*), swear that I ~~circulated~~ *gathered* or assisted in ~~circulating~~ *gathering the signatures on* the petition to which this affidavit is attached *on the stated dates*, that I believe the signatures on the petition are genuine, are the signatures of the persons whose names they purport to be, and are the signatures of Montana electors who are registered at the address or have the telephone number following the person's signature, and that the signers knew the contents of the petition before signing the petition.

.....

(date on which the first signature was gathered)

.....

(Signature of petition ~~circulator~~ *signature gatherer*)

.....

(Address of petition ~~circulator~~ *signature gatherer*)

Subscribed and sworn to before me this ... day of ....., 20...

Seal .....

(Person authorized to take oaths)

.....

(Title or notarial information)"

Section 10. Section 13-27-303, MCA, is amended to read:

"13-27-303. Verification of signatures by county official — allocating voters following reapportionment — duplicate signatures. (1) Except as required by 13-27-104, within 4 weeks after receiving the sheets or sections of a petition, the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(2) For the purpose of allocating the signatures of voters among the several legislative representative districts of the state as required to certify a petition

for a ~~ballot issue~~ *referendum or a call of a constitutional convention* under the provisions of this chapter following the filing of a districting and apportionment plan under 5-1-111 and before the first gubernatorial election following the filing of the plan, the new districts must be used with the number of signatures needed for each legislative representative district being the total votes cast for governor in the last gubernatorial election divided by the number of legislative representative districts.

(3) Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the petition circulator, or both, to the county attorney to be investigated under the provisions of 13-27-106 and 13-35-207."

Section 11. Section 13-27-304, MCA, is amended to read:

"13-27-304. County official to forward verified sheets. The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ....., Secretary of State of the state of Montana:

I, ..., ... (title) of the County of ....., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in *(*Legislative Representative District No. .... *or the County of ....)* (repeat for each district *or county* included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address, residence address, or telephone number ~~and legislative representative district number~~ is completed for each valid signature.

Signed:.....(Date) .....(Signature)

Seal .....(Title)"

Section 12. Section 13-27-307, MCA, is amended to read:

"13-27-307. Consideration and tabulation of signatures by secretary of state. (1) The secretary of state shall consider and tabulate only the signatures on petitions that are certified by the proper county official~~, and each certificate is prima facie evidence of the facts stated in the certificate~~. *The secretary of state may reject any petition that does not meet statutory requirements. The secretary of state shall return a rejected petition to the proper county official. The county official shall correct the error, when applicable, or send or deliver the rejected petition to the signature gatherer.* ~~However, the~~ *The* secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official must be in substantially the following form:

State of Montana)

)ss.

County of.....)

I, ... (name), a ~~duly~~ qualified and acting notary public in and for the above-named county and state, certify that I am personally acquainted with all of the following-named electors whose signatures are affixed to the attached (petition) (copy of a petition) and I know that they are registered electors of the state of Montana and of the county ~~and~~ *or* legislative district written after their names in the petition and that their post-office addresses are correctly stated in the petition.

.....(Names of electors)

In testimony whereof, I have set my hand and official seal this.... day of....., 20...

.....(Signature)

Seal .....(Notarial information)"

Section 13. Effective date. [This act] is effective July 1, 2003.

Ap proved April 15, 2003

CHAPTER NO. 324

[HB 303]

AN ACT MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT RELATES TO TRANSMISSION LINES; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in

securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; ~~and~~

(ii) does not include an electric transmission line ~~with a design capacity of more than 69 kilovolts but less than 230 kilovolts~~ *with a design capacity of more than 69 kilovolts but less than 230 kilovolts* for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline~~;~~*; and*

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy,

designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 325

[HB 384]

AN ACT CREATING A DEMONSTRATION PROJECT THAT ALLOWS HEALTH INSURANCE ISSUERS TO OFFER A LIMITED COVERAGE INDIVIDUAL HEALTH BENEFIT PLAN OR A MANAGED CARE PLAN; PROVIDING THAT THE INSURER MUST SPECIFY CLEARLY WHICH STATE-REQUIRED BENEFITS OR COVERAGES ARE NOT INCLUDED IN THE OFFERED LIMITED COVERAGE INDIVIDUAL PLAN; AMENDING SECTIONS 33-22-301, 33-22-706, 33-30-1001, 33-31-111, 33-31-202, 33-31-301, 33-36-201, AND 33-36-205, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative intent — purpose. (1) It is the intent of the legislature to provide for a demonstration project to allow a health service corporation, a health maintenance organization, or a health insurer to test the feasibility of a product to extend health care benefits to uninsured residents of Montana.

(2) It is the purpose of a demonstration project to provide coverage for health care services not otherwise available to uninsured residents of Montana.

Section 2. Limited coverage individual health benefit plan or managed care plan — demonstration project — criteria — rulemaking. (1) The commissioner of insurance may approve a 12-month demonstration project that allows a health insurance issuer to offer a limited coverage individual health benefit plan or managed care plan. The criteria for approval of a 12-month demonstration project include but are not limited to the following:

(a) the plan must include significant outpatient services and may not consist of inpatient benefits only;

(b) the plan may be offered only to residents of Montana who have been uninsured for 90 days or longer; and

(c) the commissioner may adopt rules that describe additional criteria to be used to determine approval of demonstration projects. Additional criteria must relate to the purpose as stated in [section 1(2)].

(2) The health benefit plan or managed care plan must specify the health services that are included and must specifically list the health services that will be limited or not be covered from the partial list of state-required coverage in subsection (3). The limitations and exclusions of the plan must be prominently displayed on the application and on the outline of coverage required by 33-22-244.

(3) Subject to subsection (4), if specifically listed as a limitation or an exclusion of coverage in the proposal, a demonstration project may limit or exclude the following health services from its health benefit plan or managed care plan:

(a) coverage of a newborn, as provided in 33-22-301, 33-30-1001, and 33-31-301(3)(e), which may be subject only to the same extent of the limitations and exclusions contained in the parent's policy;

(b) coverage for severe mental illness, as provided in 33-22-706;

(c) coverage for mental health services, as provided in 33-31-301(3)(g)(i);

(d) benefits for emergency services, as provided in 33-36-201 and 33-36-205;

(e) coverage for certain basic health care services described in 33-31-102(2)(b) and (2)(h)(v); or

(f) services provided by a specific category of licensed health care practitioner to be provided to the covered person for a health-related condition in a health benefit plan or managed care plan, including services described in 33-22-125 and 33-30-1017.

(4) All health benefit plan and managed care plan demonstration projects are subject to the following provisions:

(a) the requirement that any plan that covers physical illness generally must cover severe mental illness in a way that is no less favorable than that level provided for other physical illness generally as required by federal law;

(b) the prohibition against discrimination in 49-2-309;

(c) except as provided in subsection (3)(d), the provisions in Title 33, chapter 36, regarding network adequacy and quality assurance; and

(d) all other applicable provisions of Title 33, except those listed in subsection (3).

(5) Upon a renewal request and approval by the insurance commissioner, a demonstration project may be renewed for additional 12-month increments for a maximum total of 5 years.

Section 3. Requirements of demonstration project. Any health insurance issuer that participates in the demonstration project must:

(1) collect health risk assessment information at enrollment and reenrollment, which must be collected without reference to an individual, must allow individuals to remain anonymous, and must be reported to the commissioner only in the aggregate; and

(2) collect information on any uncompensated care that was received by the covered person directly related to the exclusion of benefits under [section 2].

Section 4. Section 33-22-301, MCA, is amended to read:

"33-22-301. Coverage of newborn under disability policy. (1) ~~Each~~ *Except as provided in [section 2], each* policy of disability insurance or certificate issued must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(2) The coverage for newborn infants must be the same as provided by the policy for the other covered persons. However, ~~that~~ for newborn infants there may not be waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(3) ~~A~~ *Except as provided in [section 2], a* policy or certificate of insurance may not be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth.

(4) The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days."

Section 5. Section 33-22-706, MCA, is amended to read:

"33-22-706. Coverage for severe mental illness — definition. (1) ~~A~~ *Except as provided in [section 2(3)] and subject to [section 2(4)], a* policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

(a) inpatient hospital services;

(b) outpatient services;

(c) rehabilitative services;

(d) medication;

(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and

(f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to this section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to health service benefits provided by:

(i) individual and group health and disability insurance;

(ii) individual and group hospital or medical expense insurance;

(iii) medical subscriber contracts;

(iv) membership contracts of a health service corporation;

(v) health maintenance organizations; and

(vi) the comprehensive health association created by 33-22-1503.

(b) This section does not apply to the following coverages:

(i) blanket;

(ii) short-term travel;

(iii) accident only;

(iv) limited or specific disease;

(v) Title XVIII of the Social Security Act (medicare); or

(vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:

(a) schizophrenia;

(b) schizoaffective disorder;

(c) bipolar disorder;

(d) major depression;

(e) panic disorder;

(f) obsessive-compulsive disorder; and

(g) autism."

Section 6. Section 33-30-1001, MCA, is amended to read:

"33-30-1001. Newborn infants covered by insurance by health service corporation. ~~A~~ *Except as provided in [section 2], a* disability insurance plan or group disability insurance plan issued by a health service corporation may not be issued or amended in this state if it contains any disclaimer, waiver, preexisting condition exclusion, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each policy must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days."

Section 7. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized

to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36, *except as provided in [section 2]*; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) ~~Chapter~~ *Except as provided in [section 2], Title 33, chapter* 1, parts 12 and 13, ~~of this title,~~ 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 8. Section 33-31-202, MCA, is amended to read:

"33-31-202. Issuance of certificate of authority. (1) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days after receipt of the application. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

(b) The health maintenance organization will effectively provide or arrange for the provision of basic health care services, *except as provided in [section 2],* on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments. This requirement does not apply to the physical or mental health care services provided by a health maintenance organization to a person receiving medicaid services under the Montana medicaid program as established in Title 53, chapter 6.

(c) The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection with the services;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information that the commissioner may reasonably require.

(d) The enrollees must be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

(e) Nothing in the proposed method of operation, as shown by the information submitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner.

(2) The commissioner may deny a certificate of authority only if the requirements of 33-31-404 are complied with.

(3) The commissioner shall examine each health maintenance organization applying for an initial certificate of authority to do business in this state. In lieu of making an examination under this part of any health maintenance organization domiciled in another state, the commissioner may accept an examination report on the organization prepared by the insurance department of the organization's state of domicile."

Section 9. Section 33-31-301, MCA, is amended to read:

"33-31-301. Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person ~~resident~~ *residing* in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) *except as provided in [section 2]*, a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) *except as provided in [section 2]*, a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

(i) a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) ~~A~~ *Except as provided in [section 2], a* health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) ~~A~~ *Except as provided in [section 2], a* health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer.

(7) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section."

Section 10. Section 33-36-201, MCA, is amended to read:

"33-36-201. Network adequacy — standards — access plan required. (1) A health carrier offering a managed care plan in this state shall maintain a network that is sufficient in numbers and types of providers to ensure that all services to covered persons are accessible without unreasonable delay. Sufficiency in number and type of provider is determined in accordance with the requirements of this section. ~~Covered~~ *Except as provided in [section 2], covered* persons must have access to emergency care 24 hours a day, 7 days a week. A health carrier providing a managed care plan shall use reasonable criteria to determine sufficiency. The criteria may include but are not limited to:

(a) a ratio of specialty care providers to covered persons;

(b) a ratio of primary care providers to covered persons;

(c) geographic accessibility;

(d) waiting times for appointments with participating providers;

(e) hours of operation; or

(f) the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care.

(2) Whenever a health carrier has an insufficient number or type of participating providers to provide a covered benefit, the health carrier shall ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the covered benefit were obtained from participating providers or shall make other arrangements acceptable to the department.

(3) The health carrier shall establish and maintain adequate provider networks to ensure reasonable proximity of participating providers to the businesses or personal residences of covered persons. In determining whether a health carrier has complied with this requirement, consideration must be given to the relative availability of health care providers in the service area under consideration.

(4) ~~A health carrier offering a managed care plan in this state on October 1, 1999, shall file with the department on October 1, 1999, an access plan complying with subsection (6) and the rules of the department.~~ A health carrier offering a managed care plan in this state ~~for the first time after October 1, 1999,~~ shall file with the department an access plan meeting the requirements of

subsection (6) and the rules of the department before offering the managed care plan. A plan must be filed with the department in a manner and form complying with the rules of the department. A health carrier shall file any subsequent material changes in its access plan with the department within 30 days of implementation of the change.

(5) A health carrier may request the department to designate parts of its access plan as proprietary or competitive information, and when designated, that part may not be made public. For the purposes of this section, information is proprietary or competitive if revealing the information would cause the health carrier's competitors to obtain valuable business information. A health carrier shall make the access plans, absent proprietary information, available on its business premises and shall provide a copy of the plan upon request.

(6) An access plan for each managed care plan offered in this state must describe or contain at least the following:

(a) a listing of the names and specialties of the health carrier's participating providers;

(b) the health carrier's procedures for making referrals within and outside its network;

(c) the health carrier's process for monitoring and ensuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in the managed care plan;

(d) the health carrier's efforts to address the needs of covered persons with limited English proficiency and illiteracy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(e) the health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(f) the health carrier's method of informing covered persons of the plan's services and features, including but not limited to the plan's grievance procedures, its process for choosing and changing providers, and its procedures for providing and approving emergency and specialty care;

(g) the health carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians and for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(h) the health carrier's process for enabling covered persons to change primary care professionals;

(i) the health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and a participating provider or in the event of the health carrier's insolvency or other inability to continue operations. The description must explain how covered persons will be notified of the contract termination or the health carrier's insolvency or other cessation of operations and be transferred to other providers in a timely manner.

(j) any other information required by the department to determine compliance with this part and the rules implementing this part.

(7) The department shall ensure timely and expedited review and approval of the access plan and other requirements in this section."

Section 11. Section 33-36-205, MCA, is amended to read:

"33-36-205. Emergency services — *exception*. (1) A health carrier offering a managed care plan shall provide or pay for emergency services screening and emergency services and may not require prior authorization for either of those services. If an emergency services screening determines that emergency services or emergency services of a particular type are unnecessary for a covered person, emergency services or emergency services of the type determined unnecessary by the screening need not be covered by the health carrier unless otherwise covered under the health benefit plan. However, if screening determines that emergency services or emergency services of a particular type are necessary, those services must be covered by the health carrier. A health carrier shall cover emergency services if the health carrier, acting through a participating provider or other authorized representative, has authorized the provision of emergency services.

(2) A health carrier shall provide or pay for emergency services obtained from a nonnetwork provider within the service area of a managed care plan and may not require prior authorization of those services if use of a participating provider would result in a delay that would worsen the medical condition of the covered person or if a provision of federal, state, or local law requires the use of a specific provider.

(3) If a participating provider or other authorized representative of a health carrier authorizes emergency services, the health carrier may not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item or health care services furnished in reliance on approval unless the approval was based on a material misrepresentation about the covered person's medical condition made by the provider of emergency services.

(4) Coverage of emergency services is subject to applicable coinsurance, copayments, and deductibles.

(5) For postevaluation or poststabilization services required immediately after receipt of emergency services, a health carrier shall provide access to an authorized representative 24 hours a day, 7 days a week, to facilitate review.

(6) The provisions of this section do not apply to a limited coverage individual managed care plan as provided in [sections 1 through 3]."

Section 12. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 22, part 2, and the provisions of Title 33, chapter 22, part 2, apply to [sections 1 through 3].

Section 13. Effective date. [This act] is effective July 1, 2003.

Section 14. Termination. [This act] terminates June 30, 2009.

Ap proved April 15, 2003

CHAPTER NO. 326

[HB 431]

AN ACT PROVIDING LOCAL GOVERNMENTS WITH THE RIGHT OF FIRST REFUSAL ON CERTAIN LANDS BEING SOLD BY THE STATE; AMENDING SECTION 77-2-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-306, MCA, is amended to read:

"77-2-306. Who may purchase. (1) State lands ~~shall~~ *may* be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. ~~No~~ *A* person ~~shall be~~ *is not* qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands ~~shall~~ *must* be sold only to actual settlers or to persons who will improve the ~~same~~ *lands* and not to persons who are likely to hold ~~such~~ *the* lands for speculative purposes, intending to resell the ~~same~~ *lands* at a higher price without having added anything to their value.

(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of ~~such~~ *any* state created by ~~such~~ *that* state as an agency or political subdivision ~~thereof~~ *of that state*. ~~Said~~ *State* lands may be purchased in the quantities set forth in 77-2-307 for use by ~~such~~ *a* state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government, as defined in 18-11-102.

(4) ~~No~~ *A* sale involving land in excess of ~~the acreage limitations in 77-2-307~~ *160 acres* may *not* be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

(5) A local government that sold or transferred property to the state shall have the right of first refusal if the state subsequently offers the property for sale. For purposes of this subsection, "right of first refusal" means the right to have the first opportunity to purchase the property for not less than fair market value when the property becomes available or the right to meet any other offer."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 327

[HB 435]

AN ACT CLARIFYING THAT A LEGISLATOR MAY NOT ACCEPT A FEE OR CERTAIN OTHER COMPENSATION FOR SPEAKING TO A MONTANA STATE AGENCY OR POLITICAL SUBDIVISION; AMENDING SECTION 2-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-111, MCA, is amended to read:

"2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office*; or*

(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 328

[HB 602]

AN ACT REQUIRING DEVELOPMENT OF A LEASING PREFERENCE GUIDELINE THAT ENCOURAGES COST-EFFICIENCY AND APPROPRIATE USE; REQUIRING A REPORT ON THE PREFERENCE GUIDELINE TO BE SUBMITTED TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Vehicle purchases — leasing guideline. (1) (a) Prior to June 1, 2004, the office of budget and program planning, in conjunction with the motor vehicle pool, shall devise for use by state agencies a leasing preference guideline for light vehicles, as defined in 61-1-139. The guideline is intended to encourage appropriate, cost-effective use of light vehicles. Factors to be addressed include multiple occupant use versus single occupant use, weather conditions at the time of use, and vehicle destination. The guideline must include stringent limitations on the use of personal vehicles at state expense, including a requirement that employees accept substitute vehicles when requested vehicles are not available.

(b) The leasing preference guideline must be submitted for review to the revenue and transportation interim committee by July 1, 2004.

(2) Subsection (1) applies to the motor pools of the Montana university system. The board of regents may exempt a purchase on a case-by-case basis.

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved April 15, 2003

CHAPTER NO. 329

[SB 13]

AN ACT SUBSTITUTING 0.08 FOR 0.10 IN THE LAWS RELATING TO DRIVING UNDER THE INFLUENCE AND DRIVING WITH AN ILLEGAL ALCOHOL CONCENTRATION IN THE BODY; REDUCING THE BLOOD ALCOHOL CONCENTRATION FROM 0.18 TO 0.16 FOR PURPOSES OF REQUIRING AN IGNITION INTERLOCK DEVICE; AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-401, 61-8-406, 61-8-442, AND 61-11-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon proper authority. (1) The department upon proper authority shall revoke the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of ~~0.10~~ *0.08* or more;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(e) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

(g) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense."

Section 2. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — probationary license — ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of ~~0.10~~ *0.08* or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall

revoke the license or driving privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license during the period of revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for a person convicted of any offense that makes mandatory the revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 3. Section 61-8-401, MCA, is amended to read:

"61-8-401. Driving under influence of alcohol or drugs. (1) It is unlawful and punishable, as provided in 61-8-442, 61-8-714, and 61-8-731 through 61-8-734, for a person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than ~~0.10~~ *0.08*, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of ~~0.10~~ *0.08* or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-410, 61-8-714, 61-8-722, 61-8-731 through 61-8-734, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 4. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of ~~0.10~~ *0.08* or more — operation of commercial vehicle by person with alcohol concentration of 0.04 or more. (1) It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and 61-8-731 through 61-8-734 for any person to drive or be in actual physical control of:

(a) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is ~~0.10~~ *0.08* or more; or

(b) a commercial motor vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood or breath, is 0.04 or more.

(2) Absolute liability, as provided in 45-2-104, will be imposed for a violation of this section."

Section 5. Section 61-8-442, MCA, is amended to read:

"61-8-442. Driving under ~~the~~ influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device discretionary on first offense. (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may restrict a defendant to driving only a motor vehicle equipped with a functioning ignition interlock device and require the defendant to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available;

(b) the defendant's blood alcohol concentration at the time of the arrest was ~~0.18%~~ *0.16* or greater; and

(c) the defendant has not been previously convicted of a violation of 61-8-401 or 61-8-406.

(2) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(3) The duration of a restriction imposed under this section must run parallel to the time period for suspension of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department."

Section 6. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).

(3) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of ~~0.10~~ *0.08* or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(4) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(5) "License" means any type of license or permit to operate a motor vehicle.

(6) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(7) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 7. Code commissioner instruction. The code commissioner is authorized and instructed to change "0.10" to "0.08" in any legislation enacted by the 2003 legislature that contains a reference to an alcohol concentration of 0.10 in a person's body.

Section 8. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 330

[SB 34]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO IMPLEMENT AN EXPEDITED ACQUISITION PROCESS FOR ACQUIRING PROPERTY UNDER CERTAIN CONDITIONS; AMENDING SECTIONS

60-4-104, 70-30-302, AND 70-30-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-4-104, MCA, is amended to read:

"60-4-104. Exercise of right of eminent domain — presumption. (1) *Subject to subsections (4) and (5), whenever* ~~Whenever~~ the department cannot acquire lands or other property or interests in the lands or property at a price or cost ~~which~~ *that* it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in Title 70, chapter 30, against all nonaccepting landholders.

(2) ~~It shall~~ *The department may* not ~~so~~ direct the attorney general or any county attorney *to procure the interests* until it adopts an order declaring that:

(a) public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in 60-4-103;

(b) the interest described in the order and sought to be condemned is necessary for the highway or improvement;

(c) the highway or improvement is planned and located in a manner ~~which~~ *that* will be compatible with the greatest public good and the least private injury.

(3) The order creates and establishes a disputable presumption:

(a) of the public necessity of the proposed highway or improvement;

(b) that the taking of the interest sought is necessary ~~therefor~~ *for the project*;

(c) that the proposed highway or improvement is planned or located in a manner ~~which~~ *that* will be most compatible with the greatest public good and the least private injury.

(4) (a) Once the department has acquired at least three-fourths of all the parcels needed to construct a project that has been selected by the commission, it may use the procedures outlined in subsection (5) and this subsection (4) to acquire the remaining parcels required for the project.

(b) Not less than 30 days or more than 45 days after service of the summons and complaint provided for in 70-30-203, the department shall deposit into an account and in the manner provided for in 70-30-302 the estimated fair market value of the property that is to be acquired and that is described in the complaint. Once the funds are deposited, the department may request, by motion filed with the court, an order to show cause why the property should not be placed in the possession of the department as requested in the complaint.

(5) (a) If the condemnee does not file an objection to the motion within 10 days, the court shall issue the preliminary condemnation order as provided in 70-30-206 and place the condemnor in possession of the property as provided in 70-30-311.

(b) If the condemnee files an objection to the motion, the court shall schedule a hearing at which the condemnee shall appear and show cause why the property should not be placed in the possession of the department as requested in the complaint. The hearing must take place not less than 20 days or more than 30 days after the objection is filed. The court shall rule on the condemnor's motion as

soon after the hearing as possible. However, the time between the hearing and the court's decision may not exceed 30 days.

(c) The motion shall include a notice specifying that the order sought is a final order on the issue of possession of the property described in the complaint."

Section 2. Section 70-30-302, MCA, is amended to read:

"70-30-302. Assessing compensation — date and measure — interest. (1) For the purpose of assessing compensation, the right to compensation is considered to have accrued at the date of the service of the summons, and the property's current fair market value as of that date is the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This subsection may not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order is made allowing the condemnor to take possession, as provided in *60-4-104(4) and (5) and* 70-30-311, the full amount finally awarded must draw interest at the rate of 10% a year from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if an appeal is filed, the date of final decision by the supreme court; or

(b) the date on which the condemnee withdraws from the court the full amount finally awarded.

(3) If the condemnee withdraws from the court a fraction of the amount finally awarded, interest on that fraction ceases on the date it is withdrawn but interest on the remainder of the amount finally awarded continues to the earlier of the dates referred to in subsections (2)(a) and (2)(b) until the full amount is withdrawn from the court.

(4) None of the amount finally awarded draws interest after the date on which the right to appeal to the Montana supreme court expires.

(5) Improvements put upon the property subsequent to the date of the service of summons may not be included in the assessment of compensation or depreciation in current fair market value and may not be used as the basis of computing compensation or depreciation."

Section 3. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting condemnor in possession. (1) At any time after the filing of the preliminary condemnation order *pursuant to 70-30-206 or an order as provided in 60-4-104(4) and (5)* and while it retains jurisdiction, the court upon application of the condemnor may make an order that~~,~~*:*

(a) upon payment into court of the amount of compensation claimed by the condemnee in the condemnee's statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, the condemnor is authorized:

~~(a)~~*(i)* if already in possession of the property of the condemnee that is sought to be taken, to continue in possession; or

~~(b)~~*(ii)* if not in possession, to take possession of the property and use and possess the property during the pendency and until the final conclusion of the proceedings and litigation*;* and ~~that~~

(b) all actions and proceedings against the condemnor on account of the possession are stayed until ~~that time~~ *the final conclusion of the proceedings and litigation*.

(2) If the condemnee fails to file a statement of claim of just compensation within the time specified in 70-30-207, the condemnor may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a condemnor's payment into court must be made within 10 days of receipt of the condemnee's statement of claim.

(3) However, when an appeal is taken by the condemnee, the court may require the condemnor before continuing or taking possession, in addition to paying into court the amount assessed, to give a bond or undertaking with sufficient sureties approved by the court and in an amount that the court may direct, conditioned to pay the condemnee any additional damages and costs above the amount assessed, which is finally determined as the amount that the condemnee is entitled to for the taking of the property, and all damages that the condemnee may sustain if for any cause the property is not finally taken for public use.

(4) The amount assessed by the commissioners or by the jury on appeal is considered, for the purposes of this section and until reassessed or changed in the further proceedings, as just compensation for the property taken. However, the condemnor, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as provided in subsection (3), may not be prevented from appealing from the assessment but may appeal in the same manner and with the same effect as if money had not been deposited or security had not been given.

(5) (a) Subject to subsection (5)(b), in all cases in which the condemnor deposits the amount of the assessment and continues in possession or takes possession of the property, as provided in this section, the condemnee, if there is no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money deposited. The demand or receipt may not preclude the condemnee's right of appeal from the assessment. However, if the amount of the assessment is finally reduced on appeal by either party, the condemnee who has received all or any part of the amount deposited is liable to the condemnor for any excess of the amount received over the amount finally assessed, with legal interest on the excess from the time the condemnee received the money deposited. The excess, plus interest, may be recovered by a civil action. Upon any appeal from an assessment by the commissioners to a jury, the jury may make a finding for any amount that it considers appropriate.

(b) The court may not order the delivery to any condemnee of more than 75% of the money deposited on the condemnee's account except upon posting of bond by the condemnee equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the condemnor amounts withdrawn that are in excess of the condemnee's final award in the proceedings."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to actions initiated on or after [the effective date of this act].

Ap proved April 15, 2003

CHAPTER NO. 331

[SB 80]

AN ACT PROHIBITING A LEGISLATIVE STANDING COMMITTEE FROM MEETING DURING THE INTERIM BETWEEN REGULAR LEGISLATIVE SESSIONS, EXCEPT IN CONJUNCTION WITH A SPECIAL SESSION OR TO PERFORM CERTAIN TASKS BEFORE A REGULAR SESSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authority for standing committees to meet during interim. (1) Except as provided in 5-2-202 and subsection (2) of this section, a standing committee of the legislature, as provided for in legislative rules, may not meet during the interim between regular legislative sessions.

(2) Upon approval of the president of the senate or the speaker of the house of representatives, a standing committee may meet before a special session, as provided in 5-3-101, or during a special session.

Ap proved April 15, 2003

CHAPTER NO. 332

[SB 86]

AN ACT REVISING ACCOUNTING, BUDGETING, AND APPROPRIATION LAWS; AUTHORIZING STATE SPECIAL AND OTHER FEDERAL FUND SWITCHES; CHANGING THE DATE FOR STATE AGENCIES TO ANNUALLY REPORT ACCOUNTING INFORMATION TO THE LEGISLATIVE FINANCE COMMITTEE; CLARIFYING THE CALCULATION OF BALANCED FINANCIAL PLANS THAT REDUCE THE PROPOSED BASE BUDGET FOR AGENCIES WITH MORE THAN 20 FTE; PROVIDING BUDGET AMENDMENT EXCEPTIONS FOR STATE SPECIAL REVENUE; AMENDING SECTIONS 17-2-108, 17-2-304, 17-7-111, AND 17-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-108, MCA, is amended to read:

"17-2-108. Expenditure of nongeneral fund money first. (1) Except for the exemptions applicable to the Montana historical society in 22-3-114(5) and the Montana state library in 22-1-226(5), an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) The approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a

contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

(3) If directed by an appropriation act, the approving authority may decrease a state special revenue, proprietary, or other funds appropriation of an agency by the amount of money received from federal sources in excess of the appropriation unless the decrease is contrary to state or federal law or federal rule. The appropriation for the fund in which the money is received is decreased by the amount of the federal special revenue increase allowed by law, rule, or contract and approved for the purpose."

Section 2. Section 17-2-304, MCA, is amended to read:

"17-2-304. Reports required. (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee by ~~August 1~~ *September 15*:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency's compliance; and

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency's noncompliance.

(2) The director of the department of administration shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1) or that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months."

Section 3. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. *Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund.* The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified in 2-17-526.

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The

department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

Section 4. Section 17-7-402, MCA, is amended to read:

"17-7-402. Budget amendment requirements. (1) Except as provided in subsection (7), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections;~~or~~

(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;

(viii) revenue collected for the Water Pollution Control State Revolving Fund Act under the provisions of Title 75, chapter 5, part 11;

(ix) revenue collected for the Drinking Water State Revolving Fund Act under the provisions of Title 75, chapter 6, part 2; or

(x) state special revenue adjustments required to allocate costs for leave or terminal leave within an agency in accordance with federal circular A-87;

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure or the expenditure is exempt under subsection (5);

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium, except that budget amendments for federal funds may extend to the end of the federal fiscal year.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

(3) Subject to subsection (1)(f), all budget amendments must itemize planned expenditures by fiscal year.

(4) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(5) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(6) An appropriation for a nonrecurring item that would usually be the subject of a budget amendment must be submitted to the legislature for approval during a legislative session between January 1 and the senate hearing on the budget amendment bill. The bill may include authority to spend money in the current fiscal year and in both fiscal years of the next biennium.

(7) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 5. Effective date. [This act] is effective July 1, 2003.

Ap proved April 15, 2003

CHAPTER NO. 333

[SB 166]

AN ACT REVISING THE PADDLEFISH ROE DONATION PROGRAM; REVISING THE RESTRICTION THAT ONLY ROE FROM PADDLEFISH CAUGHT BETWEEN THE BURLINGTON NORTHERN RAILROAD BRIDGE AT GLENDIVE TO THE CONFLUENCE OF COTTONWOOD CREEK AND THE YELLOWSTONE RIVER IS ELIGIBLE FOR DONATION TO THE PROGRAM BY SPECIFYING A LONGER SECTION OF THE YELLOWSTONE RIVER; ADJUSTING THE PERCENTAGES OF PROGRAM PROCEEDS THAT ARE DIVIDED BETWEEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE NONPROFIT ORGANIZATION THAT PROCESSES AND MARKETS THE CAVIAR; EXTENDING THE PADDLEFISH ROE DONATION PROGRAM UNTIL JUNE 30, 2018; AMENDING SECTION 87-4-601, MCA, SECTION 5, CHAPTER 409, LAWS OF 1989, AND SECTION 2, CHAPTER 196, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-601, MCA, is amended to read:

"87-4-601. ~~(Temporary)~~ Sale of fish or spawn unlawful — exceptions. (1) Except as provided in subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, in any way, catch any of the fish ~~which~~ *that* in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any ~~such~~ *game* fish. ~~No~~ *A* person may *not* sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn from any game fish.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners of private ponds;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for propagation purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules and regulations as the fish, wildlife, and parks commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) ~~A~~ *Until June 30, 2018, a* person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the burlington northern railroad bridge at Glendive to the ~~confluence of Cottonwood Creek and the Yellowstone River~~ *North Dakota state line* during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(d) (i) ~~Forty~~ *Thirty* percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(ii) ~~Sixty~~ *Seventy* percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area ~~sportsmen~~ *anglers*. The

advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants. ~~(Terminates June 30, 2003 - sec. 2, Ch. 196, L. 1993.)~~

~~**87-4-601. (Effective July 1, 2003) Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.~~

~~(2) The restrictions of subsection (1) do not apply to:~~

~~(a) the catching of fish in private ponds by the owners thereof;~~

~~(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes;~~

~~(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;~~

~~(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish, wildlife, and parks commission may prescribe; or~~

~~(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.~~"

Section 2. Section 5, Chapter 409, Laws of 1989, is amended to read:

"Section 5. **Effective date ~~— termination~~.** [This act] is effective July 1, 1989~~, and terminates June 30, 1993~~."

Section 3. Section 2, Chapter 196, Laws of 1993, is amended to read:

"Section 2. Section 5, Chapter 409, Laws of 1989, is amended to read:

"Section 5. **Effective date ~~— termination~~.** [This act] is effective July 1, 1989~~, and terminates June 30, 1993~~ *2003*.""

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 334

[SB 168]

AN ACT REQUIRING THAT MUNICIPALITIES ANNEX ROADS AND STREETS THAT ARE ADJACENT TO PROPERTY THAT IS BEING ANNEXED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Inclusion of roads and rights-of-way in annexation. In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 2, part 42, and the provisions of Title 7, chapter 2, part 42, apply to [section 1].

Ap proved April 15, 2003

CHAPTER NO. 335

[SB 241]

AN ACT DEFINING "DEALER", "MOTOR VEHICLE", AND "NEW MOTOR VEHICLE" FOR THE PURPOSES OF SECTIONS 61-4-131 THROUGH 61-4-137, 61-4-141, AND 61-4-150, MCA, IN ORDER TO PROVIDE THAT THE RIGHT OF A DESIGNATED FAMILY MEMBER TO SUCCEED IN THE OWNERSHIP OR OPERATION OF A NEW MOTOR VEHICLE DEALERSHIP INCLUDES PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES AND IN ORDER TO PROVIDE THAT A MANUFACTURER'S RIGHT OF FIRST REFUSAL AND A DEALER'S RIGHTS WITH RESPECT TO THE SALE, TRANSFER, OR EXCHANGE OF A DEALERSHIP APPLY TO PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY VEHICLES; AND AMENDING SECTION 61-4-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-131, MCA, is amended to read:

"61-4-131. Definitions. As used in 61-4-131 through 61-4-137, *61-4-141, and 61-4-150, the following definitions apply:* ~~,~~

(1) "Dealer" includes a new motor vehicle dealer as defined in 61-4-201.

(2) (a) ~~"designated~~ "*Designated* family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who~~,~~*:*

(i) in the case of a deceased dealer~~,~~*:*

(A) is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will~~,~~ *or under the laws of intestate succession of this state;* or

(B) ~~who~~ has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership~~,~~*;* or

(ii) ~~under the laws of intestate succession of this state or who,~~ in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property.

(b) The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(3) "Motor vehicle" has the same meaning as provided in 61-4-201.

(4) "New motor vehicle" has the same meaning as provided in 61-4-201."

Ap proved April 15, 2003

CHAPTER NO. 336

[SB 262]

AN ACT CLARIFYING APPOINTMENT BY COUNTY COMMISSIONERS TO A VACANCY IN THE LEGISLATURE; CLARIFYING THE ROLE OF THE COUNTY CENTRAL COMMITTEE; REVISING THE TIMEFRAME FOR NOTIFICATIONS AND APPOINTMENT; CLARIFYING THE BEGINNING OF A TERM OF OFFICE FILLED BY AN APPOINTMENT; ALLOWING AN APPOINTMENT PRIOR TO AN ELECTION IF A SPECIAL LEGISLATIVE SESSION IS CALLED; AMENDING SECTIONS 5-2-402, 5-2-403, 5-2-404, 5-2-406, AND 5-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-402, MCA, is amended to read:

"5-2-402. Appointment by board of county commissioners — *county central committee role — timeframes.* (1) ~~When~~ *Except as provided in subsection (5) or as otherwise provided by law, whenever* a vacancy occurs in the legislature, the vacancy ~~shall~~ *must* be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners *of the counties* comprising the district sitting as one appointing board.

(2) (a) Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

~~(2)~~*(b)* Whenever *a vacancy is within a multicounty district, the* boards of county commissioners *shall* sit as one appointing board~~,~~. *The* selection of an individual to fill the vacancy must be as follows:

~~(a)~~*(i)* The ~~chairman~~ *presiding officer* of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature~~,~~ and ~~he~~ shall ~~act as the presiding officer of~~ *preside at* the meeting.

~~(b)~~*(ii)* Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where*:*

(A) A is the total votes cast in the respective county for the person vacating the legislative seat or, if ~~such~~ *the vacating* person was not ~~himself~~ elected, the votes cast for the last person to be elected for the current term~~,~~*;*

(B) B is the total votes cast for that person in the legislative district~~,~~*;* and

(C) C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.

(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula *in*

subsection (2)(b)(ii) must be applied using the votes cast for the senatorial candidates at the last election in which ~~such~~ votes were cast *for a senate candidate*. ~~Such~~ *Only the number of* votes ~~shall include only those~~ cast by electors residing in the new senate district for senate candidates of the party to which the person vacating the seat belonged *may be counted*. The secretary of state shall provide an estimate of the number of votes ~~so~~ cast~~,~~ *for each party* by county or portion ~~thereof~~ *of a county*. *The selection process is the same as provided in subsection (2)(b)(iii).*

~~(c) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation required by this subsection (2). If no candidate receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers.~~

(3) The appointment ~~of a legislator~~ *process to fill a vacant legislative seat* under this section ~~must take place within 15 days after the vacancy occurs.~~ *is as follows:*

(a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners and the county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there is no county central committee, the notification of county commissioners suffices.

(b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45 days.

(c) The appointing board shall make and confirm an appointment and notify the secretary of state within 15 days:

(i) after receiving the list of prospective appointees from the county central committee or committees;

(ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or

(iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4)."

Section 2. Section 5-2-403, MCA, is amended to read:

"5-2-403. Appointee to be of same political party. (1) Whenever ~~his~~ *an appointee's* predecessor served as a member of a political party, the appointee named under 5-2-402 ~~shall~~ *must* be a member of the same political party and ~~shall~~ *must* be selected from a list of three individuals provided*:*

(a) by the *county central committee in a district within a single county; or*

(b) by the county central committees, acting together, *in a multicounty district, as described in 5-2-402* ~~of the counties wherein a portion of the senate district lies~~.

(2) Whenever the appointing board is unable to elect an appointee from the submitted list, ~~it~~ *the appointing board* shall request a second list of three names from the county central *committee or* committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

~~(2)~~*(3)* The provisions of this section do not apply if ~~his~~ *the* predecessor served as an independent."

Section 3. Section 5-2-404, MCA, is amended to read:

"5-2-404. Procedure upon failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403~~(1)~~ or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board."

Section 4. Section 5-2-406, MCA, is amended to read:

"5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual *may be appointed, pursuant to 5-2-402, if the legislature is called into special session. However, the appointment may run only until a person* ~~shall be~~ *is* elected to complete the term at ~~that~~ *the upcoming* general election *and sworn into office*. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election ~~shall~~ *must* be utilized.

(b) Whenever the vacancy occurs on or after the 75th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate ~~shall~~ *must* be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

Section 5. Section 5-2-407, MCA, is amended to read:

"5-2-407. Anticipated vacancy. (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take

office at the commencement of the term to which ~~he~~ *the legislator* was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee ~~and the 15-day period of 5-2-402(3)~~, the ~~vacancy~~ *term of office* ~~occurs~~ *commences* on the ~~first~~ day ~~of the term to which his predecessor was elected~~ *on which the appointee takes the oath of office.*

~~(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.~~

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office."

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 337

[SB 315]

AN ACT PROVIDING FOR A FEASIBILITY STUDY TO ASSESS CONDITIONS AFFECTING RAIL FREIGHT COMPETITION IN MONTANA AND TO ANALYZE POSSIBILITIES TO IMPROVE RAIL FREIGHT COMPETITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, 63 Class I freight railroads competed in the United States in 1976 and today only 8 Class I railroads traverse this country with limited competition and the control of more than 91% of all U.S. rail freight revenue; and

WHEREAS, in 2001 one railroad posted more than 97% of revenue earned in Montana from rail freight movement in and out of the state, as reported to the Public Service Commission; and

WHEREAS, railroads have seen an overall dwindling of their customer base in part because of business decisions linked to competition from other freight transporters; and

WHEREAS, three of Montana's major industries ship bulk quantities of mining, timber, and agricultural products out of state to compete in regional, national, and world markets against products on which pricing may benefit from lower variable costs in part because of competition in freight rates; and

WHEREAS, the Legislature considers greater understanding of the economic benefits of rail freight competition and the barriers to rail freight competition to be a key step forward in finding ways to promote economic development of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Feasibility study on rail freight competition. (1) The office of economic development, established in 2-15-218, shall, subject to subsection (3), present a report to the 59th legislature, as provided in 5-11-210, concerning the status of rail freight competition and its impacts on economic development in Montana. The feasibility study must address:

(a) impacts in Montana from rail freight competition or lack of competition, including if possible a list of businesses that decided for or against locating in the state as a result of the existence of or lack of rail freight competition;

(b) benchmarks as provided through a comparison of rail freight rates and competition in the region;

(c) an analysis of the benefits of rail freight competition on economic development in Montana;

(d) an analysis of the potential for public or private investment in improved rail freight competition;

(e) proposals for various methods to improve rail freight competition in areas where competition is nonexistent or minimal and an analysis of each method's feasibility; and

(f) analysis of the costs and the benefits of state-owned infrastructure compared with privately owned infrastructure associated with additional rail lines intended to promote greater rail freight competition.

(2) The office of economic development may convene a task force of economists, members of the transportation industry, members of natural resource industries that use various forms of freight transportation to ship products to market, and experts in related fields to provide guidelines for the feasibility study.

(3) The office of economic development shall secure funding from federal and private sources to cover the costs of the feasibility study. If funding is insufficient, the requirements for the study are void.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 338

[SB 316]

AN ACT CLARIFYING ENERGY-RELATED TAX LAWS BY PROVIDING THAT THE DEPARTMENT OF REVENUE MAY REFER CLAIMS FOR DEDUCTIONS OR CREDITS FOR ENERGY CONSERVATION MEASURES TO THE DEPARTMENT OF LABOR AND INDUSTRY RATHER THAN THE DEPARTMENT OF ADMINISTRATION; CLARIFYING THAT THE MINERAL EXPLORATION INCENTIVE CREDIT MAY NOT EXCEED A TOTAL OF $20 MILLION FOR ALL EXPLORATION ACTIVITIES; AND AMENDING SECTIONS 15-32-106, 15-32-503, AND 15-32-507, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-106, MCA, is amended to read:

"15-32-106. Procedure for obtaining benefit of deduction or credit. The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 that demonstrably promotes energy conservation or uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of environmental quality for its advice, and the department of environmental quality shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of ~~administration~~ *labor and industry* for its advice, and the department of ~~administration~~ *labor and industry* shall respond

within 60 days. The department of revenue may deny a deduction or credit that it finds to be impractical or ineffective."

Section 2. Section 15-32-503, MCA, is amended to read:

"15-32-503. Exploration incentive credit. (1) The department shall grant to a person a credit against the person's tax liability under Title 15, chapter 30 or 31, for the certified expenditures ~~of each~~ of the following exploration activities that are performed on land in the state for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership:

(a) surveying by geophysical or geochemical methods;

(b) drilling exploration holes;

(c) conducting underground exploration;

(d) surface trenching and bulk sampling; or

(e) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(2) (a) Except as provided in subsection (3), credit may not be granted under subsection (1) for exploration activity described in subsection (1) that occurs after the construction commencement date of a new mine.

(b) For the purposes of this subsection (2), "construction commencement date of a new mine" means the date no later than which all of the following have occurred:

(i) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(ii) all approvals, permits, licenses, and certificates are in full force and effect and without any modification that might jeopardize the completion or continued construction of the mine; and

(iii) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(3) In addition to the grant of a credit for a new mine under subsection (2), a credit may be granted under subsection (1) for exploration activity for a mine that had previously operated, that has ceased to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous operation are no longer in effect. However, a credit may not be granted under subsection (1) for exploration activity that occurs after the mine reopening date. For the purposes of this subsection (3), "mine reopening date" means the date not later than which all of the following have occurred:

(a) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(b) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect and without any modification that might jeopardize the reopening of the former mine; and

(c) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the reopening of the former mine is not in effect."

Section 3. Section 15-32-507, MCA, is amended to read:

"15-32-507. Credit limitation. ~~A~~ *A* credit *for each distinct mining operation* ~~for a specific exploration activity~~ may not exceed *a total of* $20 million *for all exploration activities under 15-32-503* and accrues at the rate of 50% of the certified expenditures each year. The credit must be applied within 15 tax years after the taking of the credit is approved under 15-32-504. However, the tax year or years in which the credit is applied need not be:

(1) the tax year in which the person first incurs liability for payment of tax based on the person's activity that is the basis of the claim for the credit; or

(2) consecutive tax years."

Ap proved April 15, 2003

CHAPTER NO. 339

[SB 341]

AN ACT INCREASING FROM 30 TO 45 DAYS THE TIME REQUIRED FOR AN INSURER TO PROVIDE NOTICE TO A POLICYHOLDER OF A CANCELLATION, NONRENEWAL, OR RENEWAL WITH CHANGES OF PROPERTY OR CASUALTY INSURANCE, MOTOR VEHICLE LIABILITY INSURANCE, OR PRIVATE RESIDENCE INSURANCE; INCREASING THE NOTIFICATION REQUIREMENT FOR CANCELLATION OR NONRENEWAL OF POLICIES ISSUED TO A SPECIFIC GROUP OF PROFESSIONAL LIABILITY POLICYHOLDERS FROM 60 TO 120 DAYS; AMENDING SECTIONS 33-15-1104, 33-15-1105, 33-15-1106, 33-23-212, 33-23-214, 33-23-302, AND 33-23-401, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-15-1104, MCA, is amended to read:

"33-15-1104. Anniversary cancellation — anniversary rate increases. (1) An insurer may issue a policy for a term longer than 1 year or for an indefinite term if the policy contains a clause that allows cancellation by the insurer if the insurer gives notice ~~30~~ *45* days prior to an anniversary date.

(2) If a policy has been issued for a term longer than 1 year and for additional premium consideration an annual premium has been guaranteed, the insurer may not increase the annual premium for the term of that policy."

Section 2. Section 33-15-1105, MCA, is amended to read:

"33-15-1105. Nonrenewal — renewal premium. (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least ~~30~~ *45* days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a

notice of ~~such~~ *the* intention *not to renew*. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(b) Notification or nonrenewal to the insured's insurance producer via electronic transfer of data or by electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured's renewal, that a single loss is among the insurer's criteria for nonrenewal."

Section 3. Section 33-15-1106, MCA, is amended to read:

"33-15-1106. Renewal with altered terms. (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rate, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rate, or rating plan to the insured at least ~~30~~ *45* days before the expiration date.

(2) This section does not apply if the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against."

Section 4. Section 33-23-212, MCA, is amended to read:

"33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty. (1) Notwithstanding any other provision of this code, a cancellation by an insurer of a motor vehicle liability insurance policy ~~may~~ *is* not ~~be~~ effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating the date on which, not less than ~~30~~ *45* days after the date of ~~such~~ *the* mailing or delivery, the cancellation becomes effective.

(2) A notice of cancellation of a policy to which 33-23-211 applies ~~may~~ *is* not ~~be~~ effective unless mailed or delivered by the insurer to the named insured at least ~~30~~ *45* days prior to the effective date of cancellation~~; provided, however, that where~~. *However, if* cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 21 days prior to the effective date of cancellation, the insurer shall specify the reason for the cancellation.

(3) Subsection (2) does not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding $500 for each violation thereof."

Section 5. Section 33-23-214, MCA, is amended to read:

"33-23-214. Advance notice required for nonrenewal — exceptions. (1) ~~No~~ *An* insurer ~~may fail to~~ *shall* renew a motor vehicle liability policy unless it mails or delivers to the named insured, at the address shown in the policy, at least ~~30~~ *45* days' advance notice of its intention not to renew. ~~Such~~ *The* notice must contain or be accompanied by a statement that upon written request made not later than 1 month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within 15 days of ~~his~~ *the insured's* request, of the reason or reasons for ~~such~~ *the* nonrenewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the motor vehicle liability policy must terminate on the effective date of any other replacement or succeeding motor vehicle liability policy procured by the insured with respect to any motor vehicle designated in both policies.

(3) This section does not apply where the named insured has failed to discharge when due any of ~~his~~ *the insured's* obligations in connection with the payment of premiums for the policy or the renewal ~~thereof~~ *of the policy* or any installment payments ~~therefor~~ *for the policy*, whether payable directly to the insurer or its insurance producer or indirectly under any premium finance plan or extension of credit.

(4) This section does not apply in any of the following cases:

(a) if the insurer has manifested its willingness to renew;

(b) in case of nonpayment of premium~~; provided that,~~. *However,* notwithstanding the failure of an insurer to comply with this section, the policy must terminate on the effective date of any other insurance policy with respect to any motor vehicle designated in both policies~~;~~.

(c) if the insured's insurance producer or broker has secured other coverage acceptable to the insured at least 20 days prior to the anniversary date of the policy or termination of the policy period.

(5) Renewal of a motor vehicle liability policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of ~~such~~ *the* renewal.

(6) A notice of nonrenewal of a motor vehicle liability policy under this section, ~~which~~ *for a* policy *that* has a term of less than 6 months, is effective only when based on one or more of the reasons listed in 33-23-211."

Section 6. Section 33-23-302, MCA, is amended to read:

"33-23-302. Cancellation or alteration of policy — increase of premium rates — ~~sixty days'~~ written notice required. Any insurer who insures a ~~physician and surgeon,~~ *person licensed in the practice of medicine, as defined in 37-3-102, a* dentist, registered nurse, nursing home administrator, registered physical therapist, podiatrist, licensed psychologist, osteopath, chiropractor, pharmacist, optometrist, or veterinarian, ~~duly~~ licensed under the laws of this state, or a licensed hospital or long-term care facility as the employer of any ~~such~~ person *identified in this section* against liability for error, omission, professional negligence, or performance of services without consent may not cancel or alter the policy insuring the person or increase the premium rates

~~thereon~~ *on the policy* without first providing the insured ~~60~~ *60* days' written notice of the insurer's intention to cancel or alter the policy or increase the premium rates."

Section 7. Cancellation or nonrenewal of all policies. Any insurer insuring a person described in 33-23-302 who elects to cancel or not renew all policies for all persons identified in 33-23-302 shall provide notice of the decision to cancel or not renew coverage to all affected persons described in 33-23-302 at least 120 days prior to cancellation or nonrenewal.

Section 8. Section 33-23-401, MCA, is amended to read:

"33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty. (1) ~~No~~ *An* insurer ~~shall~~ *may not* cancel or refuse to renew any policy insuring private residences, including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile, without first giving to the insured ~~30~~ *45* days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy.

(2) Violation of this section is punishable under 33-1-104."

Section 9. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 33, chapter 23, part 3, and the provisions of Title 33, chapter 23, part 3, apply to [section 7].

Section 10. Applicability. [This act] applies to policies effective on or after October 1, 2003.

Ap proved April 15, 2003

CHAPTER NO. 340

[SB 380]

AN ACT AUTHORIZING THE TRUSTEES OF A HIGH SCHOOL OR K-12 PUBLIC SCHOOL DISTRICT TO ESTABLISH A STUDENT FINANCIAL INSTITUTION AT A HIGH SCHOOL; DEFINING "STUDENT FINANCIAL INSTITUTION"; AMENDING SECTIONS 20-3-324, 32-1-102, 32-1-402, AND 32-3-106, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Student financial institution defined — obligations of minor — applicability of laws. (1) The term "student financial institution" means a financial institution that:

(a) is operated as a high school education program;

(b) is adopted by a school district board of trustees;

(c) is advised by but not owned by one or more state-chartered or federally chartered financial institutions, limited to a state or national bank, a state or federal savings and loan association, a trust company, an investment company, or a state or federal credit union;

(d) is located on property owned by a high school district, as defined in 20-6-101, or a K-12 school district, as defined in 20-6-701;

(e) has as its customers only those students who are enrolled in the high school in which the institution is located; and

(f) has a written commitment from the school district board of trustees guaranteeing reimbursement of any depositor's funds that are lost due to insolvency of the student financial institution.

(2) The funds of a student financial institution are not school district or public funds for the purposes of any state law governing the use or investment of school district or other public funds.

(3) To advise a student financial institution, a state-chartered bank, savings and loan association, trust company, investment company, or credit union shall provide written notice to the department of administration.

(4) With regard to the operation of a student financial institution, the obligations of a minor pertaining to borrowing money, cashing checks, and making deposits have the same force and effect as though they were the obligations of a person over the age of majority.

(5) Except as provided in 32-1-102, 32-1-402, and 32-3-106, a student financial institution established pursuant to this section is not subject to Title 32, chapters 1 through 3, or any other provision of state law that regulates banks, credit unions, other financial institutions, or currency exchanges.

Section 2. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the

district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution; ~~and~~

(27) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in [section 1]; and

~~(27)~~*(28)* perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 3. Section 32-1-102, MCA, is amended to read:

"32-1-102. Institutions to which chapter is applicable. (1) The word "bank" as used in this chapter means any corporation, other than a foreign capital depository, as defined in 32-8-103, that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, except for the operations of a foreign capital depository, whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent's principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for that purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

(6) Except for the provisions listed in 32-8-106, this chapter does not apply to foreign capital depositories.

(7) This chapter does not apply to a student financial institution, as defined in [section 1]."

Section 4. Section 32-1-402, MCA, is amended to read:

"32-1-402. When advertising as bank prohibited — trade names restricted. (1) Except as provided in subsection (4), a person, firm, company, partnership, or corporation, either domestic or foreign, that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received a certificate to do a banking business from the department, may not:

(a) *except for a student financial institution, as defined in [section 1],* advertise that the person or entity is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) The person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed or partly written and partly printed papers that contain an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) The person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner that leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) (a) A person, firm, company, partnership, or corporation, domestic or foreign*, except for a student financial institution, as defined in [section 1],* that is not subject to the supervision of the department and not required by the provisions of this chapter to report to it and that has not received from the department a certificate to do a banking business may not transact business under a name or title that contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company" unless the department has granted a waiver. This section does not prohibit the use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to 12 U.S.C. 1844.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining the person, firm, company, partnership, or corporation during

pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require."

Section 5. Section 32-3-106, MCA, is amended to read:

"32-3-106. Instruction in schools — *establishment of a student financial institution.* With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this chapter may be taught in the public schools of this state*, and the boards of trustees of a high school district, as defined in 20-6-101, or a K-12 district, as defined in 20-6-701, may establish a school financial institution, as defined in [section 1]*."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 32, chapter 1, part 1, and the provisions of Title 32, chapter 1, part 1, apply to [section 1].

Section 7. Effective date. [This act] is effective July 1, 2003, and applies to a school financial institution opened on or after July 1, 2003.

Ap proved April 15, 2003

CHAPTER NO. 341

[SB 432]

AN ACT PROVIDING FOR LICENSED REAL ESTATE APPRAISAL TRAINEES WHO ARE AUTHORIZED ONLY TO ASSIST A CERTIFIED REAL ESTATE APPRAISER IN THE PERFORMANCE OF AN APPRAISAL ASSIGNMENT; PROVIDING QUALIFICATIONS; AND AMENDING SECTIONS 37-54-102, 37-54-202, AND 37-54-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-54-102, MCA, is amended to read:

"37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(2) "Board" means the board of real estate appraisers provided for in 2-15-1758.

(3) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

~~(5)~~*(6)* "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201."

Section 2. Section 37-54-202, MCA, is amended to read:

"37-54-202. Qualifications for licensure. *(1)* To qualify for a real estate appraiser license, an applicant:

~~(1)~~*(a)* must be of good moral character;

~~(2)~~*(b)* shall successfully complete a course of study prescribed by the board;

~~(3)~~*(c)* must have the type and amount of experience in real estate appraisal prescribed by the board;

~~(4)~~*(d)* shall successfully complete an examination prescribed by the board; and

~~(5)~~*(e)* shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule.

(2) To qualify for licensure as a real estate appraiser trainee, an applicant:

(a) must be of good moral character;

(b) shall successfully complete a course of study prescribed by the board;

(c) must provide a written acknowledgment from the certified real estate appraiser that the applicant will be assisting; and

(d) is not required to take an examination."

Section 3. Section 37-54-304, MCA, is amended to read:

"37-54-304. Certification examination. (1) A person who satisfies the qualification requirements of 37-54-202*(1)* and the education and experience requirements of 37-54-303 may apply for examination as a certified real estate appraiser in the manner prescribed by this section.

(2) In addition to the examination subjects required by the board, an applicant must be examined on the types of misconduct for which disciplinary action may be initiated under this chapter.

(3) Examinations must be given at least four times each year at times and places as the board determines.

(4) An applicant may not retake the examination within 6 months after having failed it a second or subsequent time."

Ap proved April 15, 2003

CHAPTER NO. 342

[SB 460]

AN ACT REVISING THE LAWS RELATING TO THE TAXATION OF METAL MINES; PROVIDING A DEFINITION OF "BASIC TREATMENT AND REFINERY CHARGES" FOR THE PURPOSES OF DETERMINING THE GROSS PROCEEDS TAX OF METAL MINES AND THE METALLIFEROUS MINES LICENSE TAX; CLARIFYING THE TAXATION OF PROCESSED CONCENTRATE UNDER THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTIONS 15-23-801 AND 15-37-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-801, MCA, is amended to read:

"15-23-801. Definitions. As used in this part, the following definitions apply:

(1) "Agreement not at arm's length" means an agreement between parties when the sales price does not represent market value.

(2) *"Basic treatment and refinery charges" means the costs or charges incurred in the smelting, refining, or other treatment of ore and includes:*

(a) labor costs, including wages, salaries, and fringe benefits;

(b) utility and fuel costs;

(c) costs of maintenance, repairs, and supplies;

(d) costs of materials;

(e) depreciation computed on a straight-line basis with a 20-year life for buildings and improvements and a 7-year life for all other depreciable assets;

(f) equipment and machinery rental;

(g) costs of pollution control, environmental testing, and slag removal;

(h) costs incurred for training, freight, engineering services, insurance, and license fees directly attributable to smelting or refining;

(i) administrative services in Montana, including that portion of accounting, laboratory, purchasing, human resources, and warehouse allocable to smelting or refining; and

(j) any costs, charges, or fees paid by the mining company to other persons or entities for treating or processing ore, concentrate, dore, bullion, matte, or other form of processed concentrate.

(3) "Gross proceeds" or "gross metal yield" or "gross value of product" means the receipts realized from the extraction and sale of metals or concentrate containing metals.

~~(3)~~*(4)* "Merchantable value" means the receipts of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, then the merchantable value in the county in which they are extracted is the receipts received for these metals after processing.

~~(4)~~*(5)* "Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal

trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting the following:

(a) basic treatment and refinery charges;

(b) costs of transporting the mineral product from the mine or mill to the smelter or other processor, including costs of demurrage, storage, interest, and other miscellaneous costs related to transporting the mineral product;

(c) quantity deductions;

(d) price deductions;

(e) interest; and

(f) penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery."

Section 2. Section 15-37-103, MCA, is amended to read:

"15-37-103. Rate of tax. (1) The license tax to be paid by a person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced is an amount computed on the gross value of product derived by the person from mining business, work, or operation within this state during the preceding reporting period.

(2) Concentrate shipped to a smelter, mill, or reduction work is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.81% of the increment

(3) Gold, silver, or any platinum-group metal that is dore, bullion, ~~or~~ matte, *or another form of processed concentrate that is processed in a treatment facility owned or operated by the taxpayer* and that is *sold or* shipped to a refinery *for final processing* is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.6% of the increment"

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to metal mine production occurring after December 31, 2003.

Ap proved April 15, 2003

CHAPTER NO. 343

[HB 40]

AN ACT GENERALLY REVISING THE LAWS RELATING TO AN INVESTIGATIVE STOP AND FRISK BY PEACE OFFICERS; ELIMINATING THE REQUIREMENT THAT A PEACE OFFICER PROVIDE A PERSON

WITH CERTAIN INFORMATION PRIOR TO QUESTIONING OF THE PERSON AFTER AN INVESTIGATIVE STOP; AMENDING SECTION 46-5-401, MCA; AND REPEALING SECTION 46-5-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-401, MCA, is amended to read:

"46-5-401. Investigative stop *and frisk.* *(1)* In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense. *If the stop is for a violation under Title 61, unless emergency circumstances exist or the officer has reasonable cause to fear for the officer's own safety or for the public's safety, the officer shall as promptly as possible inform the person of the reason for the stop.*

(2) A peace officer who has lawfully stopped a person or vehicle under this section may:

(a) request the person's name and present address and an explanation of the person's actions and, if the person is the driver of a vehicle, demand the person's driver's license and the vehicle's registration and proof of insurance; and

(b) frisk the person and take other reasonably necessary steps for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present. The officer may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe that the object is a deadly weapon until the completion of the stop, at which time the officer shall either immediately return the object, if legally possessed, or arrest the person.

(3) A peace officer acting under subsection (2) while the peace officer is not in uniform shall inform the person as promptly as possible under the circumstances and in any case before questioning the person that the officer is a peace officer."

Section 2. Repealer. Section 46-5-402, MCA, is repealed.

Ap proved April 15, 2003

CHAPTER NO. 344

[HB 54]

AN ACT REVISING THE CRIMINAL LAWS RELATING TO STALKING, CHILD PORNOGRAPHY, DEFAMATION, AND PRIVACY IN COMMUNICATIONS TO INCLUDE ACTS INVOLVING THE USE OF ELECTRONIC COMMUNICATIONS; DEFINING "ELECTRONIC COMMUNICATION"; CHANGING THE VENUE FOR SOME OF THOSE CRIMES; AND AMENDING SECTIONS 45-5-220, 45-5-625, 45-8-212, 45-8-213, AND 46-3-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-220, MCA, is amended to read:

"45-5-220. Stalking — exemption — penalty. (1) A person commits the offense of stalking if the person purposely or knowingly causes another person

substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by ~~phone, by~~ mail, *electronic communication, as defined in 45-8-213,* or ~~by~~ *any* other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

Section 2. Section 45-5-625, MCA, is amended to read:

"45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium*, including a medium by use of electronic communication, as defined in 45-8-213,* in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, *including a medium by use of electronic communication, as defined in 45-8-213,* in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium, *including a medium by use of electronic communication, as defined in 45-8-213,* in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections."

Section 3. Section 45-8-212, MCA, is amended to read:

"45-8-212. Criminal defamation. (1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, *including by electronic communication, as defined in 45-8-213,* communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further the interest or duty.

(4) A person may not be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or nolo contendere."

Section 4. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by ~~telephone or electronic mail~~ *electronic communication* and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

(b) uses ~~a telephone or electronic mail~~ *an electronic communication* to attempt to extort money or any other thing of value from a person or to disturb by repeated ~~telephone calls or electronic mailings~~ *communications* the peace, quiet, or right of privacy of a person at the place where the ~~telephone call or calls or electronic mailings~~ *communications* are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings; or

(iii) persons given warning of the transcription or recording.

~~(d) by means of any machine, instrument, or contrivance or in any other manner:~~

~~(i) reads or attempts to read a message or learn the contents of a message while it is being sent over a telegraph line or by electronic mail;~~

~~(ii) learns or attempts to learn the contents of a message while it is in a telegraph office or is being received at or sent from a telegraph office; or~~

~~(iii) uses, attempts to use, or communicates to others any information obtained as provided in this subsection (1)(d);~~

~~(e) discloses the contents of a telegraphic message, electronic mail, or any part of a telegraphic message or electronic mail addressed to another person without the permission of the person, unless directed to do so by the lawful order of a court; or~~

~~(f) opens or reads or causes to be read any sealed letter or electronic mail not addressed to the person opening the letter or reading the electronic mail without being authorized to do so by either the writer of the letter, the sender of the electronic mail, or the person to whom the letter or electronic mail is addressed or, without the like authority, publishes any of the contents of the letter or electronic mail knowing the letter or electronic mail to have been unlawfully opened.~~

~~(2) Subsection (1) does not apply to an employer or a representative of an employer who opens or reads, causes to be opened or read, or further publishes an electronic mail or other message that either originates at or is received by a computer or computer system that is owned, leased, or operated by or for the employer.~~

~~(3)~~*(2)* Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts ~~a telephonic voice or data~~ *an electronic* communication. This subsection does not apply to elected or appointed public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(4)~~*(3)* (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both.

(4) "Electronic communication" means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

Section 5. Section 46-3-112, MCA, is amended to read:

"46-3-112. Requisite act in multiple counties. (1) Except as provided in 46-3-110(2), if two or more acts are requisite to the commission of an offense or if two or more acts are committed in furtherance of a common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) Except as provided in 46-3-110(2), if an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

(3) If an element of an offense under 45-5-220, 45-5-625, 45-8-212, or 45-8-213 involves an electronic communication, the charge may be filed in the county in or from which the electronic communication was sent or in the county in which the electronic communication was received or to which it was sent."

Ap proved April 15, 2003

CHAPTER NO. 345

[HB 170]

AN ACT REVISING THE LAW RELATING TO REVOCATION OF A SUSPENDED OR DEFERRED SENTENCE BY PROVIDING THAT RECENT LEGISLATIVE CHANGES TO THE REVOCATION LAW APPLY RETROACTIVELY; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence or any condition of a deferred imposition of sentence, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any lesser sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit, however, must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to offenders in the custody of or under the supervision of the department of corrections on [the effective date of this act].

Ap proved April 15, 2003

CHAPTER NO. 346

[HB 171]

AN ACT PROVIDING THAT A CRIMINAL OFFENDER HAS 1 YEAR AFTER FINAL JUDGMENT TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE; PROVIDING AN EXCEPTION; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-16-105, MCA, is amended to read:

"46-16-105. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before ~~or after~~ judgment *or, except when a claim of innocence is supported by evidence of a fundamental miscarriage of justice, within 1 year after judgment becomes final,* the court may, for good cause shown, permit the

plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted. *A judgment becomes final for purposes of this subsection (2):*

(a) when the time for appeal to the Montana supreme court expires;

(b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States supreme court for review expires; or

(c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 2. Effective date. [This act] is effective July 1, 2003.

Section 3. Applicability. [This act] applies to all offenders who plead guilty on or after [the effective date of this act].

Ap proved April 15, 2003

CHAPTER NO. 347

[HB 388]

AN ACT ALLOWING INDIVIDUAL OWNERS OF TRACTS OF LAND 3 ACRES OR SMALLER IN SIZE THAT ARE LOCATED WITHIN THE BOUNDARIES OF IRRIGATION DISTRICTS AND THAT ARE NOT BEING SERVED BY THE IRRIGATION DISTRICT WORKS TO BE ELIMINATED FROM FUTURE SERVICES, ASSESSMENTS OVER AND ABOVE CURRENT INDEBTEDNESS, AND LIABILITY UPON PAYMENT OF A SEVERANCE FEE OR NEGOTIATED AMOUNT; REQUIRING THAT OWNERS OF TRACTS LOCATED WITHIN AN IRRIGATION DISTRICT THAT HAS A CONTRACT WITH THE UNITED STATES BUREAU OF RECLAMATION MAY NOT PAY A SEVERANCE FEE OR NEGOTIATED AMOUNT TO BE EXCLUDED FROM FUTURE SERVICES, ASSESSMENTS, AND LIABILITY OF THE DISTRICT IF THAT WOULD IMPAIR THE CONTRACT UNLESS THE PETITIONER COOPERATES WITH THE DISTRICT IN ORDER TO COMPLY WITH FEDERAL LAWS AND REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Small tract petition to exclude land from future services, assessments, and liability of irrigation district. (1) (a) Subject to subsection (1)(b), whenever a tract of record that is 3 acres or smaller in size is located within an irrigation district, is not served and has not been served for the previous 5 years by any district system, facility, or other undertaking, and cannot be served without an unreasonable burden being placed on the owner of the tract or the district, the owner of the tract may:

(i) petition for the purpose of excluding the tract from future services, assessments, and liability of the district as provided in subsection (2); or

(ii) file a request with the irrigation district for the purpose of excluding the tract from future services, assessments, and liability of the district as provided in subsection (1)(c).

(b) If the exclusion of the tract from future services, assessments, and liability of the district threatens provisions of a United States bureau of reclamation contract, the owner of the tract may not petition for the exclusion of the tract from future services, assessments, and liability unless the owner cooperates with the district in order to comply with federal laws and requirements.

(c) A tract owner may file a request with the district to exclude a tract from future services, assessments, and liability of the district. The district may agree with the tract owner on any amount determined appropriate for that exclusion.

(2) When a tract of land in an irrigation district meets the requirements of subsection (1), the owner may petition the district court for an exclusion of the tract from future services, assessments, and liability of the district, subdistrict, or combination of a district and subdistrict. The petition must be signed by all persons who hold title to the tract and must include:

(a) the name of the irrigation district;

(b) the name and address of the persons holding title to the tract;

(c) evidence of the title to the tract as provided in 85-7-101 and 85-7-102;

(d) a copy of a map or plat of the irrigation district showing the location of the tract to be excluded from future services, assessments, and liability of the district and the relation of that land to the irrigation works of the district;

(e) a statement, corroborated by adequate documentation, that the users of the tract do not and cannot feasibly obtain water from the irrigation district through existing irrigation works and no longer want the tract to be included in the irrigation district's assessment rolls;

(f) a copy of a recent tax statement documenting assessment of the tract by the irrigation district;

(g) a request that the tract be excluded from future services, assessments, and liability of the irrigation district; and

(h) payment to the irrigation district representing a severance fee as provided in subsection (3).

(3) (a) Subject to subsection (3)(b), the severance fee that must be paid by an owner of a tract petitioning the district court to exclude a tract from future services, assessments, and liability of the irrigation district must be determined by adding the following:

(i) the present value of existing irrigation district debt apportioned to the petitioned tract; and

(ii) one-half of the present value of future irrigation district operation and maintenance costs apportioned to the petitioned tract for 20 years.

(b) The minimum severance fee is $100.

(c) The department of natural resources and conservation shall adopt by rule the present value formula to be used in determining the severance fee. The rules must include:

(i) direction on whether current or average assessment rates must be used; and

(ii) the treasury rate or interest rate to be used in the calculation.

(d) The severance fee must be determined using the values applicable on the date of filing.

(4) Upon filing the petition with the court, the petitioner shall mail a copy of the completed petition by certified mail to the irrigation district that is subject to the petition.

(5) The petitioner shall file the petition, proof of mailing pursuant to subsection (4), and a $20 fee with the clerk of the district court for the county in which the irrigation district was created.

(6) Within 45 days of the date of the filing of the petition, the irrigation district may file an objection to the petition. To be valid, the objection must provide sufficient evidence that the provisions of subsection (1) do not apply.

(7) If a valid objection is filed, the district court may hold a hearing if necessary to resolve the facts stated in the petition.

(8) The court shall grant the petition to exclude the tract from future services, assessments, and liability:

(a) if no objections are filed within 45 days of filing the petition; or

(b) upon determination of the district court that the petition is sufficient.

(9) The district court shall forward to the irrigation district:

(a) a copy of the order granting the exclusion; and

(b) the severance fee.

(10) A petition granted pursuant to this section excludes the owner of the petitioned tract from:

(a) irrigation district services, assessments, and liability;

(b) holding an office on the district board;

(c) participating in future district administrative matters; and

(d) objecting to a petition by the district to remove the acreage from the district boundaries as provided in 85-7-1802.

(11) Once a petition is granted, services, assessments, administrative fees, miscellaneous fees, and charges may not be collected from the owner of the petitioned tract and the owner is exempt from future liability of the district.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 7, part 21, and the provisions of Title 85, chapter 7, part 21, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates December 31, 2007.

Ap proved April 15, 2003

CHAPTER NO. 348

[HB 524]

AN ACT PROVIDING FOR LICENSURE OF AN OUTDOOR BEHAVIORAL PROGRAM THAT ACCEPTS PUBLIC FUNDING; AMENDING SECTION 50-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) *(A)* "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) *(a)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient

centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care providers regulated under Title 37, including chemical dependency counselors.

(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(20) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(21) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(22) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(23) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(24) *(a)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients~~,~~. ~~but~~

(b) The term does not include critical access hospitals.

(25) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(26) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(27) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(28) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(29) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(30) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

~~(34)~~*(35)* "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~*(36)* "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~*(37)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~*(38)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~*(39)* "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~*(40)* "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(40)~~*(41)* "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~*(42)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~*(43)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~*(44)* "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(44)~~*(45)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~*(46)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~*(47)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~*(48)* "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~*(49)* "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~*(50)* "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 2. Licensure of outdoor behavioral programs — exemption. (1) The department shall provide for licensure of a qualified outdoor behavioral program that accepts public funding. An outdoor behavioral program that does not accept public funds or governmental contracts is exempt from licensure.

(2) The department shall develop administrative rules for licensure that must include program requirements, staff requirements, staff to youth ratios, staff training and health requirements, youth admission requirements, water and nutritional requirements, health care and safety, environmental requirements, infectious disease control, transportation, and evacuation. The department may accept accreditation by a nationally recognized accrediting or certifying body but may not require the accreditation.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved April 15, 2003

CHAPTER NO. 349

[HB 532]

AN ACT REVISING THE PROCEDURE FOR THE ELECTION OF DRAINAGE DISTRICT COMMISSIONERS; PROVIDING THAT IF THE NUMBER OF CANDIDATES IS EQUAL TO OR LESS THAN THE NUMBER OF POSITIONS TO BE ELECTED, THE ELECTION ADMINISTRATOR MAY CANCEL THE ELECTION; PROVIDING FOR A DECLARATION OF ELECTION BY ACCLAMATION; PROVIDING FOR AN APPOINTMENT TO FILL A POSITION IF THERE ARE NO CANDIDATES; AMENDING SECTION 85-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-8-302, MCA, is amended to read:

"85-8-302. Election of commissioners — regular term of office. (1) ~~The~~ *Except as provided in subsection (2), the* regular election of commissioners ~~shall~~ *must* be held annually in accordance with 13-1-104 and 13-1-401. The term of office of commissioners shall commence on the first Tuesday in May following their election. At the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and ~~which~~ *that*, on petition, have been divided into divisions, at the first regular election following

the date of the order making ~~such~~ *the* division, ~~there shall be elected~~ three commissioners *must be elected, with* one commissioner being elected from each division. ~~of which he~~ *A commissioner* must be an actual landowner *in the division in which the commissioner is elected.* One of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following ~~his~~ election; another of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following ~~his~~ election; and the third ~~of the commissioners~~ *commissioner* shall hold office until the first Tuesday in May in the third year following ~~his~~ election. ~~Thereafter~~ *After the election of the initial commissioners,* one commissioner ~~shall~~ *must* be elected each year~~,~~. ~~who~~ *Commissioners* shall hold office for a term of 3 years and until ~~his~~ *a* successor is elected and qualified. The person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner ~~whom he is to succeed~~ *whose term expires.*

(2) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held as provided in this subsection, the county governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of commissioners shall make an appointment to fill the position, and the term is the same as if the commissioner were elected.

~~(2)~~*(3)* Each commissioner must be a resident of a county where a portion of the district lands is situated."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 15, 2003

CHAPTER NO. 350

[HB 17]

AN ACT MAKING EXPLOITATION OF AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY A FELONY IF THE AMOUNT INVOLVED IS OVER $1,000; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of *or interest in* the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of *or interest in* the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of *or interest in* the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, ~~or~~ benefit ~~of~~, *or possession of or interest in* the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2) *or (3)*, the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 2. Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) ~~Any individual~~ *An individual* who purposely or knowingly abuses, sexually abuses, *or* neglects~~, or exploits~~ an older person or a person with a developmental disability ~~is guilty of a misdemeanor and upon a first conviction may be fined an amount not to exceed $1,000 or be imprisoned in the county jail~~

~~for a term not to exceed 1 year, or both. Upon a second or succeeding conviction, an individual~~ *is guilty of a misdemeanor and upon a first conviction may be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. Upon a second or subsequent conviction, the individual* may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both.

(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of $1,000 or less in value shall be fined not more than $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than $1,000 in value shall be fined not more than $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved."

Section 3. Coordination instruction. If Senate Bill No. 444 and [this act] are both passed and approved, then [section 10 of Senate Bill No. 444], amending 52-3-825, is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved April 16, 2003

CHAPTER NO. 351

[HB 76]

AN ACT ESTABLISHING CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS AND TREASURE COMMUNITIES; REDIRECTING THE STATUTORY APPROPRIATION TO PROVIDE FUNDING TO CERTIFIED REGIONAL DEVELOPMENT CORPORATIONS; ESTABLISHING THE ECONOMIC DEVELOPMENT ADVISORY COUNCIL; PROVIDING FOR APPOINTMENT AND DUTIES OF ADVISORY COUNCIL; ABOLISHING THE MICROBUSINESS ADVISORY COUNCIL; AMENDING SECTIONS 15-35-108, 17-6-403, 90-1-116, AND 90-8-201, MCA; REPEALING SECTION 17-6-411, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Economic development advisory council. (1) There is an economic development advisory council.

(2) The council is composed of up to 19 members appointed as follows:

(a) 15 members appointed by the governor to include:

(i) the director of the department of commerce;

(ii) the chief business development officer provided for in 2-15-219, who serves as presiding officer of the council;

(iii) one member from a Montana tribal government who represents a tribal economic development organization; and

(iv) up to 12 public members representing each geographic region covered by each of the regional development corporations certified by the department pursuant to 90-1-116; and

(b) (i) two representatives, including one from each party, appointed by the speaker of the house; and

(ii) two senators, including one from each party, appointed by the committee on committees.

(3) The governor is encouraged to appoint to the initial council two individuals who were members of the microbusiness advisory council immediately prior to its being abolished.

(4) (a) Except as provided in subsection (4)(b), members of the council shall serve staggered 3-year terms subject to replacement at the discretion of the governor. The governor shall designate five of the initial members to serve 1-year terms and five of the initial members to serve 2-year terms.

(b) Legislative members must be appointed on or before the 10th day of each regular session of the legislature and shall serve until the convening of the next regular session of the legislature. If a vacancy on the council occurs during a legislative interim, that vacancy must be filled in the same manner as the original appointment.

(5) Members of the council, other than legislative members, are not entitled to compensation for their services except for reimbursement of expenses as provided in 2-18-501 through 2-18-503. Legislative members of the council are entitled to compensation pursuant to 5-2-302, which must be paid by the department of commerce.

(6) The council shall:

(a) advise the department concerning the distribution of funds to certified regional development corporations for business development purposes in accordance with 90-1-116 and this section;

(b) advise the department regarding the creation, operation, and maintenance of the microbusiness finance program and the policies and operations affecting the certified microbusiness development corporations;

(c) advise the governor and the department on significant matters concerning economic development in Montana;

(d) prescribe allowable administrative expenses for which economic development funds may be used by certified regional development corporations; and

(e) encourage certified regional development corporations to promote economic development on Indian reservations in their regions.

(7) The council is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

Section 2. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The

trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) For fiscal years beginning on or after July 1, 2003, the amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) For fiscal years beginning on or after July 1, 2003, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) ~~for the fiscal year beginning July 1, 2001, $1.25 million, for the fiscal year beginning July 1, 2002, $925,000, and~~ for fiscal years beginning on or after July 1, 2003, $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) ~~except for the fiscal year beginning July 1, 2002,~~ $425,000 for certified ~~communities~~ *regional development corporations*;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement;

(iv) $175,000 to the office of economic development for business recruitment and retention; and

(v) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) ~~For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002.~~ Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection (7)(b) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic

projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 3. Section 17-6-403, MCA, is amended to read:

"17-6-403. Definitions. As used in this part, the following definitions apply:

~~(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.~~

~~(2)~~*(1)* "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

~~(3) "Council" means the microbusiness advisory council established in 17-6-411.~~

~~(4)~~*(2)* "Department" means the department of commerce provided for in 2-15-1801.

~~(5)~~*(3)* "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

~~(6)~~*(4)* "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

~~(7)~~*(5)* "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

~~(8)~~*(6)* "Program" means the microbusiness finance program established in 17-6-406.

~~(9)~~*(7)* "Qualified microbusiness" means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than $500,000; or

(b) produces energy using an alternative renewable energy source as defined in 90-4-102.

~~(10)~~*(8)* "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan."

Section 4. Section 90-1-116, MCA, is amended to read:

"90-1-116. State matching funds program for economic development — distribution of proceeds — criteria for grants — local economic development matching funds. (1) As used in this section, the following definitions apply:

(a) ~~"Certified community lead organization" means the entity that has been endorsed by resolution of a local governing body or a tribal government, as defined in 90-6-701(3)(e), and that meets and maintains requirements for certification established by the department~~ *"Certified regional development corporation" means a private, nonprofit corporation that has been designated by*

the department through a competitive process to manage and administer funds and programs for the department on a regional basis.

(b) "Council" means the economic development advisory council established in [section 1].

~~(b)~~*(c)* "Department" means the department of commerce provided for in 2-15-1801.

(d) "Treasure community" means a community that meets and maintains requirements for certification established by the department and administered by the certified regional development corporation.

(2) The department shall create a program to provide state funds to match local economic development funds and to fund ~~the certified communities program~~ *up to 12 certified regional development corporations*. The provision of state matching funds is contingent upon specific appropriations to the department for that purpose. ~~The department shall distribute the funds in the following manner:~~

~~(a) 91% to certified community lead organizations, in the form of assistance grants;~~

~~(b) 8% to the department for administration of the certified communities program; and~~

~~(c) 1% to the department for certification assistance for noncertified communities. If there are no requests for certification assistance, the 1% allocation may be used by the department for administration of the certified communities program.~~

(3) An assistance grant to a certified ~~community lead organization is based on an annual per capita payment for the area served by the organization, according to its population in the last completed federal census. The grant may not exceed $75,000 and may not be less than $3,000 a year~~ *regional development corporation will be made based on rules adopted by the department for the state matching funds program. The rules for distribution of funds must include consideration of:*

(a) the size of the geographic area represented by the certified regional development corporation;

(b) the number of communities served by the certified regional development corporation;

(c) the population served by the certified regional development corporation; and

(d) the services offered by the certified regional development corporation.

(4) To be eligible to receive a grant, a certified ~~community lead organization~~ *regional development corporation*:

(a) must be designated as the ~~lead organization~~ *certified regional development corporation* by the ~~local governing body~~ *department*;

(b) shall maintain department requirements for certification;

(c) shall match each $1 of the grant with $1 raised from public or private sources; ~~and~~

(d) shall administer the treasure community designation and reporting process for the communities and counties in the region;

(e) shall encourage and organize full participation in regional economic development activities, meetings, projects, and planning by the treasure communities in the region; and

~~(d)~~*(f)* shall ~~participate in regional meetings of certified communities~~ *deliver services and resources to the citizens, businesses, and treasure communities throughout the region*.

(5) Grants under this section must be used to conduct economic development programs consistent with strategic plans that are adopted by the certified *regional development corporations and the treasure* communities *in the region* and that are filed with the department.

~~(6) The department shall use its portion of the proceeds to:~~

~~(a) administer the certified communities program;~~

~~(b) assist noncertified communities in seeking certification; and~~

~~(c) organize and conduct regional meetings of certified communities.~~"

Section 5. Section 90-8-201, MCA, is amended to read:

"90-8-201. Certification of Montana capital companies and small business investment capital companies. (1) The department shall certify Montana small business investment capital companies, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as a Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration certified development companies, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as a qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as a Montana small business investment capital company, the applicant shall commit to:

(a) accumulating private capital with the intention of being licensed as a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and

development, small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified ~~communities~~ *regional development corporations*, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) considering investment opportunities originating in any Montana county; and

(d) adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

Section 6. Repealer. Section 17-6-411, MCA, is repealed.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 1].

Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 2003.

Ap proved April 16, 2003

CHAPTER NO. 352

[HB 105]

AN ACT GENERALLY REVISING, UPDATING, AND CLARIFYING PROVISIONS GOVERNING VEHICLE OPERATING REQUIREMENTS; ALLOWING A SLOW-MOVING VEHICLE TO TURN OFF OF A ROADWAY AT AREAS OTHER THAN THOSE DESIGNATED FOR THAT PURPOSE; MAKING CONSISTENT REFERENCES TO VARIOUS TYPES OF HIGHWAYS; REQUIRING OTHER VEHICLES TO YIELD THE RIGHT-OF-WAY TO VEHICLES ENGAGED IN MOBILE HIGHWAY MAINTENANCE; CLARIFYING THAT LOCAL AUTHORITIES HAVE THE OPTION OF DESIGNATING NO-PASSING ZONES; CLARIFYING THAT PROVISIONS GOVERNING NO-PASSING ZONES DO NOT APPLY WHEN A VEHICLE IS MAKING CERTAIN TURNING MOVEMENTS; PROVIDING FOR AND DEFINING ROUNDABOUTS; ALLOWING A PERSON TO CROSS DOUBLE YELLOW LINES IF TURNING INTO A PRIVATE ROAD OR DRIVEWAY; PROHIBITING A PERSON FROM PARKING A MOTOR VEHICLE IN A BICYCLE LANE; REGULATING TURNING WHERE A SPECIAL LANE HAS BEEN DESIGNATED FOR MAKING LEFT TURNS; PROHIBITING THE OPERATOR OF A MOTOR VEHICLE FROM INTERFERING WITH A BICYCLIST; MODIFYING THE PROVISIONS FOR STOPPING AT AND CROSSING RAILROAD GRADE CROSSINGS; ALLOWING A MOTORCYCLIST TO DRIVE WITHOUT THE HEADLAMP LIGHTED IF THE MOTORCYCLE IS BEING DRIVEN TO A REPAIR FACILITY; INCREASING THE FINE FOR THROWING CONTAINERS OF URINE OR FECES ON A HIGHWAY TO $1,000; PROHIBITING SHOOTING A FIREARM FROM OR ACROSS THE RIGHT-OF-WAY OF ANY HIGHWAY; PROVIDING FOR THE ESTABLISHMENT OF SCHOOL CROSSING

GUARDS; AMENDING SECTIONS 61-8-301, 61-8-303, 61-8-311, 61-8-312, 61-8-321, 61-8-323, 61-8-324, 61-8-325, 61-8-326, 61-8-327, 61-8-328, 61-8-329, 61-8-330, 61-8-331, 61-8-332, 61-8-333, 61-8-334, 61-8-336, 61-8-338, 61-8-340, 61-8-341, 61-8-342, 61-8-343, 61-8-344, 61-8-345, 61-8-346, 61-8-347, 61-8-348, 61-8-349, 61-8-350, 61-8-354, 61-8-355, 61-8-356, 61-8-359, 61-8-360, 61-8-361, 61-8-362, 61-8-363, 61-8-364, 61-8-365, 61-8-368, 61-8-369, 61-8-715, 61-9-402, 61-9-416, AND 61-9-431, MCA; AND REPEALING SECTION 61-8-315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-301, MCA, is amended to read:

"61-8-301. Reckless driving — *reckless endangerment of highway worker.* (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property;

~~(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402;~~ or

~~(c)~~*(b)* operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection~~(1)(c)~~ *(1)(b)* does not apply to situations described in 61-8-351(5).

(2) ~~Each~~ *A* municipality ~~in this state~~ may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving *or of reckless endangerment of a highway worker* is subject to the penalties provided in 61-8-715.

(4) (a) A person commits the offense of reckless endangerment of a highway worker if the person purposely, knowingly, or negligently drives a motor vehicle in a highway construction zone in a manner that endangers persons or property or if the person purposely removes, ignores, or intentionally strikes an official traffic control device in a construction zone for reasons other than:

(i) avoidance of an obstacle;

(ii) an emergency; or

(iii) to protect the health and safety of an occupant of the vehicle or of another person.

(b) As used in this section:

(i) "construction zone" has the same meaning as is provided in 61-8-314; and

(ii) "highway worker" means an employee of the department of transportation, a local authority, a utility company, or a private contractor."

Section 2. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, 61-8-312, and subsection (2) of this section, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 miles an hour at all times and the speed limit for

vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime*;*

(c) in an urban district is 25 miles an hour.

(2) The speed limit for vehicles traveling on U.S. highway 93 between the Canadian and Idaho borders is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.

(3) A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

(4) Subject to the maximum speed limits set forth in subsections (1) and (2), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(5) ~~When no~~ *Except when a* special hazard exists that requires lower speed for compliance with ~~subsections (1) and (2)~~ *subsection (4)*, the ~~speed of a vehicle not in excess of the~~ limits specified in this section *and in 61-8-312* or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 ~~is lawful, but a speed in excess of 25 miles an hour in an urban district is unlawful~~ *are the maximum lawful speeds allowed.*

(6) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(7) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314."

Section 3. Section 61-8-311, MCA, is amended to read:

"61-8-311. Minimum speed regulations. (1) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a two-lane highway where passing is unsafe because of *oncoming* traffic ~~in the opposite direction~~ or other conditions, *the operator of* a slow-moving vehicle~~, including a passenger vehicle,~~ behind which four or more vehicles are formed in line shall turn off the roadway at the nearest ~~place designated as a turnout by signs erected by the authority having jurisdiction over the highway or wherever sufficient~~ area ~~for a~~ *where a sufficient and* safe turnout exists in order to permit the vehicles following it to proceed. If the shoulder of the highway to the right of the ~~overtaken~~ *slow-moving* vehicle is wide enough and is in a condition allowing safe travel, the ~~driver~~ *operator* of the ~~overtaken~~ *slow-moving* vehicle may drive onto the shoulder and proceed at a safe speed until passed. As used in this section, a slow-moving vehicle is one ~~which~~ *that* is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of transportation is authorized to designate and construct ~~such~~ turnouts and to erect ~~signs~~ *official traffic control devices* at appropriate places advising motorists of this statute.

(3) If the department of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway ~~consistently~~ impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not ~~drive~~ *operate* a vehicle except when necessary for safe operation or in compliance with law."

Section 4. Section 61-8-312, MCA, is amended to read:

"61-8-312. Special speed limitations on trucks, truck tractors, and motor-driven cycles. (1) Except as provided in 61-8-303, 61-8-309, 61-8-310, and subsection (2) of this section, the speed limit for a truck or truck tractor of more than 1 ton "manufacturer's rated capacity" traveling on:

(a) ~~completed sections of~~ *a federal-aid* interstate *highway* is 65 miles an hour; and

(b) ~~four-lane divided highways and completed sections of primary and secondary highways~~ *any other public highway* is 60 miles an hour during the daytime and 55 miles an hour during the nighttime as those terms are defined in 61-8-303.

(2) Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for a vehicle subject to a term permit under 61-10-124(2)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) is 55 miles an hour unless otherwise stated in the permit.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles an hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead."

Section 5. Right-of-way for vehicles engaged in mobile highway maintenance. The operator of a vehicle shall yield the right-of-way to an authorized vehicle that is engaged in highway maintenance activities when the authorized vehicle is displaying flashing lights that meet the requirements of the department of transportation.

Section 6. Section 61-8-321, MCA, is amended to read:

"61-8-321. Drive on right side of roadway — exceptions. (1) Upon all roadways of sufficient width, a vehicle ~~shall~~ *must* be ~~driven~~ *operated* upon the right half of the roadway, except as follows:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing ~~such~~ *the passing* movement;

(b) when the right half of a roadway is closed to traffic while under construction or repair;

(c) upon a roadway divided into three marked lanes for traffic under the rules applicable ~~thereon; or~~ *on a divided roadway;*

(d) upon a roadway designated ~~and signposted~~ *by official traffic control devices* for one-way traffic*;*

(e) when the operator of a vehicle is complying with the provisions of 61-8-346; or

(f) when an obstruction exists that makes it necessary to drive to the left of the center of the roadway.

(2) A person operating a vehicle to the left of the center of the roadway for any of the reasons provided in subsection (1) shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway that are within a distance that constitutes an immediate hazard.

~~(2)~~*(3)* ~~Upon all roadways any~~ *A* vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing~~shall~~ *must* be ~~driven~~ *operated* in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway."

Section 7. Section 61-8-323, MCA, is amended to read:

"61-8-323. Overtaking vehicle on left. The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to the limitations, exceptions, and special rules provided in this ~~part~~ *chapter*:

(1) The ~~driver~~ *operator* of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the other vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the ~~driver~~ *operator* of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle upon an audible signal or the use of signal lamps, as provided in 61-9-218, and may not increase the speed of the vehicle until completely passed by the overtaking vehicle. When giving way to the right on a two-lane highway, the ~~driver~~ *operator* of the vehicle being overtaken may travel upon the shoulder at a safe speed until passed if the shoulder is wide enough and is in a condition allowing safe travel."

Section 8. Section 61-8-324, MCA, is amended to read:

"61-8-324. ~~When overtaking~~ *Overtaking vehicle* on right ~~is permitted.~~ (1) The ~~driver~~ *operator* of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) when the vehicle overtaken is making or about to make a left turn; *or*

(b) upon a ~~street or highway~~ *roadway* with unobstructed pavement ~~not occupied by parked vehicles~~ of sufficient width for two or more ~~lines~~ *lanes* of ~~moving~~ vehicles *moving lawfully* in ~~each~~ *the* direction *being traveled by the overtaking vehicle*~~;~~

~~(c) upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles~~.

(2) The ~~driver~~ *operator* of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting ~~such movement in safety~~ *safe movement.* ~~In no event shall such~~ *The* movement *may not* be made by driving off the pavement or main-traveled portion of the roadway."

Section 9. Section 61-8-325, MCA, is amended to read:

"61-8-325. Limitations on overtaking on the left. (1) ~~No~~ *A* vehicle ~~shall~~ *may not* be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless ~~such~~ *the* left side is clearly visible and is free of oncoming traffic for a sufficient distance

ahead to permit ~~such~~ *the* overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. ~~In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.~~

(2) ~~No~~ *A* vehicle ~~shall at any time~~ *may not* be driven to the left side of the roadway under the following conditions:

(a) when approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within ~~such~~ *a* distance ~~as to create~~ *that creates* a hazard in the event *that* another vehicle might approach from the opposite direction;

(b) when approaching within 100 feet of or traversing any intersection or railroad grade crossing, *unless otherwise indicated by an official traffic control device*; *or*

(c) when the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(3) The ~~foregoing~~ limitations ~~shall~~ *provided in this section do* not apply upon a one-way roadway."

Section 10. Section 61-8-326, MCA, is amended to read:

"61-8-326. No-passing zones. (1) The department of transportation *and local authorities* may determine those portions of a highway *in their respective jurisdictions* where overtaking and passing or driving to the left of the *center of the* roadway would be especially hazardous, and ~~it~~ *they* may by ~~appropriate signs or markings~~ *official traffic control devices* on the ~~roadway~~ *highway* indicate the beginning and end of these zones. When the ~~signs or markings~~ *official traffic control devices* are in place and clearly visible to an ordinarily observant person, ~~every driver~~ *an operator* of a vehicle shall obey the directions of those ~~signs~~ *devices*.

(2) Where ~~signs or markings~~ *official traffic control devices* are in place to define a no-passing zone as set forth in subsection (1) ~~a driver~~ *an operator of a vehicle* may not drive on the left side of the roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

(3) The provisions of this section do not apply under the conditions provided in 61-8-321(1) or to the operator of a vehicle that is turning left into or from an alley, private road, or driveway."

Section 11. Section 61-8-327, MCA, is amended to read:

"61-8-327. One-way roadways, ~~and~~ rotary traffic islands, *and roundabouts*. (1) The department of transportation *or a local authority* may designate a highway, ~~or a separate~~ roadway, *part of a roadway, or specific lanes* under its ~~jurisdiction~~ *respective jurisdiction* for one-way traffic and shall erect ~~appropriate signs~~ *official traffic control devices* giving notice of that designation.

(2) Upon a roadway designated ~~and signposted~~ *by official traffic control devices* for one-way traffic a vehicle may be driven only in the direction designated.

(3) A vehicle passing around a rotary traffic island *or a roundabout* may be driven only to the right of ~~such~~ *the* island *or the center of the roundabout*.

(4) For the purposes of this section, a "roundabout" is a circular intersection where all entering traffic must yield to the vehicles within the intersection."

Section 12. Section 61-8-328, MCA, is amended to read:

"61-8-328. Driving on roadways laned for traffic. Whenever a roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all other consistent rules, apply:

(1) A vehicle must be ~~driven~~ *operated* as nearly as practicable entirely within a single lane and may not be moved from the lane until the ~~driver~~ *operator* has first ascertained that the movement can be made with safety.

(2) Upon a roadway that is divided into three lanes *and that provides for two-way movement of traffic*, a vehicle may not be ~~driven~~ *operated* in the center lane except:

(a) when overtaking and passing another vehicle ~~where the roadway is clearly visible~~ *traveling in the same direction where passing is allowed* and *where* the center lane is clear of traffic within a safe distance;

~~(b) in preparation for a left turn;~~ or

~~(c)~~*(b)* when the center lane is at the time allocated exclusively to traffic moving in the direction that the vehicle is proceeding and ~~is signposted to give notice of~~ the allocation *is designated by official traffic control devices*.

(3) Official ~~signs~~ *traffic control devices* may be erected directing ~~slow-moving~~ *specified* traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway. ~~Drivers~~ *Operators* of vehicles shall obey the directions of every official ~~sign~~ *traffic control device* that designates use of specific lanes.

(4) A person may turn a vehicle left across a lane marked with two yellow lines into a public or private parking lot, *private road, private driveway,* or a roadway if the turn can be made safely and if the person does not hinder the flow of oncoming traffic.

(5) Official traffic control devices may be installed that prohibit the changing of lanes on sections of a roadway, and operators of vehicles shall obey the directions of those devices.

(6) A motor vehicle may not be driven or parked in a bicycle lane that is signed and delineated as a bicycle lane by official traffic control devices."

Section 13. Section 61-8-329, MCA, is amended to read:

"61-8-329. Following too closely. (1) The driver of a motor vehicle ~~shall~~ *may* not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of ~~such~~ *the* vehicles and the traffic upon and the condition of the ~~highway~~ *roadway*.

~~(2) The driver of any truck tractor, truck, or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck, or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck, or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.~~

~~(3)~~*(2)* ~~Motor vehicles~~ *A motor vehicle* being driven upon ~~any~~ *a* roadway outside of a business or residence district*, including* in a caravan or motorcade,

whether or not towing other vehicles, ~~shall~~ *must* be ~~so~~ operated ~~as to allow~~ *in a manner that allows* sufficient space between each ~~such~~ vehicle or combination of vehicles ~~so as~~ to enable any other vehicle to enter and occupy ~~such~~ *the* space without danger. This provision ~~shall~~ *does* not apply to funeral processions."

Section 14. Section 61-8-330, MCA, is amended to read:

"61-8-330. Driving on divided highways. ~~Whenever any~~ *(1) Where a* highway has been divided into two *or more* roadways by leaving ~~an intervening~~ *a* space *delineated by two double yellow lines or two yellow lines with a crosshatch pattern* or by *a* physical barrier or *a* clearly indicated dividing section ~~so~~ *that is* constructed ~~as to impede~~ *in a way that impedes* vehicular traffic, ~~every~~ *a* vehicle ~~shall~~ *may* be driven only upon the right-hand roadway ~~and no~~ *unless directed or permitted by official traffic control devices or police officers to use another roadway.*

(2) A vehicle ~~shall~~ *may not* be driven over, across, or within ~~any such dividing~~ *a* space, barrier, or section *described in subsection (1)* except through an opening in ~~such~~ *the* physical barrier or dividing section or space or at ~~a~~ *an established* crossover or intersection ~~established by~~ *unless specifically prohibited by a* public authority."

Section 15. Section 61-8-331, MCA, is amended to read:

"61-8-331. Restricted and controlled access. (1) ~~No~~ *A* person ~~shall drive~~ *may not operate* a vehicle onto or from ~~any~~ *a* controlled-access roadway except at ~~such~~ entrances and exits ~~as~~ *that* are established by public authority.

(2) On ~~any~~ *a* controlled-access highway or facility ~~it is unlawful for any~~ *a* person ~~to~~ *may not*:

(a) ~~drive~~ *operate* a vehicle over, upon, or across ~~any~~ *a* curb, central dividing section, or other separation or dividing line;

(b) make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line *if travel through the opening is not prohibited by an official traffic control device*;

(c) ~~drive any~~ *operate a* vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section, or line;

(d) ~~drive any~~ *operate a* vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility;

(e) construct, operate, or maintain ~~any~~ *a* road or private driveway connecting with the highway or facility without first obtaining permission in writing from the ~~highway~~ *public* authority having jurisdiction ~~and, with the exception of an interstate highway, from the local governing body~~."

Section 16. Section 61-8-332, MCA, is amended to read:

"61-8-332. Restrictions on use of controlled-access roadway. (1) The department of transportation may by rule and local authorities may by ordinance *regulate or* prohibit the use of a controlled-access highway under their respective jurisdictions by ~~pedestrians, bicycles, or other nonmotorized traffic or by a person operating a motor-driven cycle~~ *any class or kind of traffic that is found to be incompatible with the normal and safe movement of traffic or by any vehicle.*

(2) The department or the local authority ~~which~~ *that* adopts the prohibitory regulation shall erect and maintain official ~~signs~~ *traffic control devices* on the controlled-access ~~roadway~~ *highway* on which these regulations are applicable. ~~It is unlawful for a~~ *A* person ~~to~~ *may not* violate the restrictions stated on ~~those signs~~ *the official traffic control devices*."

Section 17. Section 61-8-333, MCA, is amended to read:

"61-8-333. Required position and method of turning at intersections ~~— bicycle turn procedures — signs~~. (1) The ~~driver~~ *operator* of a vehicle intending to turn at an intersection shall do so as follows:

(a) ~~Right turns.~~ Both the approach for a right turn and a right turn ~~shall~~ *must* be made as close as practicable to the right-hand curb or edge of the roadway.

(b) ~~Left turn on two-way roadways.~~ At ~~any~~ *an* intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn ~~shall~~ *must* be made in that portion of the right half of the roadway nearest the center line ~~thereof~~ *of the roadway* and by passing to the right of ~~such~~ *the* center line where it enters the intersection. ~~and after~~ *After* entering the intersection, the left turn ~~shall~~ *must* be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn ~~shall~~ *must* be made in that portion of the intersection to the left of the center of the intersection.

(c) ~~Left turns on other than two-way roadways.~~ At ~~any~~ *an* intersection where traffic is restricted to one direction on one or more of the roadways, the ~~driver~~ *operator* of a vehicle intending to turn left ~~at any such intersection~~ shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of ~~such~~ *the* vehicle. ~~and after~~ *After* entering the intersection the left turn ~~shall~~ *must* be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in ~~such~~ *the* direction upon the roadway being entered.

(d) A person making a turn under ~~subsections~~ *subsection* (1)(a), (1)(b), or (1)(c) is entitled to the full use of the lane from which the turn may be legally made.

~~(2) (a) A person operating a bicycle who intends to turn left shall follow the course described in subsection (1) or in subsection (2)(b).~~

~~(b) A person operating a bicycle who intends to turn left shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the person shall make the turn as close as practicable to the curb or edge of the roadway on the far right side of the intersection. After turning, the person shall yield to through traffic and shall comply with any official traffic control device or police officer regulating traffic on the highway along which he intends to proceed.~~

~~(3)~~*(2)* Local authorities in their respective jurisdictions may ~~cause markers, buttons, or signs to be placed~~ *place official traffic control devices* within or adjacent to intersections, *directing* ~~and thereby require and direct~~ that a different course from that specified in this section be traveled by vehicles turning at an intersection ~~, and when markers, buttons, or signs are so placed no driver~~ *. Where official traffic control devices that direct a different course are placed, the operator* of a vehicle ~~shall~~ *may not* turn ~~a~~ *the* vehicle ~~at an intersection~~ other than as directed ~~and required by such markers, buttons, or signs~~ *by the official traffic control devices.*

(3) Where a special lane has been indicated by official traffic control devices allowing operators of vehicles proceeding in opposite directions to make left turns:

(a) a left turn may not be made from any other lane; and

(b) a vehicle may not be operated in the lane except when making a left turn from or onto the roadway or when making a U-turn when that movement is permitted by law."

Section 18. Section 61-8-334, MCA, is amended to read:

"61-8-334. ~~Turning~~ *Limitation on U-turns — turning* on curve or crest of grade prohibited. ~~No~~ *An operator of a* vehicle ~~shall be turned so as~~ *may not turn the vehicle* to proceed in the opposite direction*:*

(1) unless the movement can be made safely and without interfering with other traffic; or

(2) upon any curve or upon the approach to or near the crest of a grade where ~~such~~ *the* vehicle cannot be seen by the ~~driver~~ *operator* of any other vehicle approaching from either direction within 500 feet."

Section 19. Section 61-8-336, MCA, is amended to read:

"61-8-336. Turning movements and required signals. (1) ~~No~~ *A* person ~~shall~~ *may not* turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless ~~and until such~~ *the* movement can be made with reasonable safety *and until an appropriate signal has been given.* ~~No~~ *A* person ~~shall so~~ *may not* turn ~~any~~ *a* vehicle without giving an appropriate signal in the manner ~~hereinafter~~ provided in ~~the event any other traffic may be affected by such movement~~ *this section*.

(2) A signal of intention to turn right or left, other than when passing, ~~when required shall~~ *must* be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business, residence, or urban district as defined in 61-1-408 through 61-1-410.

(3) A signal of intention to turn right or left, other than when passing, ~~when required shall~~ *must* be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

~~(4) A signal by hand and arm need not be given continuously by the person operating a bicycle if the hand is needed in the control or operation of the bicycle.~~

~~(5)~~*(4)* ~~No~~ *A* person ~~shall~~ *may not* stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal~~in the manner provided herein~~ to the ~~driver~~ *operator* of ~~any~~ *a* vehicle immediately to the rear when there is opportunity to give ~~such~~ *the* signal."

Section 20. Section 61-8-338, MCA, is amended to read:

"61-8-338. Method of giving hand-and-arm signals. ~~(1) Except as provided in subsection (2), all~~ *All* signals ~~herein~~ required *in this part that are* given by hand and arm~~shall~~ *must* be given from the left side of the vehicle *by the operator of the vehicle* in the following manner ~~and such signals shall indicate as follows~~:

~~(a)~~*(1)* ~~Left~~ *For a left* turn~~.~~, ~~Hand~~ *the operator's hand* and arm *must be* extended horizontally.

~~(b)~~*(2)* ~~Right~~ *For a right* turn~~.~~, ~~Hand~~ *the operator's hand* and ~~arm~~ *forearm must be* extended upward.

~~(c)~~*(3)* ~~Stop~~ *For a stop* or *a* decrease *in* speed~~.~~, ~~Hand~~ *the operator's hand* and arm *must be* extended downward.

~~(2) The person operating a bicycle may signal a right turn by extending the right hand and arm horizontally.~~"

Section 21. Section 61-8-340, MCA, is amended to read:

"61-8-340. Vehicle turning left at intersection. The ~~driver~~ *operator* of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction ~~which~~ *that* is within the intersection or ~~so~~ close ~~thereto as~~ *enough to the intersection* to constitute an immediate hazard~~,~~. ~~but said driver, having so~~ *Once the operator has* yielded and ~~having given~~ *provided the operator is giving* a signal when and as required by this chapter, *the operator* may make ~~such~~ *the* left turn and the ~~drivers~~ *operators* of all other vehicles approaching the intersection from ~~said~~ *the* opposite direction shall yield the right-of-way to the vehicle making the left turn. The provisions of this section ~~shall not be applicable~~ *do not apply* where it is otherwise directed by ~~appropriate signs or signals~~ *official traffic control devices*."

Section 22. Section 61-8-341, MCA, is amended to read:

"61-8-341. Vehicle entering through highway ~~or stop intersection~~. ~~(1)~~ The ~~driver~~ *operator* of a vehicle shall stop as required by 61-8-344 at the entrance to a through highway and shall yield the right-of-way to other vehicles ~~which have entered the intersection from said through highway or which~~ *that* are approaching ~~so closely on said~~ *close enough on the* through highway ~~as~~ to constitute an immediate hazard~~,~~. ~~but said driver having so~~ *Once the operator has* yielded, *the operator* may proceed and the ~~drivers~~ *operators* of all other vehicles approaching the intersection on ~~said~~ *the* through highway shall yield the right-of-way to the vehicle ~~so~~ proceeding into or across the through highway.

~~(2) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.~~"

Section 23. Section 61-8-342, MCA, is amended to read:

"61-8-342. Vehicles approaching "Yield" sign. ~~When the intersection is designated by the department of transportation, or the local authority having jurisdiction, as a "Yield" intersection, the driver~~ *An operator* of a vehicle approaching ~~the~~ *a* "Yield" sign *is subject to the following provisions:*

(1) The operator shall slow to a speed ~~of not more than 15 miles per hour and yield right-of-way to all vehicles approaching from the right or left on the intersecting roads or streets which are so close as to constitute an immediate hazard~~ *that is reasonable for existing conditions and, if required for safety, shall stop before entering the intersection.*

(2) After slowing or stopping, the operator shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway close enough to constitute an immediate hazard during the time that the operator is moving across or within the intersection or junction of roadways.

(3) An operator of a vehicle shall yield the right-of-way to pedestrians within crosswalks at the intersection.

(4) If ~~a driver~~ *an operator of a vehicle, after having driven past a "Yield" sign,* is involved in a collision *with another vehicle* at an intersection or ~~interferes with the movement of other vehicles after driving past a "Yield" sign, such~~ *junction of roadways or with a pedestrian in an adjacent crosswalk, the* collision ~~or interference shall be deemed~~ *is considered prima facie* evidence of the ~~driver's~~ *operator's* failure to yield right-of-way."

Section 24. Right-of-way for bicycles. (1) The operator of a motor vehicle may not:

(a) intentionally interfere with the movement of a person who is lawfully riding a bicycle; or

(b) overtake and pass a person riding a bicycle unless the operator of the motor vehicle can do so safely without endangering the person riding the bicycle.

(2) The operator of a motor vehicle shall yield the right-of-way to a person who is riding a bicycle within a designated bicycle lane.

Section 25. Section 61-8-343, MCA, is amended to read:

"61-8-343. Vehicle entering ~~highway~~ *roadway* from private road, driveway, *alley,* or public approach ramp. The ~~driver~~ *operator* of a vehicle about to enter or cross a ~~highway~~ *roadway* from a private road, driveway, *alley,* or public approach ramp shall yield the right-of-way to all vehicles approaching on ~~said highway~~ *the roadway*."

Section 26. Section 61-8-344, MCA, is amended to read:

"61-8-344. Vehicles to stop at stop signs. (1) The department of transportation ~~with reference to state highways~~ and local authorities ~~with reference to other highways under~~ *in* their ~~jurisdiction~~ *respective jurisdictions* may designate through highways and erect stop signs at specified entrances to these highways or may designate an intersection as a stop intersection and erect ~~similar~~ *stop* signs at one or more entrances to that intersection.

~~(2) The sign shall bear the word "Stop" in letters not less than 8 inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination or by a fixed floodlight projected on the face of the sign or by efficient reflecting elements on the face of the sign.~~

~~(3)~~*(2)* The stop sign ~~shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway~~ *and its placement must conform to the sign manual adopted by the department of transportation*.

~~(4)~~*(3)* ~~A driver~~ *An operator* of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, ~~he~~ *the operator* shall stop at a clearly marked stop line~~, but if none, then~~ *. If there is not a clearly marked stop line, the operator shall stop* at the point nearest the intersecting roadway where the ~~driver~~ *operator* has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer, ~~or~~ highway patrol officer, or traffic control signal."

Section 27. Section 61-8-345, MCA, is amended to read:

"61-8-345. Stop before emerging from alley, driveway, *private road,* or building. The ~~driver~~ *operator* of a vehicle within a business or residence

district *who is* emerging from an alley, driveway, *private road,* or building shall stop ~~such~~ *the* vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across ~~any alleyway or~~ *an alley,* driveway, *or private road* and shall yield the right-of-way to ~~any pedestrian as may be necessary to avoid collision, and upon~~ *pedestrians. Upon* entering the roadway, *the operator* shall yield the right-of-way to all vehicles approaching on ~~said~~ *the* roadway."

Section 28. Section 61-8-346, MCA, is amended to read:

"61-8-346. Operation of vehicles on approach of ~~police vehicles or~~ authorized emergency vehicles *or police vehicles* — approaching stationary emergency vehicles *or police vehicles.* (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the ~~driver~~ *operator* of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the ~~police vehicle or~~ authorized emergency vehicle *or police vehicle* has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section does not relieve the driver of ~~a police vehicle or~~ *an* authorized emergency vehicle *or police vehicle* from the duty to drive with due regard for the safety of all persons using the highway.

(3) Upon approaching a stationary authorized emergency vehicle *or police vehicle* that is displaying visible signals of flashing or rotating amber, blue, red, or green lights, the ~~driver~~ *operator* of the approaching vehicle shall:

(a) reduce the vehicle's speed, proceed with caution, and, if possible considering safety and traffic conditions, move to a lane that is not adjacent to the lane in which the authorized emergency vehicle *or police vehicle* is located or move as far away from the authorized emergency vehicle *or police vehicle* as possible; or

(b) if changing lanes is not possible or is determined to be unsafe, reduce the vehicle's speed, proceed with caution, and maintain a reduced speed, appropriate to the road and the conditions, through the area where the authorized emergency vehicle *or police vehicle* is stopped."

Section 29. Section 61-8-347, MCA, is amended to read:

"61-8-347. Obedience to signal indicating approach of train. (1) ~~Whenever any~~ *When a* person ~~driving~~ *operating* a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the ~~driver~~ *operator* of ~~such~~ *the* vehicle shall stop ~~within 50 feet~~ *as close as practicable* but not less than 15 feet from the nearest rail of ~~such~~ *the* railroad~~,~~ and ~~shall~~ *may* not proceed until ~~he~~ *the operator* can do so safely. The ~~foregoing~~ requirements ~~shall~~ *of this subsection (1)* apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) a crossing gate is lowered or when a ~~human flagman~~ *flag person* gives ~~or continues to give~~ a signal of the approach or passage of a railroad train;

(c) a railroad train approaching within approximately 1,500 feet of the highway crossing emits ~~a~~ *an audible* signal ~~audible from such distance and such~~ *indicating that the* railroad train, by reason of its speed or nearness to ~~such~~ *the* crossing, is an immediate hazard; *or*

(d) an approaching railroad train is plainly visible and is in hazardous proximity to ~~such~~ *the* crossing.

(2) ~~No~~ *A* person ~~shall drive~~ *may not operate* any vehicle through, around, or under any crossing gate or barrier at a railroad *grade* crossing while ~~such~~ *the* gate or barrier is closed or is being opened or closed."

Section 30. Section 61-8-348, MCA, is amended to read:

"61-8-348. All vehicles to stop at certain railroad grade crossings. *(1)* The department of transportation and local authorities *in their respective jurisdictions* may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. ~~When~~ *Where* these stop signs are erected, the ~~driver~~ *operator* of a vehicle shall stop ~~within 50 feet~~ *as close as practicable* but not less than 15 feet from the nearest rail of the railroad and ~~shall~~ *may* proceed only upon exercising due care.

(2) The operator of a vehicle upon a highway outside of the limits of an incorporated city or town who is approaching a highway grade crossing where a flag person or a mechanical device is not in place or maintained to warn the public of approaching trains shall, before crossing the railroad tracks, stop the vehicle as close as practicable but not less than 15 feet from the nearest rail if:

(a) a curve in the tracks or vegetation or some other feature or characteristic obscures the view of approaching trains; or

(b) a moving train is within sight or hearing."

Section 31. Section 61-8-349, MCA, is amended to read:

"61-8-349. Certain vehicles to stop at all railroad grade crossings. ~~(1) A person driving a motor vehicle upon a public highway of this state outside of corporate limits of incorporated cities or towns where the view is obscure or when a moving train is within sight or hearing shall bring the vehicle to a full stop not less than 10 or more than 100 feet from the intersection of the highway and the railroad tracks, before crossing the railroad tracks, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.~~

~~(2) (a)~~ *(1) (a)* Except as provided in subsection ~~(2)(b)~~ *(1)(b)*, the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle ~~within 50 feet~~ *as close as practicable* but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door (in the case of a school bus) and shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train and may not proceed until ~~he~~ *the driver* can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the ~~driver~~ *operator* of a vehicle ~~shall~~ *may* cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The ~~driver~~ *operator* may not shift gears while crossing the track or tracks.

(b) A stop is not required at a crossing where a police officer, highway patrol officer, or *official* traffic control ~~signal~~ *device* directs traffic to proceed.

~~(3)~~*(2)* As used in this section, "*official* traffic control ~~signal~~ *device*" does not include a railroad grade crossing signal."

Section 32. Section 61-8-350, MCA, is amended to read:

"61-8-350. Moving heavy equipment at railroad grade crossings. (1) ~~No~~ *A* person shall ~~operate or move~~ *comply with the provisions of this section before operating or moving upon or across the tracks at a railroad grade crossing* any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure ~~having~~ *that has:*

(a) a normal operating speed of 10 or less miles ~~per~~ *an* hour*;* or

(b) a vertical body or load clearance *measured above the surface of the roadway* of*:*

(i) less than one-half inch ~~per~~ *for each* foot of the distance between any two adjacent axles*;* or

(ii) ~~in any event of less than~~ *at least* 9 inches~~, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section~~.

(2) Notice of ~~any such~~ *an* intended crossing ~~shall~~ *must* be given to a ~~station agent~~ *representative* of ~~such~~ *the* railroad and reasonable time *must* be given to ~~such~~ *the* railroad to provide proper protection at ~~such~~ *the* crossing.

(3) Before making ~~any such~~ *a* crossing the person operating or moving ~~any such~~ *the* vehicle or equipment shall first stop the ~~same~~ *vehicle or equipment as close as practicable but* not less than 15 feet ~~or more than 50 feet~~ from the nearest rail of ~~such~~ *the* railroad and while ~~so~~ stopped shall listen and look in both directions along ~~such~~ *the* track for any approaching train and for signals indicating the approach of a train~~;~~*.* ~~and shall~~ *The person may* not proceed until the crossing can be made safely.

(4) ~~No such~~ *A* crossing ~~shall~~ *may not* be made when warning is given by automatic signal, ~~or~~ crossing gates, ~~or~~ a ~~flagman~~ *flag person,* or ~~otherwise~~ *other official traffic control device* of the immediate approach of a railroad train or car. If a ~~flagman~~ *flag person* is provided by the railroad, movement over the crossing ~~shall~~ *must* be under ~~his~~ *the flag person's* direction."

Section 33. Section 61-8-354, MCA, is amended to read:

"61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions. (1) ~~No~~ *A* person ~~shall~~ *may not* stop, stand, or park a vehicle, except *[*as allowed under ~~subsection (2)~~ *[section 13 of LC 200]* or*]* when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer, ~~or~~ highway patrol officer, or *official* traffic control device, in any of the following places:

(a) on a sidewalk;

(b) in front of a public or private driveway;

(c) within an intersection;

(d) within 15 feet of a fire hydrant;

(e) on a crosswalk;

(f) within 20 feet of a crosswalk at an intersection;

(g) within 30 feet upon the approach to any flashing beacon, stop sign, or *official* traffic control ~~signal~~ *device* located at the side of a roadway;

(h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;

(i) within 50 feet of the nearest rail of a railroad crossing;

(j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of ~~said~~ *the* entrance when properly signposted;

(k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) at any place where official~~signs~~ *traffic control devices* prohibit stopping.

~~(2) A bicycle may be parked on a sidewalk and other such places if the parking does not impede normal and reasonable movement of pedestrians or other traffic.~~

~~(3)~~*(2)* A public bus stop may not be established in the areas described in subsections (1)(a) through (1)(c) and (1)(e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by ~~a local government~~ *the authority having jurisdiction*. ~~Such a~~ *A* bus stop ~~must~~ *may only* be established ~~by ordinance~~ pursuant to a traffic and engineering study. ~~Such establishment is subject to review and approval by the department of transportation if the bus stop is to be established on a street or highway under its jurisdiction.~~

~~(4)~~*(3)* ~~No~~ *A* person ~~shall~~ *may not* move a vehicle not lawfully under ~~his~~ *the person's* control into ~~any such~~ *a* prohibited area or *an unlawful distance* away from a curb ~~such distance as is unlawful~~."

Section 34. Section 61-8-355, MCA, is amended to read:

"61-8-355. Additional parking regulations. (1) Except as otherwise provided in this section, a vehicle *that is* stopped or parked upon a *two-way* roadway ~~where there are adjacent curbs shall~~ *must* be stopped or parked with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb *or as close as practicable to the right edge of the right-hand shoulder.*

(2) ~~A local authority may by ordinance permit parking of a vehicle~~ *Except when otherwise provided by the authority having jurisdiction, a vehicle that is stopped or parked upon a one-way roadway must be stopped or parked parallel to the curb or edge of the roadway in the direction of authorized traffic movement, with its right-hand wheels within 18 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder or* with ~~the~~ *its* left-hand wheels ~~adjacent to and~~ within 18 inches of the left-hand curb ~~of a one-way roadway~~ *or as close as practicable to the left edge of the left-hand shoulder*.

(3) A local authority may by ordinance permit angle parking on a roadway, except that angle parking~~shall~~ *may* not be permitted on any federal-aid or state highway unless the department of transportation determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The ~~department with respect to highways under its~~ *authority having* jurisdiction may place ~~signs~~ *official traffic control devices* prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its ~~opinion~~ *judgment* this stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would

unduly interfere with the free movement of traffic ~~on it. These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs~~."

Section 35. Section 61-8-356, MCA, is amended to read:

"61-8-356. Prohibition against parking or leaving vehicles on public property — presumption of ownership. (1) A vehicle may not be parked or left standing upon the right-of-way of a public highway for a period longer than 48 hours or upon a city street or state, county, or city property for a period longer than 5 days.

(2) The abandonment of a ~~motor~~ vehicle, *other than a bicycle,* on a public highway, a city street, public property, or private property creates a prima facie presumption that the last-registered owner of the ~~motor~~ vehicle is responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less the amount realized if the ~~motor~~ vehicle is sold.

(3) The filing of a ~~verified~~ theft report with a law enforcement agency prior to the abandonment relieves the last-registered owner of liability under subsection (2)."

Section 36. Section 61-8-359, MCA, is amended to read:

"61-8-359. Riding on motorcycles. (1) A person operating a motorcycle or quadricycle on public streets or highways ~~shall~~ *may* ride only upon the permanent and regular seat attached ~~thereto, and such~~ *to the motorcycle or quadricycle. The* operator ~~shall~~ *may* not carry any other person~~; nor shall any other~~ *and another* person *may not* ride on a motorcycle or quadricycle unless ~~such~~ *the* motorcycle or quadricycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the operator.

(2) ~~No~~ *A* passenger ~~shall~~ *may not* be carried in a position that will interfere with the operation of the motorcycle or quadricycle or the view of the operator.

(3) ~~No~~ *A* person operating a motorcycle or quadricycle ~~shall~~ *may not* carry any packages, bundles, or articles ~~which~~ *that* would *prevent the operator from keeping both hands on the handlebars or that would* interfere with the operation of ~~said~~ *the* vehicle in a safe and prudent manner.

(4) ~~"Sidesaddle" riding on a motorcycle or quadricycle is prohibited~~ *A person may ride upon a motorcycle or quadricycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle or quadricycle.*

(5) ~~Motorcycles~~ *Except as provided in subsections (5)(a) and (5)(b), motorcycles* and quadricycles ~~are to~~ *must* be operated with lights on at all times when operated on any public ~~highway or street, except that if~~ *roadway. A motorcycle or quadricycle may be operated without lights from one-half hour before sunrise to one-half hour after sunset if:*

(a) the motorcycle is registered under 61-3-411 as a collector's item~~, it may be operated without lights from one-half hour before sunrise to one-half hour after sunset~~ *and* if persons and vehicles are clearly discernible at a distance of 500 feet*; or*

(b) the motorcycle or quadricycle is being driven to the nearest repair facility for headlamp repair.

(6) ~~Not~~ *No* more than two motorcycles ~~shall~~ *may* be operated side by side in a single traffic lane.

(7) All motor vehicles, including motorcycles and quadricycles, are entitled to the full use of a traffic lane, and ~~no~~ *a* vehicle ~~shall~~ *may not* be driven or operated in ~~such~~ a manner ~~so as to deprive~~ *that deprives* any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated ~~not~~ *no* more than two abreast in a single traffic lane.

(8) Every person riding a motorcycle or quadricycle upon a roadway ~~shall be~~ *is* granted all of the rights and ~~shall be~~ *is* subject to all of the duties applicable to the driver of a motor vehicle except ~~as to~~ *for* those provisions which, by their nature, can have no application."

Section 37. Section 61-8-360, MCA, is amended to read:

"61-8-360. Obstruction to driver's view or driving mechanism. (1) ~~No~~ *A* person ~~shall drive~~ *may not operate* a vehicle*, other than a bicycle,* ~~when it is so loaded, or when there are in the front seat such number of persons exceeding three, as to obstruct~~ *with more than three people in the front seat or with any load or number of people in the front seat that would obstruct* the view of the ~~driver~~ *operator* to the front or sides of the vehicle or ~~as to~~ *that would* interfere with the ~~driver's~~ *operator's* control over the driving mechanism of the vehicle.

(2) ~~No~~ *A* passenger in a vehicle ~~shall~~ *may not* ride in ~~such~~ *a* position ~~as to interfere~~ *that interferes* with the ~~driver's~~ *operator's* view ahead or to the sides or ~~to interfere~~ *that interferes* with ~~his~~ *the operator's* control over the driving mechanism of the vehicle."

Section 38. Section 61-8-361, MCA, is amended to read:

"61-8-361. Driving on mountain highways. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold ~~such~~ *the* motor vehicle under control and as near the right-hand edge of the ~~highway~~ *roadway* as reasonably possible."

Section 39. Section 61-8-362, MCA, is amended to read:

"61-8-362. Coasting prohibited. The driver of ~~any~~ *a* motor vehicle when traveling upon a downgrade ~~shall~~ *may* not coast with the ~~gears~~ *transmission* of ~~such~~ *the* vehicle in neutral or with the clutch manually disengaged."

Section 40. Section 61-8-363, MCA, is amended to read:

"61-8-363. Following fire apparatus prohibited. The ~~driver~~ *operator* of ~~any~~ *a* vehicle other than one on official business ~~shall~~ *may* not follow ~~any~~ *a* fire apparatus traveling in response to a fire ~~alarm~~ *call* closer than 500 feet or drive into or ~~park such~~ *stop the* vehicle within ~~the block~~ *500 feet of* where *the* fire apparatus has stopped in answer to a fire ~~alarm~~ *call*."

Section 41. Section 61-8-364, MCA, is amended to read:

"61-8-364. Crossing firehose. ~~No~~ *A* vehicle ~~shall~~ *may not* be ~~driven~~ *operated* over ~~any~~ *an* unprotected hose of a fire department when *the hose is* laid down on any ~~street~~ *roadway, private road,* or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command."

Section 42. Section 61-8-365, MCA, is amended to read:

"61-8-365. Putting refuse on highway prohibited. (1) A person may not throw or deposit upon a highway glass bottles, glass, nails, tacks, wire, cans, plastic bottles, plastic, ~~or~~ paper, *or any other debris*. A person may not throw or

deposit upon a highway any substance likely to injure a person or animal or damage a vehicle upon the highway.

(2) A person who drops or permits to be dropped or thrown upon a highway destructive or injurious material shall immediately remove the material or cause it to be removed.

(3) A person who removes a wrecked or damaged vehicle from a highway shall remove glass or any other injurious substance dropped upon the highway from the vehicle.

(4) Except as provided in 61-8-372 and subsection (5) of this section, a person convicted of violating this section shall be fined not more than $250. Except for the maximum fine of $250 as provided in this subsection and except for the maximum fine of $500 as provided in 61-8-372, the penalty provisions of 61-8-711 apply to this section.

(5) A person may not throw or deposit upon a highway plastic bottles or any other containers in which urine or feces have been deposited. A person convicted of violating this subsection shall be fined not more than ~~$500~~ *$1,000. The department shall make information about this subsection available at all weigh stations*."

Section 43. Section 61-8-368, MCA, is amended to read:

"61-8-368. Opening and closing vehicle doors. ~~No~~ *A* person ~~shall~~ *may not* open ~~any~~ *a* door of a motor vehicle unless ~~and until~~ it is reasonably safe to do so without interfering with the movement of other traffic~~;~~. ~~nor shall any~~ *A* person *may not* leave a door open on a side of a vehicle ~~available~~ *adjacent* to moving traffic for a period of time longer than *is* necessary to load or unload passengers."

Section 44. Section 61-8-369, MCA, is amended to read:

"61-8-369. Shooting from or across road or highway right-of-way. Except as provided in 87-2-803(4),~~no~~ *a* person ~~shall~~ *may not* shoot ~~any~~ *a* firearm from or across the right-of-way of ~~any state or federal~~ *a* highway ~~or county road~~."

Section 45. Section 61-8-715, MCA, is amended to read:

"61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) Except as provided in subsection ~~(3)~~ *(2)*, a person convicted of reckless driving under 61-8-301(1)(a) or ~~(1)(c)~~ *(1)(b)* or convicted of reckless endangerment of *a* highway ~~workers~~ *worker* under ~~61-8-315~~ *61-8-301(4)* shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than $25 or more than $300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than $50 or more than $500, or both.

~~(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than $300 or more than $500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than $500 or more than $1,000.~~

~~(3)~~*(2)* A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person

shall be punished by a fine in an amount not exceeding $10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351(6) does not apply to a prosecution under ~~61-8-301(1)(c)~~ *61-8-301(1)(b)* that is punishable under this subsection."

Section 46. Section 61-9-402, MCA, is amended to read:

"61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section. ~~The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation.~~

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

~~(a)~~*(5)* The use of signal equipment as described in this section imposes upon the ~~drivers~~ *operators* of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

~~(b)~~*(6)* An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection ~~(4)(a)~~ *(5)*.

~~(5)~~*(7)* Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the

specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-1-118 may display blue lights, lenses, or globes.

~~(6)~~*(8)* A police car and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

~~(7)~~*(9)* Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

~~(8)~~*(10)* A violation of ~~61-9-402(4)(a)~~ *subsection (5)* is considered reckless endangerment of *a* highway ~~workers~~ *worker*, as provided in ~~61-8-315~~ *61-8-301(4)*, and is punishable as provided in ~~61-8-715(2)~~ *61-8-715*."

Section 47. Section 61-9-416, MCA, is amended to read:

"61-9-416. Commercial tow truck definition — requirements. (1) "Commercial tow truck" means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. A commercial tow truck must be equipped with:

(a) not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) at least two highway warning signs as provided in 61-9-431.

(c) a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) a lamp emitting a flashing red or amber light meeting the requirements of 61-9-402~~(5)~~*(7)*, or both a red and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted so that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in a position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

(f) a shovel, and whenever practical, the tow truck operator engaged to remove a disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; and

(g) a portable electrical extension cord or other device for use in displaying stop, turn, and taillamps on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles. When a disabled vehicle is towed, the tow truck operator shall provide for the rear light that is capable of displaying a stop signal, turn signal, and taillamps by means of the extension cord or other device referred to in this subsection.

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of a portion of the roadway, place a highway warning sign as required in 61-9-431.

(3) The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

(4) A commercial tow truck company that is in compliance with 61-9-431 and that is operating an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of 61-9-402~~(4)~~*(5)*."

Section 48. Section 61-9-431, MCA, is amended to read:

"61-9-431. Use of warning signs, flares, reflectors, lanterns, *and* flag persons. (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both *during the* day and *at* night. The warning signs must bear the words "hazard ahead", "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of *a* highway ~~workers~~ *worker*, as provided in ~~61-8-315~~ *61-8-301(4)*, and is punishable as provided in ~~61-8-715(2)~~ *61-8-715*."

Section 49. School crossing guards. (1) The trustees of a school district or the administration of a private school may organize and supervise school crossing guards for a school under their authority.

(2) The department of justice shall, in cooperation with the superintendent of public instruction and in accordance with the sign manual adopted by the department of transportation, prescribe by rule the identification, training requirements, and operation of school crossing guards.

(3) The purpose of school crossing guards is to influence and encourage pupils of the school to refrain from crossing public highways at points other than regular crossings, to direct pupils as to where and when to cross highways, and to direct traffic when pupils are crossing highways at regular crossings.

Section 50. Repealer. Section 61-8-315, MCA, is repealed.

Section 51. Coordination instruction. (1) If House Bill No. 189 is not passed and approved, then the bracketed language in 61-8-354(1) is void.

(2) If [this act] is passed and approved and House Bill No. 189 is not passed and approved, then:

(a) 61-8-333 must read as follows:

"Section 20. Section 61-8-333, MCA, is amended to read:

"61-8-333. Required position and method of turning at intersections ~~— bicycle turn procedures — signs.~~ (1) The ~~driver~~ *operator* of a vehicle intending to turn at an intersection shall do so as follows:

(a) ~~Right turns.~~ Both the approach for a right turn and a right turn ~~shall~~ *must* be made as close as practicable to the right-hand curb or edge of the roadway.

(b) ~~Left turn on two-way roadways.~~ At ~~any~~ *an* intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn ~~shall~~ *must* be made in that portion of the right half of the roadway nearest the center line ~~thereof~~ *of the roadway* and by passing to the right of ~~such~~ *the* center line where it enters the intersection. ~~and after~~ *After* entering the intersection, the left turn ~~shall~~ *must* be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn ~~shall~~ *must* be made in that portion of the intersection to the left of the center of the intersection.

(c) ~~Left turns on other than two-way roadways.~~ At ~~any~~ *an* intersection where traffic is restricted to one direction on one or more of the roadways, the ~~driver~~ *operator* of a vehicle intending to turn left ~~at any such intersection~~ shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of ~~such~~ *the* vehicle. ~~and after~~ *After* entering the intersection the left turn ~~shall~~ *must* be made so as to leave the

intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in ~~such~~ *the* direction upon the roadway being entered.

(d) A person making a turn under ~~subsections~~ *subsection* (1)(a), (1)(b), or (1)(c) is entitled to the full use of the lane from which the turn may be legally made.

(2) (a) A person operating a bicycle who intends to turn left shall follow the course described in subsection (1) or in subsection (2)(b).

(b) A person operating a bicycle who intends to turn left shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the person shall make the turn as close as practicable to the curb or edge of the roadway on the far right side of the intersection. After turning, the person shall yield to through traffic and shall comply with any official traffic control device or police officer regulating traffic on the highway along which ~~he~~ *the person* intends to proceed.

(3) Local authorities in their respective jurisdictions may ~~cause markers, buttons, or signs to be placed~~ *place official traffic control devices* within or adjacent to intersections, *directing* ~~and thereby require and direct~~ that a different course from that specified in this section be traveled by vehicles turning at an intersection~~.~~ ~~and when markers, buttons, or signs are so placed no driver~~ *Where official traffic control devices that direct a different course are placed, the operator* of a vehicle ~~shall~~ *may not* turn ~~a~~ *the* vehicle ~~at an intersection~~ other than as directed ~~and required by such markers, buttons, or signs~~ *by the official traffic control devices.*

(4) Where a special lane has been indicated by official traffic control devices allowing operators of vehicles proceeding in opposite directions to make left turns:

(a) a left turn may not be made from any other lane; and

(b) a vehicle may not be operated in the lane except when making a left turn from or onto the roadway or when making a U-turn when that movement is permitted by law.””; and

(b) 61-8-338 must read as follows:

“Section 23. Section 61-8-338, MCA, is amended to read:

“61-8-338. Method of giving hand-and-arm signals. (1) Except as provided in subsection (2), all signals ~~herein~~ required *in this part that are* given by hand and arm ~~shall~~ *must* be given from the left side of the vehicle *by the operator of the vehicle* in the following manner ~~and such signals shall indicate as follows~~:

(a) ~~Left~~ *For a left* turn~~.~~, ~~Hand~~ *the operator's hand* and arm *must be* extended horizontally.

(b) ~~Right~~ *For a right* turn~~.~~, ~~Hand~~ *the operator's hand* and ~~arm~~ *forearm must be* extended upward.

(c) ~~Stop~~ *For a stop* or *a* decrease *in* speed~~.~~, ~~Hand~~ *the operator's hand* and arm *must be* extended downward.

(2) The person operating a bicycle may signal a right turn by extending the right hand and arm horizontally.””

Section 52. Codification instruction. (1) [Sections 5 and 24] are intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [sections 5 and 24].

(2) [Section 49] is intended to be codified as an integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to [section 49].

Ap proved April 16, 2003

CHAPTER NO. 353

[HB 134]

AN ACT REVISING THE DISPOSITION OF FUNDS HELD BY OR FOR THE BENEFIT OF STATE PRISON INMATES; PROVIDING AN APPROPRIATION; AND AMENDING SECTIONS 17-7-502 AND 53-1-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; *[section 3];* 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch.

497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 53-1-107, MCA, is amended to read:

"53-1-107. ~~Limits on inmate~~ *Inmate* financial transactions *and trust account system*. (1) An inmate of ~~the Montana~~ *a* state prison ~~in Deer Lodge or the women's prison in Billings~~*, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v),* shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. ~~If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration.~~ The department may charge an inmate a minimum fee, not to exceed ~~$1.60~~ *$2* each month, to administer the inmate's account.

(2) The department may, consistent with administrative rules adopted by the department, use a portion of the funds in an inmate's account to:

(a) satisfy court-ordered restitution, whether or not restitution is a condition of probation or parole;

(b) satisfy court-ordered child support;

(c) satisfy court-ordered fines, fees, or costs;

(d) pay for the inmate's medical and dental expenses and costs of incarceration; and

(e) pay any other fees, costs, expenses, or monetary sanctions ordered by a court or imposed by a state prison and pay reasonable claims by a debt collection or financial institution.

~~(2)~~*(3)* (a) Money~~forfeited~~ *taken* under subsection ~~(1) to~~*(2) for* the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If ~~the inmate's sentence did not provide for the payment of restitution or if~~ there is a balance of money *in the inmate's account* after ~~restitution has been paid~~ *payments* under subsection (2)~~(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration~~*, the department may allow the balance to accumulate in a savings subaccount for the inmate.*

~~(3)~~*(4)* The department shall adopt rules establishing ~~criteria for forfeiture~~ *the prison inmate trust account system and criteria for the use* of funds under ~~subsection (1)~~ *this section*. The rules must contain clear guidelines regarding

~~forfeiture~~ *the use of funds* that ensure ~~restitution~~ *payment* under subsection (2) ~~but that:~~

~~(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and~~

~~(b) do~~ *and that* inhibit ~~any~~ *an* inmate's ability to deal in contraband or illegal acts within or outside the ~~correctional facility~~ *state prison*."

Section 3. Prison inmate welfare account. (1) There is an account in the state special revenue fund. The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account established in this subsection.

(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the amount that each state prison contributed to the fund. The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families.

(3) For purposes of this section, "state prison" has the meaning provided in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v).

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 1, part 1, and the provisions of Title 53, chapter 1, part 1, apply to [section 3].

Section 5. Coordination instruction. If House Bill No. 453 and [section 2 of this act], amending 53-1-107, are both passed and approved, then the amendments to subsections (1) and (2) of 53-1-107 contained in House Bill No. 453 are void.

Ap proved April 16, 2003

CHAPTER NO. 354

[HB 210]

AN ACT AUTHORIZING AN APPEAL TO DISTRICT COURT BASED UPON THE DENIAL OF A MOTION TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE BY A COURT OF LIMITED JURISDICTION; PROVIDING A TIME FOR AN APPEAL; AMENDING SECTIONS 46-17-203 AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the concurring opinion in State v. Boucher, 2002 MT 114, 309 Mont. 114, 48 P.3d 21 (2002), urges the Legislature to give the District Courts authority to entertain direct appeals from courts of limited jurisdiction in cases in which the defendant claims that a guilty plea was not voluntary.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) *(a)* ~~A~~ *Subject to subsection (2)(b), a* plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may appoint counsel, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 2. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in *46-17-203(2)(b) or* subsection (4) *of this section* and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial *or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b)*. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to denial of motions to withdraw pleas of guilty or nolo contendere entered on or after [the effective date of this act].

Ap proved April 16, 2003

CHAPTER NO. 355

[HB 223]

AN ACT CREATING THE STATE LAND BANK FUND; REVISING THE LAWS RELATING TO THE SALE OF STATE TRUST LAND AND THE DISPOSITION OF PROCEEDS; PROHIBITING THE SALE OF LAND TO THE FEDERAL GOVERNMENT; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ACQUIRE LANDS FOR THE FINANCIAL BENEFIT OF TRUST BENEFICIARIES; PROVIDING A STATUTORY APPROPRIATION FOR THE FUNDING OF STATE LAND BANK FUNCTIONS, INCLUDING THE ACQUISITION OF TRUST LANDS; PROHIBITING CREATION OF RIGHT OF ACCESS; PROVIDING A DEADLINE FOR LAND SALES UNDER THE LAND BANKING PROCESS; REQUIRING A REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL; AMENDING SECTIONS 17-3-1003, 17-7-502, 18-2-107, 77-1-109, 77-2-301, 77-2-306, 77-2-309, 77-2-323, 77-2-328, AND 77-2-337, MCA; REPEALING SECTIONS 77-2-307 AND 77-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-1003, MCA, is amended to read:

"17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, ~~and~~ Title 77, chapter 1, part 6, *and [section 12],* the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose ~~whatever~~, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid ~~over~~ to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; *[section 12];* 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 3. Section 18-2-107, MCA, is amended to read:

"18-2-107. Deposit of capitol building grant revenue. (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109, ~~and~~ Title 77, chapter 1, part 6, *and [section 12]*.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act."

Section 4. Section 77-1-109, MCA, is amended to read:

"77-1-109. Deposits of proceeds in trust land administration account. (1) The department shall, until the deposit equals the amount

appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108, the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands; ~~and~~

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341*; and*

(d) fees collected pursuant to 77-2-328.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands, must be deposited in the appropriate permanent fund and the capitol building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1).

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."

Section 5. Section 77-2-301, MCA, is amended to read:

"77-2-301. Sales of state land under board control. The board ~~is hereby vested with the power and authority to~~ *may* decide when sales of state ~~lands~~ *land* are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. ~~As a general rule and except as provided in 77-2-318, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families.~~"

Section 6. Section 77-2-306, MCA, is amended to read:

"77-2-306. Who may purchase. ~~(1) State lands shall be sold only to citizens of the United States, persons who have declared their intentions to become citizens, corporations organized under the laws of this state, or towns, cities, counties, or consolidated local governments of this state. No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value.~~

~~(2) State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in 77-2-307 for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.~~

~~(3) State lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government may be sold to a tribal government as defined in 18-11-102.~~ *(1) State land may be sold to any person who is 18 years of age or older or any governmental or private entity including tribal governments as defined in 18-11-102.*

(2) ~~No~~ *A* sale involving land in excess of ~~the acreage limitations in 77-2-307~~ *160 acres* may *not* be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

(3) State land may not be sold to the federal government or to an agency of the federal government, except for the purpose of building federal facilities and structures. Nothing in this section prohibits the sale of state land to a tribal government as defined in 18-11-102."

Section 7. Section 77-2-309, MCA, is amended to read:

"77-2-309. Discretion of board with respect to surveying and platting. ~~Except as provided in 77-2-312, it shall be entirely optional with the~~ *The* board *has the option of determining* whether or not state ~~lands or any part thereof shall~~ *land must* be surveyed, platted, and laid off into blocks and lots ~~as herein provided, as may appear to be for the best interests of the state~~."

Section 8. Section 77-2-323, MCA, is amended to read:

"77-2-323. Sale procedure and limitation. (1) At the time fixed for the sale, ~~the lands~~ *state land* must be offered for sale at auction in the order that ~~they appear~~ *the land appears* in the notice of sale. Under the direction of the department, the ~~lands~~ *state land* must be sold to the highest qualified bidder ~~under the following restrictions:~~

~~(a) Lands~~. *State land* may not be sold for less than the value determined by the board after appraisal by a qualified land appraiser.

~~(b) Tillable lands capable of producing agricultural crops may not be sold for less than $10 an acre.~~

~~(c) Lands principally valuable for grazing purposes may not be sold for less than $5 an acre.~~

(2) The ~~lands~~ *state land* must be sold as nearly as practicable according to the subdivisions in which ~~they are~~ *it is* advertised, and care must be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the ~~lands~~ *state land* advertised ~~have~~ *has* been offered for sale.

~~(4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased, the successful bidder shall forfeit to the state not less than $50 or more than $1,000, to be determined by the board according to the circumstances of the case. If the forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery of the amount in the name of the state. The forfeiture amount must be deposited in the state general fund.~~"

Section 9. Section 77-2-328, MCA, is amended to read:

"77-2-328. Additional rules — deposit of fees. The board may prescribe any additional rules for the conduct of ~~these~~ sales *of state land* as in its judgment the interests of the state may demand. Any fees collected by a rule adopted pursuant to this section must be deposited in the ~~state general fund~~ *trust land administration account as provided in 77-1-108*."

Section 10. Section 77-2-337, MCA, is amended to read:

"77-2-337. Disposition of sale proceeds. (1) ~~The~~ *Except as provided in [section 12] and subsection (3) of this section, the* proceeds from the ~~lands~~ *state*

land sold, including all subsequent payments on the principal, ~~shall~~ *must* be credited to the permanent fund arising from the grant to which it belongs and ~~shall~~ *must* become and forever remain an inseparable and inviolable part ~~thereof~~ *of the permanent fund*.

(2) All payments on interest ~~shall~~ *must* be credited to the proper income fund and ~~shall~~ *must* be available for use as provided by law.

(3) (a) Proceeds from the sale of any state trust land, as authorized by [sections 11 through 17], must be deposited into the state land bank fund established in [section 12] to be used for the purposes described in [sections 12 and 14] for the long-term financial benefit of the beneficiaries for whom the funds were deposited.

(b) If the proceeds from the sale of state trust land, as authorized by [sections 11 through 17], are not used for the purposes described in [sections 12 and 14], the proceeds from the sale and any earnings on the proceeds must be deposited pursuant to subsection (1) of this section."

Section 11. Definitions. As used in [sections 11 through 17], the following definitions apply:

(1) "Isolated parcel" means any state land not possessing a legal right of access by the public.

(2) "Land banking" means a process of selling various parcels of state land and using the proceeds from the sales to purchase other land, easements, or improvements that are likely to provide greater or equal trust revenue, as may be reasonably expected over a 20-year accounting period with an acceptable level of risk, for the affected trust and to diversify the land holdings of the various trusts.

Section 12. State land bank fund — statutory appropriation — rules. (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by [sections 11 through 17] must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in [sections 11 through 17]. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) Except as provided in subsection (2)(c), up to 10% of the proceeds in the state land bank fund may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales.

Section 13. Land banking land sales and limitations. (1) The board may not cumulatively sell or dispose of more than 100,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to [section 14].

(2) (a) A person bidding to purchase state land offered for sale shall 45 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least 50% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by [section 14], the lessee may cancel the sale by giving notice to the department at least 30 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324.

Section 14. Land banking purchases. (1) The board may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

(2) Sales of state land may be initiated only by the board, the department, or at the request of a lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324.

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes.

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold. The board may not purchase land, easements, or improvements pursuant to [sections 11 through 17] unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be reasonably expected over a 20-year accounting period, with an acceptable level of risk for the affected trust, than the current annual rate of return from the state land that has been sold pursuant to [section 13]. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing [sections 11 through 17], that duty requires the board to:

(a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

(d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

(e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's fiduciary duty.

(6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall consult with the county commissioners of the county in which the parcel is located.

Section 15. Right of access not created. Nothing in [sections 11 through 17] creates any express or implied right of access, right-of-way, or easement for the benefit of the board, the department, or any purchaser of state land over or through any other property.

Section 16. Land banking process — time limit — report to environmental quality council. (1) State land may not be sold through the

land banking process pursuant to [sections 11 through 17] after October 1, 2008. Land banking purchases under [section 14] may continue after October 1, 2008, until all the proceeds in the state land bank fund are expended or revert to the public school fund or the permanent fund of the respective trust pursuant to [section 12(2)(d)].

(2) The department shall provide a report to the environmental quality council by July 1, 2008, that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation.

Section 17. Road easements on state lands. County roads or easements for county roads on lands purchased from the state of Montana are subject to the provisions of Title 7, chapter 14, part 26, regarding the establishment, alteration, or abandonment of county roads.

Section 18. Repealer. Sections 77-2-307 and 77-2-312, MCA, are repealed.

Section 19. Codification instruction. [Sections 11 through 17] are intended to be codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3, apply to [sections 11 through 17].

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective on passage and approval.

Ap proved April 17, 2003

CHAPTER NO. 356

[HB 224]

AN ACT REVISING LAWS RELATING TO STANDING MASTERS; REMOVING THE AUTHORITY OF COUNTIES TO APPOINT STANDING MASTERS; REMOVING THE AUTHORITY OF WATER JUDGES TO SET THE SALARY OF WATER MASTERS; REMOVING THE REQUIREMENT THAT WATER MASTERS PARTICIPATE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REPEALING SECTIONS 3-5-123 AND 3-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 3-5-123 and 3-7-302, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 16, 2003

CHAPTER NO. 357

[HB 237]

AN ACT REQUIRING A MOTOR VEHICLE EQUIPPED WITH AN ENGINE COMPRESSION BRAKE DEVICE TO HAVE A MUFFLER; ALLOWING USE OF AN ENGINE COMPRESSION BRAKE DEVICE EQUIPPED WITH A MUFFLER; PROVIDING A PENALTY; AND PROVIDING A DELAYED APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Engine compression brake device — use. (1) A commercial motor vehicle, as defined in 61-1-134, equipped with an engine compression brake device must be equipped with a muffler in good working condition to prevent excessive noise.

(2) An operator of a commercial motor vehicle that has an engine compression brake device with a factory-installed muffler or an equivalent after-market muffler may not be prohibited from using the engine compression brake device.

Section 2. Violation of engine compression brake device provisions. A person who violates the provisions of [section 1] is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 9, part 3, and the provisions of Title 61, chapter 9, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 9, part 5, and the provisions of Title 61, chapter 9, part 5, apply to [section 2].

Section 4. Applicability. [Section 2] applies to violations occurring on or after April 1, 2004.

Ap proved April 16, 2003

CHAPTER NO. 358

[HB 317]

AN ACT ALLOWING A SENTENCING COURT TO REQUIRE A PERSON CONVICTED OF CRUELTY TO ANIMALS TO PAY THE REASONABLE COSTS INCURRED BY A PUBLIC OR PRIVATE ANIMAL CONTROL AGENCY OR HUMANE ANIMAL TREATMENT SHELTER FOR THE CARE OF THE ANIMAL; AMENDING SECTION 45-8-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-211, MCA, is amended to read:

"45-8-211. Cruelty to animals — exception. (1) A person commits the offense of cruelty to animals if without justification the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying or confining any animal in a cruel manner;

(c) failing to provide an animal in the person's custody with:

(i) proper food, drink, or shelter; or

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) (a) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed $1,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(b) If the convicted person is the owner, the person may be required to forfeit to the county in which the person is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may:

(a) require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected; ~~and~~

(b) require the defendant to pay all reasonable costs of necessary care of the affected animal that are incurred by a public or private animal control agency or humane animal treatment shelter; and

~~(b)~~*(c)* prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.

(4) Nothing in this section prohibits:

(a) a person from humanely destroying an animal for just cause; or

(b) the use of commonly accepted agricultural and livestock practices on livestock."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 17, 2003

CHAPTER NO. 359

[HB 337]

AN ACT REQUIRING THAT THE EXPENSE OF MOVING UTILITY WIRES AND POLES WHEN RELOCATING A STRUCTURE BE PAID BY THE PERSON, FIRM, OR CORPORATION MOVING THE STRUCTURE; PROVIDING AN EXCEPTION; REQUIRING A PAYMENT TO THE OWNER OF THE WIRES AND POLES IN ADVANCE OF THE MOVE; AMENDING SECTIONS 69-4-602 AND 69-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-602, MCA, is amended to read:

"69-4-602. ~~Procedure to give required notice~~ *Notice of move — cost estimate.* *(1)* The person, firm, or corporation moving ~~any~~ *a* house, building, derrick, or other structure shall give the person, firm, or corporation owning or ~~operating~~ *controlling* the wires, *cables,* or poles *affected by the movement of a structure,* at *both* ~~their~~ *the person's, firm's, or corporation's* principal office and ~~their~~ nearest office within the state, not less than 10 days' written notice of the proposed time and place of moving a structure.

(2) The owner of the wires, *cables,* or poles shall give the mover a written estimate of the *total* cost of *all work related to* cutting~~, raising, or moving the wires or poles~~ *or raising the wires or cables or moving the poles, including travel time,* at least 3 days prior to the move or within 10 days after receipt of the written notice of the move, whichever time comes sooner.

(3) The estimate of the total cost required under this section must be developed in accordance with the cost schedule filed as provided in subsection (4).

(4) A public utility, cable television company, or unregulated telecommunications provider with wires, cables, or poles in Montana shall file with the commission, by April 1 of each year, an application for approval of a cost schedule for labor and equipment for all work related to cutting or raising wires or cables or moving poles. The cost schedule is effective on a temporary basis, subject to a rebate and a surcharge as provided in 69-3-304, 30 days after the filing of a cost schedule and pending a final order of the commission, unless the commission first determines that the cost schedule is above cost."

Section 2. Section 69-4-603, MCA, is amended to read:

"69-4-603. Procedure to accomplish move — *payment of cost.* (1) In order to accomplish moving a house, building, derrick, or other structure through an area in which ~~utility~~ *wires, cables, or* poles ~~or wires~~ impede the movement, ~~it is the duty of~~ the person, firm, or corporation who owns or controls the ~~poles or~~ wires, *cables, or poles* and who has received the notice required by 69-4-602 ~~to~~ *shall* furnish competent workers to raise or cut the wires *or cables* or move the poles as necessary to facilitate moving the house, building, derrick, or other structure.

~~(2) The necessary and reasonable expense of raising or cutting the wires or of moving the poles for utilities subject to the jurisdiction of the public service commission must be fixed and determined by the public service commission on the average cost per line or pole for time and materials expended. These costs and expenses must be reviewed biennially. Except as provided in subsections (4) and (5), the necessary and reasonable expense of raising or cutting the wires or of moving the poles must be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved.~~

~~(3) The rates and charges of rural cooperative electric utilities, rural cooperative telephone utilities, and other persons who occupy and use utility or cooperative poles may not exceed the charges established by the public service commission for utilities subject to its jurisdiction. The charges assessed by utilities, other than utilities subject to the jurisdiction of the public service commission, must be apportioned as provided in subsection (2).~~

~~(4)~~*(2)* (a) Except as provided in subsection ~~(4)(b)~~ *(2)(b)*, ~~to facilitate the movement of a house, building, derrick, or other structure,~~ the necessary and ~~reasonable~~ *actual* costs of raising or cutting wires or cables or moving poles to facilitate the movement *of a house, building, derrick, other structure, or prefabricated structure that is intended to be moved from the place of fabrication, storage facility, or dealer's lot, determined in accordance with the schedule filed under 69-4-602,* must be paid by the ~~owner of:~~

~~(i) a prefabricated structure that is intended to be moved from the place of fabrication; or~~

~~(ii) the sixth and each subsequent structure that exceeds 25 feet in height while being moved and that is to be moved from a single site. When structures are moved in a group or in a continuous caravan formation and when only a single line cut or movement is necessary, the move must count as only a single structure move for purposes of this subsection (4)(a)(ii). For the purposes of this subsection (4)(a)(ii), a single site includes but is not limited to a development complex, housing complex, military base, or institutional complex. The whole of an incorporated municipality is not a single site as the term is used in this subsection~~ *mover*.

(b) The necessary and ~~reasonable~~ *actual* costs of raising or cutting wires or cables or moving poles to facilitate the movement of a structure*, determined in accordance with the schedule filed under 69-4-602, must be shared equally by the mover and the owner of the wires, cables, or poles if the structure is owned* by a person for occupancy *or use* by that person ~~must be shared equally as provided in subsection (2)~~.

~~(5) (a) A person, firm, or corporation who owns or moves a house, building, derrick, or other structure may not raise, cut, or in any way interfere with any poles or wires~~

(3) A mover may not raise, cut, or in any way interfere with wires, cables, or poles unless the person, firm, or corporation who owns or controls the ~~poles or~~ wires*, cables, or poles* refuses, after having been notified as required by 69-4-602, to raise or cut the wires *or cables* or move the poles.

~~(b) When the person who owns or controls the poles or wires refuses to raise or cut the wires or move the poles, the person, firm, or corporation who owns or moves the house, building, derrick, or other structure shall ensure that only competent and experienced workers raise or cut the wires or move the poles.~~

~~(c) The following procedure must be followed:~~

~~(i) The necessary and reasonable expense incurred by the owner or mover of the house, building, derrick, or other structure as a result of raising or cutting the wires or moving the poles must be paid by the owners of the poles or wires handled.~~

~~(ii) The work of raising or cutting the wires or moving the poles must be done in a careful manner.~~

~~(iii) The poles and wires must be promptly replaced and any damage to the poles or wires must be promptly repaired.~~

(4) The mover shall make a prepayment of a portion of the total cost estimated under 69-4-602 in advance of the move as follows:

(a) if the structure is moved through or out of the service territory of the owner of the wires, cables, or poles, 100% of the mover's share pursuant to subsection (2); or

(b) if the structure is delivered to a place within the service territory of the owner of the wires, cables, or poles, 50% of the mover's share pursuant to subsection (2).

(5) The owner of the wires, cables, or poles may waive the prepayment requirement or accept a bond or other financial instrument in lieu of payment.

(6) The mover shall pay the mover's share of all actual costs under subsection (2) in excess of any prepayment made under subsection (4) within 30 days of the move.

(7) If the prepayment made under subsection (4) exceeds the mover's share of actual costs under subsection (2), the owner of the wire, cable, or pole shall refund the difference to the mover within 30 days of the move."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 17, 2003

CHAPTER NO. 360

[HB 385]

AN ACT PROVIDING THAT MONTANA NEW MOTOR VEHICLE WARRANTY LAWS APPLY TO MOTOR VEHICLES REGISTERED IN THIS STATE IN ADDITION TO MOTOR VEHICLES SOLD IN THIS STATE; INCLUDING MOTORCYCLES AS VEHICLES COVERED BY REGISTRATION; SUBSTITUTING SELECTION OF AN ARBITRATOR FOR SELECTION OF AN ARBITRATION PANEL AND DECREASING THE NUMBER OF ARBITRATORS FROM THREE TO ONE; AND AMENDING SECTIONS 61-4-501, 61-4-516, 61-4-518, AND 61-4-519, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-501, MCA, is amended to read:

"61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning applied to that word in 61-4-201.

(5) *(a)* "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold *or registered* in this state.

(b) The term does not include a truck with 10,000 pounds or more gross vehicle weight rating ~~or a motorcycle as defined in 61-1-105~~. Motor vehicle does not include components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use ~~shall~~ *must* be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

(7) "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier."

Section 2. Section 61-4-516, MCA, is amended to read:

"61-4-516. ~~Composition of arbitration panel~~ *Selection of arbitrator*. An ~~arbitration panel hearing~~ *arbitrator for* a grievance under this part must ~~consist of three members~~ *be chosen by the department of administration*. ~~One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties.~~ The department of administration ~~may~~ *shall* maintain a list of persons willing to serve ~~on panels from which the third member may be chosen~~ *as an arbitrator*."

Section 3. Section 61-4-518, MCA, is amended to read:

"61-4-518. Arbitration — role of department of administration — expert. (1) The department of administration shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department of administration may, on behalf of the ~~arbitration panel~~ *arbitrator*, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the ~~panel~~ *arbitrator*, the department of administration may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the ~~panel~~ *arbitrator*. The expert, *at the arbitrator's request,* may ~~sit as a nonvoting member of the panel~~ *be present* whenever oral testimony is presented."

Section 4. Section 61-4-519, MCA, is amended to read:

"61-4-519. Action by ~~arbitration panel~~ *arbitrator* — decision. (1) The ~~arbitration panel~~ *arbitrator* shall, as expeditiously as possible, but not later than 60 days after the department of administration has accepted a complaint, render a fair decision based on the information gathered and disclose ~~its~~ *the arbitrator's* findings and ~~its~~ reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department of administration shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees."

Ap proved April 17, 2003

CHAPTER NO. 361

[HB 437]

AN ACT GENERALLY REVISING LAWS GOVERNING THE ENVIRONMENT; PROVIDING THAT THE ENACTMENT OF CERTAIN LEGISLATION IS THE LEGISLATIVE IMPLEMENTATION OF ARTICLE II, SECTION 3, AND ARTICLE IX OF THE MONTANA CONSTITUTION AND PROVIDING THAT COMPLIANCE WITH THE REQUIREMENTS OF THE LEGISLATIVE IMPLEMENTATION CONSTITUTES ADEQUATE REMEDIES AS REQUIRED BY THE CONSTITUTION; REQUIRING THAT A CHALLENGE TO A PERMIT ISSUED PURSUANT TO THE AIR QUALITY LAWS OR OPENCUT MINING RECLAMATION LAWS, A CHALLENGE TO A LICENSE OR PERMIT ISSUED PURSUANT TO THE METAL MINE RECLAMATION LAWS, A CHALLENGE TO A CERTIFICATE ISSUED PURSUANT TO THE MONTANA MAJOR FACILITY SITING ACT, OR AN AMENDMENT ISSUED PURSUANT TO THE OPENCUT MINING RECLAMATION LAWS MUST PROVIDE FOR COSTS AND ATTORNEY FEES IF THE CHALLENGE WAS FOR AN IMPROPER PURPOSE; PROVIDING THAT AN ACTION CHALLENGING THE ISSUANCE OF A PERMIT UNDER THE AIR QUALITY LAWS, THE ISSUANCE OF AN AMENDMENT UNDER THE OPENCUT MINING RECLAMATION LAWS, THE ISSUANCE OF A LICENSE OR PERMIT UNDER THE METAL MINE RECLAMATION LAWS, A PETITION FOR REVIEW CHALLENGING A LICENSING OR PERMITTING DECISION UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT, AN ARBITRATION ACTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975, ANY ACTION UNDER THE HAZARDOUS WASTE FACILITIES LAWS OR THE MONTANA ENVIRONMENTAL POLICY ACT, ENTRY AND INSPECTION UNDER THE COAL AND URANIUM MINE RECLAMATION LAWS, OR A CERTIFICATE ISSUED UNDER THE MAJOR FACILITY SITING LAWS MUST BE BROUGHT IN THE COUNTY IN WHICH THE ACTIVITY SUBJECT TO THE PERMIT, PETITION FOR REVIEW, AMENDMENT, LICENSE, ARBITRATION, ACTION, CERTIFICATE, OR

INSPECTION WILL OCCUR; PROVIDING THAT FOR AN ACTIVITY THAT WILL OCCUR IN MORE THAN ONE COUNTY, ANY COUNTY IN WHICH THE ACTIVITY WILL OCCUR IS A PROPER VENUE; PROVIDING THAT CERTAIN PERSONS MAY NOT CONDUCT REMEDIAL ACTIONS CONCERNING CLEANUP ACTIVITIES AT ANY FACILITY THAT IS SUBJECT TO AN ADMINISTRATIVE OR JUDICIAL ORDER; AMENDING SECTIONS 2-4-702, 2-4-704, 50-40-102, 75-1-102, 75-1-103, 75-2-102, 75-2-104, 75-5-101, 75-5-102, 75-7-102, 75-7-121, 75-10-202, 75-10-402, 75-10-420, 75-10-706, 75-10-902, 75-11-202, 75-11-301, 75-11-502, 75-20-102, 75-20-201, 75-20-401, 75-20-406, 76-6-102, 76-7-102, 82-4-102, 82-4-202, 82-4-239, 82-4-252, 82-4-301, 82-4-349, 82-4-402, 82-4-427, 82-4-436, AND 87-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, Article II, section 3, of the Montana Constitution enumerates certain inalienable individual rights, including the right to a clean and healthful environment, the right of pursuing life's basic necessities, the right of enjoying and defending an individual's life and liberty, the right of acquiring, possessing, and protecting property, and the right of seeking individual safety, health, and happiness in all lawful ways; and

WHEREAS, the constitutionally enumerated rights are by their very nature bound to result in competing interests in specific fact situations; and

WHEREAS, Article IX, section 1, of the Montana Constitution provides that the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations and directs the Legislature to provide for the administration and enforcement of this duty and also directs the Legislature to provide adequate remedies for the protection of the environmental life support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources; and

WHEREAS, the Legislature has reviewed the intent of the framers of the 1972 Montana Constitution as evidenced in the verbatim transcripts of the constitutional convention; and

WHEREAS, there is no indication that one enumerated inalienable right is intended to supersede other inalienable rights, including the right to use property in all lawful means; and

WHEREAS, the Legislature, mindful of its constitutional obligation to provide for the administration and enforcement of the constitution, has enacted a comprehensive set of laws to accomplish the goals of the constitution, including the Montana Clean Indoor Air Act of 1979, Title 50, chapter 40, part 1, MCA; the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA; the Clean Air Act of Montana, Title 75, chapter 2, parts 1 through 4, MCA; water quality laws, Title 75, chapter 5, MCA; The Natural Streambed and Land Preservation Act of 1975, Title 75, chapter 7, part 1, MCA; The Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA; The Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA; the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, MCA; the Montana Megalandfill Siting Act, sections 75-10-901 through 75-10-945, MCA; the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act, Title 75, chapter 11, part 2, MCA; the Montana Underground Storage Tank Act, Title 75, chapter 11, part 5, MCA; the Montana Major Facility Siting Act, Title 75, chapter 20, MCA; the

Open-Space Land and Voluntary Conservation Easement Act, Title 76, chapter 6, MCA; the Environmental Control Easement Act, Title 76, chapter 7, MCA; The Strip and Underground Mine Siting Act, Title 82, chapter 4, part 1, MCA; The Montana Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, MCA; The Opencut Mining Act, Title 82, chapter 4, part 4, MCA; and The Nongame and Endangered Species Conservation Act, Title 87, chapter 5, part 1, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-702, MCA, is amended to read:

"2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision is rendered. Except as otherwise provided by statute *or subsection (2)(d)*, the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends ~~he is~~ *to be* entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the

original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be ~~taxed~~ *required* by the court ~~for~~ *to pay* the additional costs. The court may require or permit subsequent corrections or additions to the record."

Section 2. Determination of constitutionality. In any action filed in district court invoking the court's original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Title 75 or Title 82 or activities taken pursuant to a license or permit issued under Title 75 or Title 82, the plaintiff shall first establish the unconstitutionality of the underlying statute.

Section 3. Section 2-4-704, MCA, is amended to read:

"2-4-704. Standards of review. (1) The review ~~shall~~ *must* be conducted by the court without a jury and ~~shall~~ *must* be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof ~~thereof~~ *of the irregularities* may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute."

Section 4. Section 50-40-102, MCA, is amended to read:

"50-40-102. ~~Purpose~~ *Intent — purpose.* *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system.* The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke."

Section 5. Section 75-1-102, MCA, is amended to read:

"75-1-102. ~~Purpose~~ *Intent — purpose.* *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that environmental attributes are fully considered.*

(2) The purpose of parts 1 through 3*of this chapter* is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council."

Section 6. Section 75-1-103, MCA, is amended to read:

"75-1-103. Policy. (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

(a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) protect the right to use and enjoy private property free of undue government regulation;

(e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, *that each person has the right to pursue life's basic necessities*, and that each person has a responsibility to contribute to the preservation and enhancement of the environment. *The implementation of these rights requires the balancing of the competing interests associated with the rights by the legislature in order to protect the public health, safety, and welfare.*"

Section 7. Section 75-2-102, MCA, is amended to read:

"75-2-102. ~~Policy~~ *Intent — policy* and purpose. (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution has enacted the Clean Air Act of Montana. It is the legislature's intent that the requirements of parts 1 through 4 of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) It is ~~hereby declared to be~~ the public policy of this state and the purpose of this chapter to achieve and maintain ~~such~~ levels of air quality ~~as~~ *that* will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. *This policy must be balanced by the legislature with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in all lawful ways.*

~~(2)~~*(3)* ~~It is also declared that local~~ *Local* and regional air pollution control programs ~~are to~~ *must* be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

~~(3)~~*(4)* To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest."

Section 8. Section 75-2-104, MCA, is amended to read:

"75-2-104. Limitations — personal cause of action unabridged — *venue*. *(1)* ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed to:

~~(1)~~*(a)* grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

~~(2)~~*(b)* affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

~~(3)~~*(c)* supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; *or*

~~(4)~~*(d)* abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

Section 9. Section 75-5-101, MCA, is amended to read:

"75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution*; and*

(3) balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing the program referred to in subsection (2)."

Section 10. Section 75-5-102, MCA, is amended to read:

"75-5-102. ~~Purpose~~ *Intent — purpose* — rights of action not abridged. (1) *The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this chapter. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.* A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of ~~his~~ *the person's* rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution."

Section 11. Section 75-7-102, MCA, is amended to read:

"75-7-102. ~~Policy~~ *Intent — policy.* *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana."

Section 12. Section 75-7-121, MCA, is amended to read:

"75-7-121. Review. Any review of final action by the supervisors under 75-7-112 or 75-7-113 must be by arbitration. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3*, and must be brought in the county where the action is proposed to occur*."

Section 13. Section 75-10-202, MCA, is amended to read:

"75-10-202. Legislative *intent,* findings, and policy. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Solid Waste Management Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible."

Section 14. Section 75-10-402, MCA, is amended to read:

"75-10-402. ~~Findings~~ *Intent, findings,* and purpose. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Hazardous Waste Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

~~(1)~~*(2)* The legislature finds that the safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

~~(2)~~*(3)* It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ensure the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended."

Section 15. Section 75-10-420, MCA, is amended to read:

"75-10-420. Venue for legal actions. All legal actions affecting hazardous waste management facilities in the state must be brought in the county in which the facility is located *or is proposed to be located*."

Section 16. Section 75-10-706, MCA, is amended to read:

"75-10-706. Purpose — *intent*. *(1)* The purposes of this part are to:

~~(1)~~*(a)* protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

~~(2)~~*(b)* encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

~~(3)~~*(c)* provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

(2) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Comprehensive Environmental Cleanup and Responsibility Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(3) A person who is not subject to an administrative or judicial order may not conduct any remedial action at any facility that is subject to an administrative or judicial order issued pursuant to this part without the written permission of the department. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources."

Section 17. Section 75-10-902, MCA, is amended to read:

"75-10-902. ~~Purpose~~ *Intent — purpose.* *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Megalandfill Siting Act. It is the legislature's intent that the requirements of the Megalandfill Siting Act provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

~~(1)~~*(2)* It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations,

to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

~~(2)~~*(3)* The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, ~~due to~~ *because of* the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933."

Section 18. Section 75-11-202, MCA, is amended to read:

"75-11-202. ~~Findings~~ *Intent, findings* and purpose. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

~~(1)~~*(2)* Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation, closure, and inspection require specialized knowledge, training, and experience.

~~(2)~~*(3)* To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to provide for permitting, licensing, and inspection activities."

Section 19. Section 75-11-301, MCA, is amended to read:

"75-11-301. ~~Findings~~ *Intent, findings,* and purposes. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

~~(1)~~*(2)* The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

~~(2)~~*(3)* The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

~~(3)~~*(4)* The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

~~(4)~~*(5)* The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. ~~The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.~~

~~(5)~~*(6)* The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases."

Section 20. Section 75-11-502, MCA, is amended to read:

"75-11-502. ~~Findings~~ *Intent, findings,* and purpose. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under this part. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in this part and other appropriate authority provided by law to remedy violations of requirements established under this part."

Section 21. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy, *intent,* and legislative findings. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting*

Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

~~(1)~~*(2)* It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

~~(2)~~*(3)* The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing that a electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of environmental compatibility acquired pursuant to this chapter.

~~(3)~~*(4)* The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

Section 22. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 23. Section 75-20-401, MCA, is amended to read:

"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions — *venue for challenging certificate issuance.* (1) Notwithstanding any other law, ~~no~~ *a* state or regional agency or municipality or other local government may *not* require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur."

Section 24. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of board decisions. (1) A person aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. *A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.*

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to

whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined under 75-1-203, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 25. Section 76-6-102, MCA, is amended to read:

"76-6-102. ~~Findings~~ *Intent, findings* and policy. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Open-Space Land and Voluntary Conservation Easement Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) The legislature finds that:

~~(1)~~*(a)* the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

~~(2)~~*(b)* the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

~~(3)~~*(c)* this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

~~(4)~~*(d)* the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

~~(5)~~*(e)* to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

~~(6)~~*(f)* the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

~~(7)~~*(g)* the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

~~(8)~~*(h)* the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest."

Section 26. Section 76-7-102, MCA, is amended to read:

"76-7-102. ~~Findings~~ *Intent, findings* and purpose. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article*

IX of the Montana constitution, has enacted the Environmental Control Easement Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

~~(1)~~*(2)* The legislature finds that:

(a) numerous sites throughout the state contain or may contain hazardous wastes or substances that may threaten the public health, safety, or welfare or the environment if certain uses are permitted on these sites or if certain activities are not performed on these sites;

(b) at some sites, protection of the public health, safety, or welfare or the environment may be enhanced by the application and enforcement of certain restrictions on the future use of the site or requirements for performance of certain activities;

(c) the creation of an enforceable easement mechanism for imposing restrictions on the use of a site and requiring performance of operations and maintenance activities may help protect the public health, safety, and welfare and the environment by:

(i) preventing or minimizing the exposure of the public to hazardous wastes or substances;

(ii) preventing the disturbance of important features of remediation work and remedial technologies employed at the site;

(iii) ensuring that the presence of hazardous wastes or substances and the features of remediation work and remedial technologies are properly considered in the future use or development of a site; or

(iv) requiring the performance of certain activities or the prohibition or limitation of certain activities, with respect to the site; and

(d) the expenditure of public funds for the acquisition or designation of interests and rights in real property to protect the public health, safety, and welfare and the environment is in the public's interest.

~~(2)~~*(3)* It is the purpose of this chapter to authorize and enable federal public entities, other public bodies, and certain qualifying private organizations to provide for:

(a) the monitoring and protection of environmental control sites to ensure that those sites are not used for purposes that may threaten the public health, safety, or welfare or the environment;

(b) a process of reviewing the need for specialized construction, development, use, and safety measures if the owner or user of an environmental control site proposes a new use for which any contamination might present a risk to the public health, safety, or welfare or the environment; and

(c) a mechanism for prohibiting or limiting certain activities or requiring certain activities on an environmental control site to enhance protection of the public health, safety, or welfare or the environment."

Section 27. Section 82-4-102, MCA, is amended to read:

"82-4-102. ~~Policy~~ *Intent — findings — policy* and purpose. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting Act. It is the legislature's intent that the requirements*

of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

~~(1)~~*(2)* It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

~~(2)~~*(3)* It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove ~~such~~ *those* locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state~~,~~ that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to ~~insure~~ *ensure* that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

~~(3)~~*(4)* This part is ~~deemed to be~~ an exercise of the general police power to provide for the health and welfare of the people."

Section 28. Section 82-4-202, MCA, is amended to read:

"82-4-202. ~~Policy~~ *Intent — policy* — findings. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Strip and Underground Mine Reclamation Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

~~(1)~~*(2)* It is the declared policy of this state and its people to:

(a) maintain and improve the state's clean and healthful environment for present and future generations;

(b) protect its environmental life-support system from degradation;

(c) prevent unreasonable degradation of its natural resources;

(d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;

(e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;

(f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards ~~(~~, especially as to reclamation of disturbed lands~~)~~, in order to achieve the ~~aforementioned~~ objectives *enumerated in this subsection (2)*; and

(g) provide for the orderly development of coal resources through strip or underground mining to ~~assure~~ *ensure* the wise use of these resources and prevent the failure to conserve coal.

~~(2)~~*(3)* The legislature hereby finds and declares that:

(a) in order to achieve the ~~aforementioned~~ policy objectives *enumerated in subsection (2)*, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and ~~assure~~ *ensure* a long-range dependable tax base, it is reasonably necessary to require, after March 16, 1973, that*:*

(i) all strip-mining and underground-mining operations be limited to those for which 5-year permits are granted~~,~~*;*

(ii) ~~that no~~ *a* permit *not* be issued until the operator presents a comprehensive plan for reclamation and restoration and a coal conservation plan, together with an adequate performance bond, and the plan is approved~~,~~*;*

(iii) ~~that~~ certain other things must be done, ~~that~~ certain remedies ~~are~~ *must be* available, ~~that~~ *and* certain lands because of their unique or unusual characteristics may not be strip-mined or underground-mined under any circumstances~~, all as more particularly appears in the remaining provisions of this part,~~*;* and

(iv) ~~that~~ the department be given authority to administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended;

(b) this part be ~~deemed~~ *considered* to be an exercise of the authority granted in the Montana constitution~~, as adopted June 6, 1972,~~ and, in particular, a response to the mandate expressed in Article IX ~~thereof~~ and also be ~~deemed~~ *considered* to be an exercise of the general police power to provide for the health and welfare of the people."

Section 29. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in

this subsection. *The action must be brought in the county in which the mine is located.*

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

(i) land or water resources have been adversely affected by past coal-mining practices;

(ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by~~sections 1 and 2,~~ Article IX, *sections 1 and 2*, of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection *(5)(a)* may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of

the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 30. Section 82-4-252, MCA, is amended to read:

"82-4-252. Mandamus. (1) A resident of this state or any person having an interest ~~which~~ *that* is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced or implemented by a public officer or employee whose duty it is to enforce or implement the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that ~~shall~~ *must* state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce or implement the requirement or rule, the resident or person having an interest ~~which~~ *that* is or may be adversely affected may bring an action of mandamus ~~in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or~~ in the district court of the county in which the land is located. The court, if it finds that a requirement of this part or a rule adopted under this part is not being enforced, shall order the public officer or employee whose duty it is to enforce the requirement or rule to perform ~~his~~ *the officer's or employee's* duties. If ~~he~~ *the officer or employee* fails to ~~do so~~ *obey the order*, the public officer or employee ~~shall~~ *must* be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on ~~his~~ *the person's* own behalf to compel compliance with this part against any person for the violation of this part or any rule, order, or permit issued ~~hereunder~~ *under this part*. However, ~~no such~~ *the* action may *not* commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued ~~hereunder~~ *under this part.* Any person may intervene as a matter of right in ~~any such~~ *the* civil action. ~~Nothing in this~~ *This* section ~~restricts~~ *does not restrict* any right that any person may have under any statute or common law to seek enforcement of this part or the rules adopted ~~hereunder~~ *under this part* or to seek any other relief.

(4) Any person who is injured in ~~his~~ person or property through the violation by any operator of any rule, order, or permit issued pursuant to this part may bring an action for damages, ~~(~~including reasonable attorney and expert witness fees~~)~~, only in the county in which the strip- or underground-coal-mining operation complained of is located. ~~Nothing in this~~ *This* subsection ~~affects~~ *does not affect* the rights established by or limits imposed under ~~chapter 71 of~~ Title 39*, chapter 71*.

(5) The court, in issuing any final order in any action brought pursuant to subsection (3), may award costs of litigation, ~~(~~including attorney and expert witness fees~~)~~, to any party whenever the court determines ~~such~~ *that the* award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Montana Rules of Civil Procedure."

Section 31. Section 82-4-301, MCA, is amended to read:

"82-4-301. Legislative *intent and* findings. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed."

Section 32. Section 82-4-349, MCA, is amended to read:

"82-4-349. Limitations of actions — *venue.* *(1)* Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permitholder or applicant must include the party to whom the license or permit was issued unless otherwise agreed to by the license or permitholder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined under 75-1-203, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 33. Section 82-4-402, MCA, is amended to read:

"82-4-402. ~~Policy~~ *Intent, findings, and policy.* *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut materials mining. Therefore, it is the purpose of this part:

~~(1)~~*(a)* to preserve natural resources;

~~(2)~~*(b)* to aid in the protection of wildlife and aquatic resources;

~~(3)~~*(c)* to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut materials mining;

~~(4)~~*(d)* to protect and perpetuate the taxable value of property through reclamation;

~~(5)~~*(e)* to protect scenic, scientific, historic, or other unique areas; and

~~(6)~~*(f)* to promote the health, safety, and general welfare of the people of this state."

Section 34. Section 82-4-427, MCA, is amended to read:

"82-4-427. Hearing — *appeal — venue.* (1) A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board, if a written request is submitted to the board within 30 days of the department's decision.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(3) An action to challenge the issuance of a permit pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(4) A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder or applicant must include the party to whom the permit was issued unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined under 75-1-203, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 35. Section 82-4-436, MCA, is amended to read:

"82-4-436. Plan amendments — *venue.* (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that continued operation under the terms of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

(a) an identification of the existing plan or permit;

(b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and

(c) the text of the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or until after the department director affirms or modifies the amendment if a review by the director is requested. A decision by the department director is subject to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project cost, as determined under 75-1-203, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or

increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 36. Section 87-5-103, MCA, is amended to read:

"87-5-103. Legislative *intent, findings, and* policy. *(1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame and Endangered Species Conservation Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*

(2) The legislature finds and declares all of the following:

~~(1)~~*(a)* that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific purposes, and to ~~insure~~ *ensure* their perpetuation as members of ecosystems;

~~(2)~~*(b)* that species or subspecies of wildlife indigenous to this state ~~which~~ *that* may be found to be endangered within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;

~~(3)~~*(c)* that the state should assist in the protection of species or subspecies of wildlife ~~which~~ *that* are ~~deemed~~ *considered* to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of species or subspecies of wildlife unless ~~such~~ *those* actions will assist in preserving or propagating the species or subspecies."

Section 37. Venue. A proceeding to challenge an action taken pursuant to parts 1 through 3 must be brought in the county in which the activity that is the subject of the action is proposed to occur or will occur. If an activity is proposed to occur or will occur in more than one county, the proceeding may be brought in any of the counties in which the activity is proposed to occur or will occur.

Section 38. Codification instruction. (1) [Section 37] is intended to be codified as an integral part of Title 75, chapter 1, part 1, and the provisions of Title 75, chapter 1, part 1, apply to [section 37].

(2) [Section 2] is intended to be codified as an integral part of Title 82 and Title 75, and the provisions of Title 82 and Title 75 apply to [section 2].

Section 39. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 40. Effective date. [This act] is effective on passage and approval.

Section 41. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit, petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act].

Ap proved April 16, 2003

CHAPTER NO. 362

[HB 451]

AN ACT ALLOWING PRIVATE CORRECTIONAL FACILITIES TO CONFINE OUT-OF-STATE INMATES; AMENDING SECTION 53-30-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-603, MCA, is amended to read:

"53-30-603. Private correctional facilities — confinable persons. (1) An individual, corporation, partnership, association, or other private organization or entity may not construct a private correctional facility in this state unless authorized by the department.

(2) An individual, corporation, partnership, association, or other private organization or entity may not operate a private correctional facility in this state unless licensed by the department. A license is nontransferable.

(3) A person ~~charged or~~ convicted in ~~another~~ *any* state *or U.S. federal* ~~or charged or convicted in federal court in another state~~ *court* may ~~not~~ be confined in a private correctional facility in this state *pursuant to approval by the department of a written agreement between the originating jurisdiction and the private correctional facility if the person is at all times and in all places within the correctional facility kept physically separated from persons convicted in this state. The agreement must include provisions for returning an out-of-state inmate to the originating jurisdiction prior to the inmate's parole or release.*~~.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 16, 2003

CHAPTER NO. 363

[HB 453]

AN ACT PROVIDING FOR THE USE OF A PRISON INMATE'S FUNDS, INCOME, AND ASSETS TO PAY THE INMATE'S MEDICAL AND DENTAL EXPENSES; AND AMENDING SECTION 53-1-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-107, MCA, is amended to read:

"53-1-107. Limits on inmate financial transactions — *taking income earned or accrued outside prison for medical and dental expenses.* (1) An inmate of ~~the Montana~~ *a* state prison ~~in Deer Lodge or the women's prison in Billings shall~~ *must* use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution, ~~or~~ *the inmate's medical and dental expenses, and the* costs of incarceration. The department may charge an inmate a minimum fee, not to exceed $1.60 each month, to administer the inmate's account.

(2) (a) Money forfeited under subsection (1) to the payment of restitution must be paid in the following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund until the state is fully reimbursed for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss; and

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If the inmate's sentence did not provide for the payment of restitution or if there is a balance of money after restitution has been paid under subsection (2)(a), money forfeited under subsection (1) must be applied *to the payment of the inmate's medical and dental expenses and, if there is a balance after those expenses have been paid,* to the inmate's costs of incarceration.

(3) The department shall adopt rules establishing criteria for forfeiture of funds under subsection (1). The rules must contain clear guidelines regarding forfeiture that ensure restitution under subsection (2) but that:

(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and

(b) do inhibit any inmate's ability to deal in contraband or illegal acts within or outside the correctional facility.

(4) An inmate is responsible for the inmate's medical and dental expenses and is obligated to repay the department for reasonable costs incurred by the department for the inmate's medical and dental expenses. The department may investigate, identify, take in any manner allowed by law for the satisfaction of a judgment, and use to pay the inmate's medical and dental expenses any assets of the inmate or any income of the inmate from sources outside the state prison that is not deposited in the account provided for in subsection (1)."

Ap proved April 16, 2003

CHAPTER NO. 364

[HB 480]

AN ACT INCREASING THE PENALTIES FOR CERTAIN VIOLATIONS REGARDING MOTOR VEHICLE ACCIDENTS; INCREASING THE RATE AT WHICH FINES MAY BE COMMUTED BY JAIL TIME; AND AMENDING SECTION 61-7-118, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-7-118, MCA, is amended to read:

"61-7-118. Penalty for violation. ~~(1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the offender shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for~~

~~not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.~~

(1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than $200 or more than $300 or by imprisonment for not more than 20 days. For a second conviction within 1 year of the first conviction, the offender shall be punished by a fine of not less than $300 or more than $400, by imprisonment for not more than 30 days, or both. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than $400 or more than $500, by imprisonment for not more than 6 months, or both.

~~(2)~~*(2)* Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment shall be commuted at the rate of 1 day's incarceration for each ~~$10~~ *$20* of the fine."

Ap proved April 17, 2003

CHAPTER NO. 365

[HB 527]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND APPLICANTS FOR OPERATING PERMITS UNDER THE METAL MINE RECLAMATION ACT TO CONSIDER THE UTILIZATION OF FACILITIES CONSTRUCTED IN CONJUNCTION WITH MINING OPERATIONS FOR POSTMINING USES IN LIEU OF REQUIRING THE REMOVAL OF THE FACILITIES; PROVIDING THAT ANCILLARY INDUSTRIAL FACILITIES MAY HAVE AN ACCEPTABLE POSTMINING USE; PROVIDING THAT AN AMENDMENT TO AN OPERATING PERMIT FOR THE PURPOSE OF RETENTION OF MINE-RELATED FACILITIES THAT ARE VALUABLE FOR POSTMINING USE IS A MINOR AMENDMENT AND DOES NOT REQUIRE THE PREPARATION OF AN ENVIRONMENTAL REVIEW OR AN ENVIRONMENTAL IMPACT STATEMENT; AMENDING SECTIONS 82-4-303, 82-4-335, 82-4-336, AND 82-4-342, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, metal mine operators typically construct ancillary industrial facilities in conjunction with the operation of metal mines; and

WHEREAS, facilities may include office buildings, shop buildings, electrical transmission lines, electrical power substations, electronic communication lines and facilities, water lines, water treatment plants, septic systems, roads, parking lots, fencing, security stations, and environmental monitoring sites; and

WHEREAS, these facilities may have significant value when the operator discontinues the mining operations; and

WHEREAS, the continued availability of these facilities may provide economic development opportunities for the residents of the county where the facilities are located and to the people of Montana generally; and

WHEREAS, the metal mine reclamation laws do not include provisions that encourage or require the Department of Environmental Quality or the mine operator to consider the feasibility of a postmining use of these facilities for other industrial purposes instead of simply removing the facilities; and

WHEREAS, the Legislature believes that future beneficial use provisions could be provided for in the metal mine reclamation laws without significantly increasing the cost to the state or to the operator of obtaining and maintaining a mine operating permit.

THEREFORE, the Legislature finds that it is beneficial and appropriate to create these provisions.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance, ~~(~~other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium~~)~~, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12) "Placer deposit" means:

(a) naturally occurring, scattered or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, *which may include use of the land as an industrial site not necessarily related to mining*;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, ~~or,~~ *that*, except as provided in 82-4-310, ~~that~~ knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation~~;~~, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2) or a permit that meets the criteria of subsection (15)(c)~~;~~, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(16) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(17) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(18) "Underground mining" means all methods of mining other than surface mining.

(19) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(20) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or

other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(3) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of $500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; ~~and~~

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site*; and*

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license

issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 3. Section 82-4-336, MCA, is amended to read:

"82-4-336. Reclamation plan and specific reclamation requirements. (1) Taking into account the site-specific conditions and circumstances, *including the postmining use of the mine site,* disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents; or

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department; or

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. *This standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:*

(i) The postmining use of the mine-related facilities must be approved by the department.

(ii) In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.

(b) With regard to open pits and rock faces, the reclamation plan must provide for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment; and

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands.

(c) The reclamation of open pits and rock faces does not require backfilling, in whole or in part, except and only to the extent necessary to meet the requirements of the applicable provisions of Title 75, chapters 2 and 5.

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges."

Section 4. Section 82-4-342, MCA, is amended to read:

"82-4-342. Amendment to operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) *(a)* The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments.

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

(ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever is less;~~and~~

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance~~.~~*; and*

(i) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use."

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 16, 2003

CHAPTER NO. 366

[HB 553]

AN ACT REVISING THE LAWS GOVERNING THE TREATMENT OF ANIMALS; PROVIDING FOR A CIVIL HEARING CONCERNING THE CARE OF ANIMALS SEIZED WHEN THE OWNER IS CHARGED WITH CRUELTY TO ANIMALS; CHANGING THE FINE AND IMPRISONMENT PENALTIES FOR THE CRIME; CREATING THE OFFENSE OF "AGGRAVATED ANIMAL CRUELTY"; EXPANDING THE LIST OF EXEMPT ACTIVITIES AND PRACTICES; AND AMENDING SECTION 45-8-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-211, MCA, is amended to read:

"45-8-211. Cruelty to animals — ~~exception~~ *exceptions*. (1) A person commits the offense of cruelty to animals if, without justification, the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, *torturing,* injuring, or killing ~~any~~ *the* animal;

(b) carrying or confining ~~any~~ *the* animal in a cruel manner;

(c) failing to provide an animal in the person's custody with:

~~(i) proper food, drink, or shelter; or~~

(i) food and water of sufficient quantity and quality to sustain the animal's normal health;

(ii) minimum protection for the animal from adverse weather conditions, with consideration given to the species;

~~(ii)~~*(iii)* in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) (a) A person convicted of the offense of cruelty to animals shall be fined *an amount* not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail for a term not to exceed ~~6 months~~ *1 year*, or both. A person convicted of a second or subsequent offense of cruelty to animals *or of a first or subsequent offense of aggravated animal cruelty* shall be fined *an amount* not to exceed ~~$1,000~~ *$2,500* or be ~~imprisoned~~ *sentenced to the department of corrections* ~~in the state prison~~ for a term not to exceed 2 years, or both.

(b) If the convicted person is the owner, the person may be required to forfeit *any animal affected* to the county in which the person is convicted ~~any animal affected~~. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(c) For the purposes of this subsection (2), when more than one animal is subject to cruelty to animals, each act may comprise a separate offense.

(3) In addition to the sentence provided in subsection (2), the court ~~may~~ *shall*:

(a) require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected, *including reasonable costs of care incurred by a public or private animal control agency or humane animal treatment shelter*; and

(b) prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.

(4) ~~Nothing in this section prohibits~~ *This section does not prohibit*:

(a) a person ~~from~~ humanely destroying an animal for just cause; ~~or~~

(b) the use of commonly accepted agricultural and livestock practices on livestock*;*

(c) rodeo activities that meet humane standards of the professional rodeo cowboys association;

(d) lawful fishing, hunting, and trapping activities;

(e) lawful wildlife management practices;

(f) lawful scientific or agricultural research or teaching that involves the use of animals;

(g) services performed by a licensed veterinarian;

(h) lawful control of rodents and predators and other lawful animal damage control activities; or

(i) accepted training and discipline methods."

Section 2. Aggravated animal cruelty. A person commits the offense of aggravated animal cruelty if the person purposely or knowingly:

(1) kills or inflicts cruelty to an animal with the purpose of terrifying, torturing, or mutilating the animal; or

(2) inflicts cruelty to animals on a collection, kennel, or herd of 10 or more animals.

Section 3. Animal welfare hearing. (1) When an animal is seized from a person pursuant to an arrest for an alleged violation of 45-8-211 or [section 2],

the prosecutor may file petition for an animal welfare hearing in district court in the county where the arrest was made.

(2) The petition must contain:

(a) the purported facts regarding animal neglect and the current condition of the animal;

(b) any facts demonstrating the animal's extreme disease, injury, or suffering, if applicable; and

(c) the name and address of the respondent.

(3) If the court finds probable cause that the animal exhibits extreme disease, injury, or suffering, the court shall set the matter for hearing not more than 10 days after the petition was filed with the clerk of court. Otherwise, the court shall set the matter for hearing not more than 30 days after the petition was filed.

(4) At the hearing, the court may consider the following factors:

(a) the propriety of returning the animal to the owner given the alleged facts regarding abuse or neglect;

(b) the extent of the animal's disease, injury, or suffering, if applicable;

(c) the likelihood of viable treatment of the animal's condition, if applicable, based upon available veterinary testimony; and

(d) the availability of funding to provide for the animal's treatment, shelter, and care.

(5) Upon consideration of the factors listed in subsection (4), the court may order any of the following:

(a) immediate release of the animal to the owner;

(b) imposition of a bond or security in an amount sufficient to provide for the animal's care for a minimum of 30 days from the date of seizure;

(c) euthanization of severely diseased, injured, or suffering animals; or

(d) retention of the animal in a humane animal treatment shelter.

(6) A hearing pursuant to this section does not constitute an adjudication with regard to charges filed under 45-8-211 or [section 2].

Section 4. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 27, chapter 1, part 4, and the provisions of Title 27, chapter 1, part 4, apply to [section 3].

Ap proved April 17, 2003

CHAPTER NO. 367

[HB 563]

AN ACT GENERALLY REVISING ELECTION LAWS; PROHIBITING A THIRD PARTY FROM COLLECTING ABSENTEE BALLOT APPLICATIONS TO FORWARD TO AN ELECTION ADMINISTRATOR, WITH CERTAIN EXCEPTIONS; ALLOWING POLITICAL PARTY COMMITTEEMEN FOR AN

ELECTION PRECINCT TO BE ELECTED BY ACCLAMATION; ALLOWING COMMISSIONERS OF A DRAINAGE DISTRICT TO BE ELECTED BY ACCLAMATION; AND AMENDING SECTIONS 13-13-213, 13-38-201, 85-8-302, AND 85-8-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection ~~(2)~~ *(3)*, the elector shall ~~forward the application by~~ mail *the application directly to the election administrator* or deliver ~~it~~ *the application* in person to the election administrator. *With the exception of an immediate family member, as defined in 15-30-602, or a guardian, a third party may not collect applications for absentee ballots from electors and forward the applications to the election administrator.*

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

~~(2)~~*(3)* In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector."

Section 2. Section 13-38-201, MCA, is amended to read:

"13-38-201. Election of committeemen at primary. (1) ~~Each~~ *Except as provided in subsection (4), each* political party shall elect at each primary election one ~~man and one woman~~ *person of each sex* who shall serve as committeemen for each election precinct. The committeemen ~~shall~~ *must* be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a ~~writing so stating~~ *written statement*, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) ~~The~~ *Except as provided in subsection (4), the* names of candidates for precinct committeeman of each political party ~~shall~~ *must* be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner ~~as he~~ *that the voter* does for other candidates.

(4) If only one person of each sex has been nominated to fill a precinct's positions, the election administrator may decline to include that precinct's election in the primary election. If a precinct's election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that precinct's committeemen positions."

Section 3. Section 85-8-302, MCA, is amended to read:

"85-8-302. Election of commissioners — regular term of office. (1) ~~The~~ *Except as provided in subsection (2), the* regular election of commissioners ~~shall~~ *must* be held annually in accordance with 13-1-104 and 13-1-401.

(2) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is canceled as provided in this subsection, the county governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If there is not a candidate nominated for the position, the board of commissioners shall make an appointment to fill the position and the term is the same as if the commissioner were elected.

(3) The term of office of commissioners ~~shall commence~~ *commences* on the first Tuesday in May following their election *or appointment*.

(4) ~~At~~ *Except as provided in subsection (2), at* the first regular election following the organization of a district and in districts organized and in existence on March 1, 1921, and ~~which~~ *that*, on petition, have been divided into divisions, at the first regular election following the date of the order making ~~such~~ *the* division, there ~~shall~~ *must* be elected three commissioners, one commissioner being elected from each division of which ~~he~~ *the commissioner* must be an actual landowner. One of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following ~~his~~ *the commissioner's* election; another of the commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following ~~his~~ *the commissioner's* election; and the third of the commissioners shall hold office until the first Tuesday in May in the third year following ~~his~~ *the commissioner's* election. Thereafter, one commissioner ~~shall~~ *must* be elected each year, who shall hold office for a term of 3 years and until ~~his~~ *the commissioner's* successor is elected *or appointed* and qualified. The person elected *or appointed* as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected *or appointed* as a commissioner from the same division as the commissioner whom ~~he~~ *the commissioner* is to succeed.

~~(2)~~*(5)* Each commissioner must be a resident of a county where a portion of the district lands is situated."

Section 4. Section 85-8-624, MCA, is amended to read:

"85-8-624. Assessments on improvements — taxpayers' approval, limitations, and election procedures. (1) ~~It shall require a~~ *A* vote of the persons on the assessment rolls in any existing district *is required* to make Chapter 409, Laws of 1973, applicable to ~~such districts~~ *a district*.

(2) ~~Nothing in~~ Chapter 409, Laws of 1973, ~~confers~~ *does not confer* upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

(3) The election provided for by subsection (1) ~~shall~~ *must* be governed by the following rules:

(a) Notice of the election ~~shall~~ *must* be as provided in 13-1-401(4).

(b) The manner of conducting the election ~~shall~~ *must* be as provided in ~~85-8-302~~ *13-1-401* and as nearly as practicable in accordance with the provisions of the general election laws of the state *in Title 13*, except that ~~no~~ registration may *not* be required.

(c) The qualifications of electors ~~shall~~ *must* be as provided in 85-8-305, except that, in addition to persons holding title or evidence of title to lands

within the district, any person, as ~~therein defined~~ *provided in 85-8-305,* who does not own land within the district but has been assessed or will have ~~his~~ *the person's* improvements assessed under Chapter 409, Laws of 1973, or who will be assessed for benefits received ~~shall be~~ *is* entitled to one vote. Commissioners shall prepare a list of ~~such~~ persons, and the election administrator or deputy election administrator shall give them notice as provided in 13-1-401(4).

(d) The commissioners of any district in existence prior to March 21, 1973, who wish to hold an election to determine if the district ~~shall be~~ *is* governed by Chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of ~~said~~ *the* district wish to be governed by Chapter 409, Laws of 1973. The resolution ~~shall~~ *must* contain a short summary of the changes made by Chapter 409, Laws of 1973, and the summary must be included in the notice provided for by 13-1-401(4). In addition, the commission shall provide copies of Chapter 409, Laws of 1973, to any person interested in obtaining a copy ~~of the same~~, and the notice to the persons in the district calling the election ~~shall~~ *must* describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing ~~said~~ copies, not to exceed 20 cents ~~per~~ *a* page.

(e) The ballot ~~shall~~ *must* include the summary as provided for in ~~the preceding~~ subsection *(3)(d),* and the form of the ballot ~~shall~~ *must* conform as closely as possible to that provided for in Title 13, chapter 27.

(f) A simple majority of those who cast valid ballots ~~shall determine~~ *determines* the outcome of the election."

Section 5. Coordination instruction. (1) If House Bill No. 532 and [this act] are both passed and approved, then [section 3 of this act] amending 85-8-302, is void.

(2) If House Bill No. 190 and [this act] are both passed and approved, then [section 29] of House Bill No. 190, amending 13-13-213, is void.

Ap proved April 17, 2003

CHAPTER NO. 368

[HB 584]

AN ACT REVISING THE CONTROLLED ALLOCATION OF LIABILITY LAWS; ELIMINATING THE TERMINATION DATE FOR THE CONTROLLED ALLOCATION OF LIABILITY ACT; AMENDING SECTION 75-10-743, MCA; REPEALING SECTION 75-10-752, MCA, AND SECTION 30, CHAPTER 415, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-743, MCA, is amended to read:

"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) unencumbered funds remaining in the abandoned mines state special revenue account;

(e) interest income on the account;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) ~~(a)~~ On August 21, 2002, $1,000 is transferred from the orphan share fund to the general fund. If sufficient money remains in the orphan share fund on June 29, 2003, $999,000 must be transferred to the general fund.

~~(b) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.~~

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)"

Section 2. Repealer. Section 75-10-752, MCA, and section 30, Chapter 415, Laws of 1997, are repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 17, 2003

CHAPTER NO. 369

[SB 152]

AN ACT REVISING THE QUALIFICATIONS, PROCEDURES, AND FEES FOR OBTAINING SPECIAL PERMITS TO SELL BEER AND TABLE WINE; DEFINING "SPECIAL EVENT"; REVISING CATERING REQUIREMENTS; AMENDING SECTIONS 16-1-106, 16-4-111, 16-4-204, 16-4-301, AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(21)~~*(22)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(22)~~*(23)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(23)~~*(24)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(24)~~*(25)* "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

~~(25)~~*(26)* "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(26)~~*(27)* "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(27)~~*(28)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-4-111, MCA, is amended to read:

"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

Section 3. Section 16-4-204, MCA, is amended to read:

"16-4-204. Transfer — catering endorsement. (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 3 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and

may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(h) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

Section 4. Section 16-4-301, MCA, is amended to read:

"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance. (1) (a) ~~Any association or corporation~~ *An organization or institution that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, that is organized and operated to raise funds for a needy person, or that is an accredited Montana postsecondary school and* ~~conducting a picnic, convention, fair, civic or community enterprise, or sporting event is, in the discretion of the department, entitled to~~ *that conducts a special event may receive* a special permit to sell beer and table wine to the patrons of that *special* event~~, and except as provided in subsection (1)(c), the beer and wine must be~~

~~consumed within the enclosure in which the event is held~~. *An organization may receive up to three special permits a year.*

(b) A civic league or organization that has a tax-exempt designation under section 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(4), as amended, or an organization authorized by an accredited Montana postsecondary school to engage in fundraising activities for intercollegiate athletics that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, may receive up to 12 special permits a year to sell beer and table wine. For purposes of fundraising activities for intercollegiate athletics, only one organization for each Montana postsecondary school may be authorized to apply for and receive special permits under this section. All net earnings from the sale of beer and table wine must be contributed to the state of Montana or a political subdivision of the state or must be devoted to purposes required of entities under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended.

(c) An association or corporation engaged in professional sporting contests or junior hockey contests may receive one special permit to sell beer and table wine covering the entire season of play if:

(i) the association or corporation is sanctioned by a sports organization that regulates the specific sport;

(ii) the season of play of the sport is specified in advance;

(iii) an admission fee to the contests is charged; and

(iv) the contest events are held in facilities that provide seating for at least 1,000 patrons.

(d) A chamber of commerce or business league that has a tax-exempt designation under section 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(6), as amended, may receive up to 12 special permits a year to sell beer and table wine. A chamber of commerce may not use one of its special permits for an event conducted by a business league and a business league may not use one of its permits for an event conducted by a chamber of commerce. The chamber of commerce or business league receiving a special permit must obtain liquor liability insurance for any event it conducts.

(e) The beer and wine sold under this subsection (1) must be consumed at the time when and within the enclosure where the special event, activity, or sporting contest is held.

~~(b)~~*(f)* ~~The~~ *An* application ~~of the association or corporation~~ *for a special permit* must be presented 3 days in advance, *but the department may, for good cause, waive the 3-day requirement.* ~~and~~ *The application* must describe the location of the enclosure where the *special* event, *activity, or sporting contest* is to be held, the nature of the *special* event, *activity, or sporting contest*, and the period during which it is contemplated that the *special* event, *activity, or sporting contest* will be held. *An application for a permit for professional sporting contests or junior hockey contests under subsection (1)(c) must provide the inclusive dates of the season of play for the sporting contest.* The application must be accompanied by the amount of the permit fee and a written statement of approval of the premises where the *special* event, *activity, or sporting contest* is to be held issued by the local law enforcement agency that has jurisdiction over the premises ~~where the event is to be held~~.

~~(c) The permit issued to the association or corporation is a special permit but does not authorize the sale of beer and table wine except starting 1 day before~~

~~the regular period when events are being held upon the grounds, during the period described in the application, and for 1 day after the period described in the application.~~

~~(d)~~*(g)* A special permit issued under this subsection (1) for the purpose of selling and serving beer at ~~an~~ *a special* event, *activity, or sporting contest* conducted on the premises of a county fairground or public sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

~~(e)~~*(h)* For the purposes of this subsection (1), a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization otherwise licensed under this code is an ~~association entitled to~~ *organization that may receive* special permits for three *special* events a year, as described in subsection (1)(a), to sell beer and table wine. All net proceeds must go to the post or lodge acquiring the special permit.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code ~~is, in the discretion of the department~~ *may receive*, without notice or hearing as provided in 16-4-207, ~~entitled to~~ a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at the post or lodge to members and their guests only, to be consumed within the hall or building of the post or lodge.

(b) The application of a nationally chartered veterans' organization or lodge of a recognized national fraternal organization must describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit may be issued for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 special permits to any post or lodge during a calendar year."

Section 5. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500;

(ii) for each storage depot, $400;

(b) (i) each beer wholesaler, $400; each domestic winery producing more than 25,000 gallons of wine, $400; each domestic winery producing 25,000 gallons or less of wine, $200; each table wine distributor, $400;

(ii) for each subwarehouse, $400;

(c) each beer retailer, $200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the *following* rate*:*

(a) ~~of~~ $10 a day for each day that beer and table wine are sold at *events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c)* ~~those events lasting 2 or more days, but the fee may not exceed $300 for a series of scheduled sporting events~~*; and*

(b) $1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is $200; and

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by

the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 16, 2003

CHAPTER NO. 370

[SB 159]

AN ACT PROVIDING THAT CERTAIN PROPERTY OWNED BY A RAILROAD AND LEASED BY A NONPROFIT ORGANIZATION OR A GOVERNMENT ENTITY IS EXEMPT FROM PROPERTY TAXES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Property on railroad land leased by nonprofit organizations. (1) A building and appurtenant land or just the appurtenant land, not exceeding 2.5 acres, owned by a railroad as defined in 69-14-101 and leased for less than $100 a year to a nonprofit organization exempt from taxation under section 26 U.S.C. 501(c)(3) or to a government entity is exempt from property taxation if:

(a) the building was constructed on a railroad right-of-way by a railroad prior to the year 2000; and

(b) the property is directly used for purely public charitable purposes.

(2) A building and land exempted under this section are subject to fees and assessments for services and special improvements that are collected with property taxes.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Ap proved April 16, 2003

CHAPTER NO. 371

[SB 284]

AN ACT REVISING THE PROCEDURE A COUNTY AUDITOR IS REQUIRED TO FOLLOW TO PROCESS A CLAIM; ESTABLISHING TIMEFRAMES WITHIN WHICH INVESTIGATION OF CERTAIN CLAIMS MUST BE COMPLETED; PROVIDING TIMEFRAMES AND PROCEDURES FOR DISAPPROVING A CLAIM; AUTHORIZING A BOARD OF COUNTY COMMISSIONERS, UPON A MAJORITY VOTE, TO ORDER PAYMENT OF A CLAIM DISAPPROVED BY A COUNTY AUDITOR; PROVIDING FOR AN APPEAL TO DISTRICT COURT WITHIN 7 WORKING DAYS IF A BOARD OF COUNTY COMMISSIONERS ORDERS PAYMENT OF A DISAPPROVED CLAIM; AMENDING SECTION 7-6-2407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2407, MCA, is amended to read:

"7-6-2407. ~~Auditing~~ *Examination* and investigation of claims. (1) It ~~shall be~~ *is* the duty of persons holding claims against any county having a county auditor to present the ~~same~~ *claims* to the county auditor, ~~whose duty it~~ *who* shall ~~be to audit the same. The county auditor shall also~~ investigate and examine all claims presented. ~~to him and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval endorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose.~~

(2) (a) Within 30 days of receipt of a claim in the office of the county auditor, the county auditor shall approve the claim, disapprove the claim, or notify the board of county commissioners, the claimant, and any affected county elected officials or department heads in writing that the claim requires further investigation.

(b) Further investigation of a claim must be completed and an approval or disapproval of payment of the claim must be issued within 60 days from the date that the county auditor provides the written notification required in subsection (2)(a).

(3) (a) The county auditor shall report approved claims to the board of county commissioners at its regular meeting after investigations into the claims have been completed.

(b) The county auditor shall keep a complete record of all claims submitted and investigations and examinations of the claims.

~~(2)~~*(4)* In all counties having a county auditor:

(a) all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners ~~shall~~ *must* be investigated, examined, and inspected by the county auditor, who shall ~~endorse his approval or disapproval thereon~~ *approve or disapprove payment of the claims* before any warrant for the payment of the ~~same can~~ *claims may* be drawn;

(b) ~~no~~ *a* claim against the county ~~shall~~ *may not* be paid or *a* warrant drawn ~~therefor~~ *for the claim* unless the ~~same shall have~~ *claim has* the approval of the county auditor~~; provided, however, that the judge of the district court of the county where any~~. *If ~~claim has been disapproved by~~* the county auditor *disapproves payment of a claim:*

(i) the auditor shall, within 5 days of the disapproval, provide written documentation to the board of county commissioners, the claimant, and any affected county elected officials or department heads specifying the reasons for the disapproval;

(ii) the auditor shall, within 15 days of the disapproval, present documentation and testimony in support of the disapproval of the claim to the board of county commissioners in a public hearing at a properly noticed and regularly scheduled meeting of the board of county commissioners; and

(iii) the board of county commissioners may order the payment of the ~~same~~ *claim by a majority vote at a regular board meeting. If a majority of the board orders payment of the disapproved claim, the county auditor may appeal the decision to the district court within 7 working days. If the board's decision is not appealed within the required 7-day period, the claim must be paid*."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 16, 2003

CHAPTER NO. 372

[SB 334]

AN ACT INCREASING THE NUMBER OF REPRESENTATIVES WHO MAY BE HIRED BY A VENDOR PROMOTING THE VENDOR'S PRODUCT IN THE STATE; REQUIRING THAT A VACANCY IN THE ONE REQUIRED REPRESENTATIVE POSITION BE FILLED WITHIN 60 DAYS; AND AMENDING SECTION 16-3-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-107, MCA, is amended to read:

"16-3-107. Resident representatives required. (1) For the purposes of this section, "vendor" means a person, partnership, association, or corporation that sells liquor to the department.

(2) A vendor who desires to promote the sale of ~~his~~ *the vendor's* product in the state shall employ one representative and may employ ~~an~~ *two* additional ~~representative~~ *representatives* to promote the sale of the vendor's product. A

representative must be ~~or become after employment~~ a resident of the state *or become a resident after employment.* ~~If a vacancy occurs in a representative position, the vendor shall fill the position within 60 days after the vacancy occurs.~~

(3) If a vacancy occurs in the one required position, the vendor shall fill the position within 60 days after the vacancy occurs."

Ap proved April 16, 2003

CHAPTER NO. 373

[HB 50]

AN ACT GENERALLY REVISING THE MONTANA FOOD, DRUG, AND COSMETIC ACT; REDEFINING THE TERM "BOTTLED WATER" TO CONFORM TO FEDERAL LAW; ELIMINATING REQUIREMENTS FOR WATER BOTTLERS UNDER THE ACT; DEFINING "DIETARY SUPPLEMENT" AND ADDING THE TERM TO THE DEFINITION OF "FOOD"; CLARIFYING THAT A FOOD SERVICE ESTABLISHMENT MEANS A PLACE THAT SERVES FOOD AT RETAIL TO THE PUBLIC; CLARIFYING THE DEFINITION OF "RETAIL MEAT ESTABLISHMENT"; ELIMINATING PERMIT REQUIREMENTS FOR MANUFACTURING, PROCESSING, OR PACKAGING FOOD BECAUSE THOSE REQUIREMENTS ARE PROVIDED FOR ELSEWHERE IN STATE LAW; AMENDING SECTIONS 50-31-103, 50-31-110, 50-31-208, 50-31-312, AND 50-31-501, MCA; AND REPEALING SECTIONS 50-31-205, 50-31-206, 50-31-207, 50-31-236, AND 50-31-238, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

~~(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.~~

~~(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.~~

~~(4)~~*(2)* "Beef patty mix" means "hamburger" or "ground beef " to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

~~(5)~~*(3)* "Bottled water" means ~~carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption~~ *water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients, except that it may optionally contain safe and suitable antimicrobial agents.*

~~(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.~~

~~(7)~~*(4)* "Color" includes black, white, and intermediate grays.

~~(8)~~*(5)* (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

(b) The term does not include material that has been or is exempted under the federal act.

~~(9)~~*(6) (a)* "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act.

(b) The term does not include:

~~(a)~~*(i)* any tobacco or tobacco product;

~~(b)~~*(ii)* a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

~~(c)~~*(iii)* a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

~~(d)~~*(iv)* a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

~~(e)~~*(v)* a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

~~(10)~~*(7)* "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, ~~from~~ foreign or injurious contaminations.

~~(11)~~*(8)* "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

~~(12)~~*(9)* "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

~~(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.~~

~~(14)~~*(10)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~*(11)* "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; *or*

(b) to affect the structure or function of the body of humans or other animals.

(12) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and that:

(a) is advertised only as a food supplement;

(b) bears or contains one or more of the following ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical substance;

(iv) an amino acid;

(v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subsections (13)(b)(i) through (13)(b)(iv);

(c) conforms to any additional provisions for the definition of dietary supplement found at 21 U.S.C. 321.

~~(16) "Distilled water" means purified water that has been vaporized and condensed.~~

~~(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.~~

~~(18)~~*(13)* "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection ~~(18)(a)~~ *(14)(a)*, ~~(18)(b)~~ *(14)(b)*, or ~~(18)(c)~~ *(14)(c)* but does not include devices or their components, parts, or accessories.

~~(19)~~*(14)* "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

~~(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set forth in 21 CFR 103.35.~~

~~(21)~~*(15)* "Food" means:

(a) articles used for food or drink for humans or other animals;

(b) chewing gum; ~~and~~

(c) articles used for components of these articles*; and*

(d) dietary supplements.

~~(22)~~*(16)* (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) The term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

~~(23)~~*(17)* "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food *at retail* to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

~~(24)~~*(18)* "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef " may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

~~(25)~~*(19)* "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

~~(26)~~*(20)* "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

~~(27)~~*(21)* "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

~~(28)~~*(22)* "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

~~(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.~~

~~(30)~~*(23)* "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

~~(31)~~*(24)* "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

~~(32)~~*(25)* (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

~~(33)~~*(26)* "Person" includes an individual, partnership, corporation, and association.

~~(34)~~*(27)* "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide

Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

~~(35)~~*(28)* "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail *meat* establishment.

~~(36)~~*(29)* "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

~~(37)~~*(30)* "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food~~,~~ and the enclosure of the food in a package.

~~(38) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of the United States of America, 1980.~~

~~(39)~~*(31)* "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

~~(40)~~*(32)* "Retail *meat* establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

~~(41) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.~~

~~(42)~~*(33)* "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

~~(43) "Water-bottling plant" means a facility in which bottled water is produced.~~

~~(44) "Well water" means water that:~~

~~(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;~~

~~(b) is not modified in its mineral content; and~~

~~(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process.~~"

Section 2. Section 50-31-110, MCA, is amended to read:

"50-31-110. Certain agricultural chemicals not color additives. Subsections ~~(7)~~ *(5)* and ~~(8)~~ *(6)* of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical *that affects the color of produce of the soil, whether before or after harvest,* solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil ~~and thereby affecting its color, whether before or after harvest~~."

Section 3. Section 50-31-208, MCA, is amended to read:

"50-31-208. Sale of hamburger and beef patty mix. (1) ~~No~~ *A* food service establishment or retail *meat* establishment may*not* use the terms "hamburger",

"burger", or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail *meat* establishment selling or serving beef patty mix may refer to the product as "beef patty mix" or by any other term ~~which~~ *that* accurately informs the customer of the nature of the food product ~~which he is~~ *being* sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail *meat* establishment, a list of ingredients must appear on the menu or label~~,~~ or, if there is ~~no~~ *not a* menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term ~~which~~ *that* accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) ~~If there is no menu or label, the~~ *The* lettering on the placard must be at least 1 inch in height (72-point letters), in boldface, and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail *meat* establishment, the grade *of hamburger or ground beef*, as ~~defined~~ *enumerated* in 50-31-103~~(24)~~*(19)*, and the maximum fat and minimum lean content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) ~~of this section~~. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment."

Section 4. Section 50-31-312, MCA, is amended to read:

"50-31-312. Exemptions from new drug application requirement.(1) Section 50-31-311 does not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act (21 U.S.C. 355(i) or 357(d));

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug that is manufactured by an establishment licensed under 42 U.S.C. 262; or

(d) any drug that is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103~~(30)~~*(24)* do not apply to any drug, when the drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to the drug, that on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103~~(30)~~*(24)* as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act (21 U.S.C. 355)."

Section 5. Section 50-31-501, MCA, is amended to read:

"50-31-501. Prohibited acts. The following acts and the causing of the acts within the state of Montana are prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery ~~thereof~~ *of any food, drug, device, or cosmetic* for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of ~~50-31-205 or~~ 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking ~~which~~ *if the* guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking ~~to the same effect~~ signed by and containing the name and address of ~~the~~ *a* person residing in the state of Montana *and* from whom the person received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, ~~or removal of the whole or any part of the labeling of or the doing of~~ *or commission of* any other act with respect to a food, drug, device, or cosmetic *or the removal, in whole or in part, of the labeling of a food, drug, device, or cosmetic* if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or ~~of the~~ federal act;

(11) ~~the~~ using on the labeling of any drug or in any advertisement relating to the drug ~~of~~ any representation or suggestion that an application with respect to the drug is effective under 50-31-311 or that the drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor to maintain for transmittal or to transmit to any practitioner, licensed by applicable law to administer the drug *and* who makes written request for information as to the drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold or other printed matter as is approved under the federal act. This subsection does not exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug, ~~or~~ device, or container of a drug *or device*, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with

intent to sell, dispense, or dispose of, any drug, device, or any container of the drug or device with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed on the drug, device, or container in a manner prohibited by subsection (13);

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce ~~that~~ *a* trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint upon any drug, device, or container of the drug or device;

(16) the using by any person to the person's own advantage or revealing, other than to officers or employees of the department or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity~~, as defined in this chapter,~~ if the commodity is contained in a package or if there is affixed to that commodity a label ~~which~~ *that* does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that the persons:

(a) are engaged in the packaging or labeling of the commodities; or

(b) prescribe or specify by any means the manner in which the commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, *device*, or cosmetic ~~which~~ *that* fails to conform with the requirements of this chapter."

Section 6. Repealer. Sections 50-31-205, 50-31-206, 50-31-207, 50-31-236, and 50-31-238, MCA, are repealed.

Ap proved April 17, 2003

CHAPTER NO. 374

[HB 67]

AN ACT GENERALLY REVISING AND UPDATING PROVISIONS GOVERNING PEDESTRIANS; ELIMINATING STATUTORY PROVISION FOR SCHOOL SAFETY PATROLS; PROHIBITING A VEHICLE OPERATOR FROM DRIVING PAST A SCHOOL CROSSING GUARD DIRECTING CHILDREN; DIRECTING WHERE A PEDESTRIAN MAY WALK WHEN SIDEWALKS OR SHOULDERS ARE NOT AVAILABLE; RESTRICTING STANDING ON A ROADWAY OR HIGHWAY FOR SOLICITING RIDES, BUSINESS, OR CONTRIBUTIONS; PROHIBITING A PERSON WHO IS UNDER THE INFLUENCE OF ALCOHOL OR ANY ILLEGAL DRUG FROM WALKING OR STANDING ON A ROADWAY OR SHOULDER EXCEPT IN AN AUTHORIZED CROSSWALK; REQUIRING PEDESTRIANS TO YIELD TO EMERGENCY VEHICLES; REQUIRING OPERATORS OF VEHICLES TO YIELD TO BLIND PEDESTRIANS; PROHIBITING PEDESTRIANS FROM ENTERING A RAILROAD GRADE CROSSING WHILE BARRIERS ARE CLOSED OR BEING OPENED OR CLOSED; AMENDING SECTIONS

20-3-106, 61-8-501, 61-8-502, 61-8-504, 61-8-506, 61-8-507, AND 61-8-508, MCA; AND REPEALING SECTION 20-1-408, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(18) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

~~(27) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;~~

~~(28)~~*(27)* provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(29)~~*(28)* upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

~~(30)~~*(29)* administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(31)~~*(30)* perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 2. Section 61-8-501, MCA, is amended to read:

"61-8-501. Pedestrians subject to traffic regulations. (1) *A pedestrian shall obey the instructions of any traffic control device that is specifically applicable to the pedestrian unless otherwise directed by a police officer.*

(2) Pedestrians ~~shall be~~ *are* subject to traffic control signals *and pedestrian control signals* at intersections as provided in 61-8-207 *and 61-8-208*. ~~unless required by local ordinance to comply strictly with such signals, but at~~

(3) At all other places, pedestrians ~~shall be~~ *are* accorded the privileges and ~~shall be~~ *are* subject to the restrictions ~~stated~~ *provided* in this part.

~~(2)~~*(4)* Local authorities ~~are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic control signal and~~ may by ordinance prohibit pedestrians from crossing ~~any~~ *a* roadway ~~in a business district or any designated highways~~ *within a local government's jurisdiction,* except in a *marked* crosswalk *or in an unmarked crosswalk at an intersection*."

Section 3. Section 61-8-502, MCA, is amended to read:

"61-8-502. Pedestrians' right-of-way in crosswalk — *school children*. (1) (a) Except as provided in subsection (1)(b), when traffic control signals are not in place or not in operation, the ~~driver~~ *operator* of a vehicle shall yield the right-of-way, slowing down or stopping if ~~need be to so yield~~ *necessary*, to a pedestrian crossing the roadway within a marked crosswalk or within an unmarked crosswalk at an intersection, but a pedestrian may not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impossible for the ~~driver~~ *operator* to yield. This provision does not apply under the conditions ~~stated~~ *provided* in 61-8-503(2).

(b) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection, the ~~driver~~ *operator* of a vehicle may make a right-hand turn if the pedestrian is in the opposite half of the roadway and is not in danger.

(2) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the ~~driver~~ *operator* of any other vehicle approaching from the rear may not overtake and pass the stopped vehicle.

(3) ~~It is unlawful for any~~ *A* person *may not* ~~to drive~~ *operate* a ~~motor~~ vehicle through a column of school children crossing a ~~street or highway~~ *roadway* or past a ~~member of the school safety patrol~~ *school crossing guard* while the ~~member of the school safety patrol~~ *crossing guard* is directing the movement of children across a ~~street or highway~~ *roadway* and while the ~~school safety patrol member~~ *crossing guard* is holding an official ~~signal~~ *sign* in the stop position."

Section 4. Section 61-8-504, MCA, is amended to read:

"61-8-504. ~~Drivers~~ *Operators* to exercise due care. Notwithstanding ~~the foregoing provisions of this part~~ *61-8-501 through 61-8-503*, ~~every driver~~ *an operator* of a vehicle shall exercise due care to avoid colliding with ~~any~~ *a* pedestrian or with ~~any~~ *a* person ~~operating a bicycle~~ *propelling a human-powered vehicle or using an assistive mobility device* upon ~~any~~ *a* roadway, ~~and~~ shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing ~~any~~ *a* child or ~~any~~ *an obviously* confused, ~~or~~ incapacitated, *or intoxicated* person upon a roadway."

Section 5. Section 61-8-506, MCA, is amended to read:

"61-8-506. Pedestrians on roadways *and highways*. (1) Where sidewalks are provided~~, it shall be unlawful for any pedestrian to~~ *and their use is practicable, a pedestrian may not* walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided, ~~any~~ *a* pedestrian*, other than an intoxicated pedestrian referred to in 61-8-508, who is* walking along and upon a highway ~~shall, when practicable,~~ *may* walk only on the ~~left side of the roadway or its shoulder facing traffic which may approach from the opposite direction~~ *shoulder, as far as practicable from the edge of the roadway.*"

Section 6. Section 61-8-507, MCA, is amended to read:

"61-8-507. Pedestrian soliciting rides, ~~or~~ business, *or contributions.* (1) ~~No~~ *A* person ~~shall~~ *may not* stand ~~in~~ *on* a roadway for the purpose of soliciting a ride~~, employment, or business from the occupant of any vehicle~~.

(2) ~~No~~ *A* person ~~shall~~ *may not* stand on ~~or in proximity to~~ a ~~street or~~ highway for the purpose of soliciting ~~the watching or guarding of any vehicle while parked or about to be parked on a street or highway~~ *employment, business, or contributions from the occupant of a vehicle unless the solicitation is authorized by the proper jurisdictional authority*."

Section 7. Section 61-8-508, MCA, is amended to read:

"61-8-508. Intoxicated pedestrian. ~~No~~ *Except in an authorized crosswalk, a* person ~~shall walk upon or along the highway while~~ *who is* under the influence of ~~intoxicating liquor~~ *alcohol or any drug may walk or stand in the public right-of-way, as defined in 60-1-103, but not on a roadway or a shoulder as is otherwise permissible under 61-8-506(2)*."

Section 8. Pedestrian to yield to authorized emergency vehicle. (1) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal that meets the requirements of 61-9-401(4) and visual signals that meet the requirements of 61-9-402 or of a police vehicle that is properly making use of an audible signal, a pedestrian shall yield the right-of-way to the authorized emergency vehicle or police vehicle.

(2) This section does not relieve the operator of an authorized emergency vehicle or a police vehicle from the duty to drive with due regard for the safety of all individuals using the highway or from the duty to exercise due care to avoid colliding with a pedestrian.

Section 9. Operator of vehicle to yield to blind pedestrian. On a way of the state open to the public, the operator of a vehicle shall yield the right-of-way to a blind pedestrian who is carrying a visible white cane or who is accompanied by a guide dog.

Section 10. Pedestrians at railroad crossings. A pedestrian may not pass through, around, over, or under a crossing gate or barrier at a railroad grade crossing while the gate or barrier is closed or is being opened or closed.

Section 11. Repealer. Section 20-1-408, MCA, is repealed.

Section 12. Codification instruction. [Sections 8 through 10] are intended to be codified as an integral part of Title 61, chapter 8, part 5, and the provisions of Title 61, chapter 8, part 5, apply to [sections 8 through 10].

Ap proved April 17, 2003

CHAPTER NO. 375

[HB 98]

AN ACT GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF ATHLETICS IS DISCRETIONARY; PROVIDING THAT CERTAIN BOXING AND WRESTLING LICENSES ARE NOT RENEWABLE; PROVIDING THAT THE ADOPTION OF CERTAIN RULES BY THE BOARD OF PUBLIC ACCOUNTANTS IS DISCRETIONARY; PROVIDING THAT THE CREDENTIALS OF A FOREIGN ACCOUNTANT BE RECOGNIZED RATHER THAN REGISTERED; EXPANDING THE GROUNDS FOR WAIVING AN EXAMINATION FOR FOREIGN OR OUT-OF-STATE CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS; PROVIDING THAT THE BOARD OF REALTY REGULATION MAY REQUIRE SPECIFIC PERFORMANCE LEVELS OF LICENSEES WHO TAKE CERTAIN KINDS OF CONTINUING EDUCATION COURSES; REQUIRING FINGERPRINT CHECKS FOR LICENSE APPLICANTS BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; CLARIFYING LICENSE APPLICATION REQUIREMENTS FOR APPLICANTS OTHER THAN INDIVIDUALS APPLYING FOR LICENSURE BY THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A DIRECTORY OF REAL ESTATE BROKERS AND SALESPERSONS; ELIMINATING THE REQUIREMENT FOR MAINTAINING A ROSTER OF LICENSED AND CERTIFIED REAL ESTATE APPRAISERS; AMENDING SECTIONS 23-3-405, 23-3-501, 37-50-102, 37-50-203, 37-50-301, 37-50-311, 37-50-312, 37-50-313, 37-50-335, 37-51-204, 37-60-303, AND 37-60-304, MCA; REPEALING SECTIONS 37-51-307 AND 37-54-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) *(a)* The rules must include ~~but are not limited to the following:~~

~~(a)~~ the granting, ~~renewal,~~ suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. ~~Such~~ *License* qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

~~(b)~~*(i)* the labeling of a match as a championship match;

~~(c)~~*(ii)* the number and length of rounds and the weight of gloves;

~~(d)~~*(iii)* the extent and timing of the physical examination of contestants;

~~(e)~~*(iv)* the attendance of a referee and ~~his~~ *the referee's* powers and duties; and

~~(f)~~*(v)* review of decisions made by officials.

(3) The rules ~~shall~~ *must* meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for

the protection of the health and safety of the contestants. The rules ~~shall~~ *must* require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and ~~shall~~ *must* provide for the qualifications of judges, referees, and seconds and for ~~the~~ *their* payment ~~of such officials~~ by the promoter."

Section 2. Section 23-3-501, MCA, is amended to read:

"23-3-501. Licenses — fees. (1) The board may issue a~~renewable~~ license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue ~~renewable~~ licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule ~~and may be renewed upon payment of a fee set by the board~~.

(4) Each application for a license under this section must be accompanied by a fee, *commensurate with costs for that license, as provided in 37-1-134, as* set by the board~~, commensurate with costs related to the particular license as provided in 37-1-134~~."

Section 3. Section 37-50-102, MCA, is amended to read:

"37-50-102. Exemptions. ~~Nothing contained in this~~ *This* chapter ~~shall~~ *does not* prohibit any person *who is* not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314, ~~or~~ a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter, or a foreign accountant ~~registered~~ *whose credentials have been recognized* under 37-50-313~~;~~. ~~provided that such~~ *However, the* employee or assistant~~shall~~ *may* not issue any accounting or financial statement ~~over his~~ *in the employee's or assistant's* name."

Section 4. Section 37-50-203, MCA, is amended to read:

"37-50-203. Rules of the board. (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

~~(d) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any corporation failing to comply with the standards;~~

~~(e)~~*(d)* rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and

~~(f)~~*(e)* rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

(3) The board may adopt rules:

(a) governing partnerships, corporations, and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations;

(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a corporation or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i); and

(c) establishing education and experience qualifications for out-of-state and foreign accountants seeking authorization to practice in Montana."

Section 5. Section 37-50-301, MCA, is amended to read:

"37-50-301. Illegal use of title. (1) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant ~~who has registered~~ *whose credentials are recognized* under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received.

(2) A partnership or corporation may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335.

(3) A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

(4) A partnership or corporation may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation is composed of public accountants unless it is registered as required under 37-50-335.

(5) A person, corporation, or partnership may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA".

However, a foreign accountant ~~who has registered~~ *whose credentials are recognized* under 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

(6) A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties.

(7) A person may not sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation conforms to the requirements of 37-50-330 and is registered as required under 37-50-335.

(8) A person may not assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide partnership or corporation that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335. However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner."

Section 6. Section 37-50-311, MCA, is amended to read:

"37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible ~~therefor~~ who is the holder of*:*

(1) a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state*;* ~~or~~

(2) ~~is the holder of~~ a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in ~~such~~ *that* country, comparable to that of a certified public accountant in this state, which is then in full force and effect~~, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued~~*; or*

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application."

Section 7. Section 37-50-312, MCA, is amended to read:

"37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible ~~therefor~~ who is the holder of*:*

(1) a license as a licensed public accountant, then in full force and effect, issued under the laws of any state*;* ~~or is~~

(2) ~~the holder of~~ a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in ~~such~~ *that* country, comparable to that of a licensed public accountant in this state, which is then in full force and effect~~, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.~~*; or*

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application."

Section 8. Section 37-50-313, MCA, is amended to read:

"37-50-313. ~~Registration~~ *Recognition of credentials* of foreign accountants — restriction on title used — *practice.* *(1)* The board may in its discretion ~~permit the registration~~ *recognize the credentials* of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in ~~such~~ *that* country. A person ~~so registered~~ *whose credentials are recognized* ~~shall~~ *may* use only the title under which ~~he~~ *the person* is generally known in ~~his~~ *that* country, followed by the name of the country from which ~~he~~ *the person* received ~~his~~ *the* certificate, license, or degree.

(2) A person whose credentials are recognized by the board may practice public accounting under the terms and conditions established by the board."

Section 9. Section 37-50-335, MCA, is amended to read:

"37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, ~~or~~ *by* a partnership or corporation of certified public accountants, ~~or~~ by a licensed public accountant, ~~or~~ *by* a partnership or corporation of licensed public accountants, or by ~~one registered~~ *a foreign accountant recognized* under 37-50-313 ~~shall~~ *must* be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314."

Section 10. Section 37-51-204, MCA, is amended to read:

"37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 *and subsection (3) of this section*, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required under 37-51-310 when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction."

Section 11. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. (1) Except as ~~otherwise specified in this section~~ *provided in subsection (8)*, an applicant for licensure under this chapter *is subject to the provisions of this section and* shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or its equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service;

(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; and

(e) has fulfilled any other requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

~~(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.~~

~~(7)~~*(6)* The board ~~shall~~ *may* require an applicant to demonstrate by written examination ~~such~~ additional qualifications as the board may by rule require.

(7) Except for an applicant subject to the provisions of subsection (8), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(8) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

(b) The board shall establish by rule the license application procedure and application fee for business entities described in subsection (8)(a).

(c) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (8)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 12. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) *Except as provided in 37-60-303(8), an application* ~~Application~~ for a license ~~shall~~ *must* be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application ~~shall~~ *must* be made under oath and ~~shall~~ *must* include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) ~~two~~ *one* recent ~~photographs~~ *photograph* of the applicant, of a type prescribed by the board, and two classifiable sets of ~~his~~ *the applicant's* fingerprints;

(f) a statement of ~~his~~ *the applicant's* age and experience qualifications;*and*

(g) ~~such~~ other information, evidence, statements, or documents as may be prescribed by the rules of the board~~; and~~

~~(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager~~.

(3) The board shall verify the statements in the application and the applicant's moral character.

(4) The submittal of fingerprints must be a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(5) The board shall send written notification to the chief of police, ~~the~~ sheriff, and ~~the~~ county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."

Section 13. Repealer. Sections 37-51-307 and 37-54-110, MCA, are repealed.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Effective date. [This act] is effective July 1, 2003.

Ap proved April 17, 2003

CHAPTER NO. 376

[HB 104]

AN ACT REVISING THE QUALIFICATIONS FOR A VOLUNTARY PURCHASING POOL; DECREASING THE NUMBER OF REQUIRED EMPLOYEES FROM 1,000 TO 51; ELIMINATING THE OPTION OF USING RATING ARRANGEMENTS TO OFFER DISABILITY INSURANCE POLICIES, CERTIFICATES, OR CONTRACTS THROUGH A POOL THAT RATES EACH MEMBER EMPLOYER SEPARATELY; REQUIRING CONTRACTS OFFERED THROUGH A POOL TO RATE AN ENTIRE GROUP AS A WHOLE AND TO CHARGE EACH INSURED PERSON BASED ON A COMMUNITY RATE WITHIN THE COMMON GROUP AS PERMITTED BY LAWS GOVERNING GROUP DISABILITY INSURANCE; AND AMENDING SECTION 33-22-1815, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1815, MCA, is amended to read:

"33-22-1815. Qualifications for voluntary purchasing pool. A voluntary purchasing pool of disability insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance with the following provisions:

(1) It contains at least ~~1,000~~ *51* eligible employees.

(2) It establishes requirements for membership. The voluntary purchasing pool shall accept for membership any small employers and may accept for membership any employers with ~~more than 50~~ *at least 51* eligible employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may not exclude any small employers that otherwise meet the requirements for membership on the basis of claim experience, occupation, or health status.

(3) It holds an open enrollment period at least once a year during which new members can join the voluntary purchasing pool.

(4) It offers coverage to eligible employees of member employers and to the employees' dependents. Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).

(5) It does not assume any risk or form self-insurance plans among its members.

(6) (a) ~~It has the option of using the following types of rating arrangements with the disability insurance policies, certificates, or contracts:~~

~~(i) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate each member employer separately are subject to the provisions of this part.~~

~~(ii)~~ Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool ~~that~~ *must* rate the entire group as a whole ~~must~~ *and* charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.

(b) Rates for voluntary purchasing pool groups must be set pursuant to the provisions of 33-22-1809.

~~(b)~~*(c)* At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool, by member employers, or by eligible employees and their dependents.

(7) A person marketing disability insurance policies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer."

Ap proved April 17, 2003

CHAPTER NO. 377

[HB 110]

AN ACT ELIMINATING THE AMOUNT FOR WHICH AN INJURED WORKER IS LIABLE TO ALL MEDICAL SERVICE PROVIDERS, EXCEPT FOR A HOSPITAL EMERGENCY DEPARTMENT, FOR TREATMENT RELATED TO A COMPENSABLE INJURY OR OCCUPATIONAL DISEASE AFTER THE INITIAL VISIT; PROVIDING THAT A WORKER IS NOT RESPONSIBLE FOR THE COST OF A SUBSEQUENT VISIT TO AN EMERGENCY DEPARTMENT FOR TREATMENT REQUESTED BY AN INSURER; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment was required.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment

that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility or a critical access hospital pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

~~(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as~~

~~requested by the insurer or is a visit to a preferred provider as requested by the insurer.~~

~~(b)~~*(7) (a)* After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

~~(c)~~*(b)* "Visit", as used in ~~subsections (7)(a) and (7)(b)~~ *this subsection (7)*, means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

~~(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605.~~

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is for treatment requested by an insurer."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to claims for treatment filed on or after [the effective date of this act].

Ap proved April 17, 2003

CHAPTER NO. 378

[HB 130]

AN ACT REVISING THE PROMPT PAY PROVISIONS FOR INSURERS; MODIFYING THE DEFINITION OF "PROOF OF LOSS"; DEFINING "CLAIM DOCUMENTATION"; REVISING THE TIME PERIOD FOR PAYMENT OF CLAIMS BY AN INSURER; REQUIRING PROMPT PAYMENT OF MOTOR VEHICLE DAMAGE CLAIMS; REVISING THE ADMINISTRATIVE PENALTY PROVISIONS FOR FAILURE OF AN INSURER TO PROMPTLY PAY CLAIMS; PROVIDING THAT COMPLIANCE OR NONCOMPLIANCE WITH PROMPT PAYMENT REQUIREMENTS MAY NOT BE USED AS A BASIS FOR PRIVATE CAUSE OF ACTION OR ADMISSIBLE AS EVIDENCE IN A PRIVATE ACTION; AND AMENDING SECTIONS 33-18-231, 33-18-232, AND 33-18-233, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-231, MCA, is amended to read:

"33-18-231. State administrative process to provide timely payment of ~~medical benefits~~ *medical benefits* — definitions. In 33-18-231 through 33-18-235 the following definitions apply:

(1) "Claim documentation" means standard claims forms or other documentation routinely accepted by insurers as proof of loss.

~~(1)~~*(2)* "Insurer" means ~~any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit~~

~~health care corporation, health maintenance organization, self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state~~ *any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state*.

~~(2)~~*(3)* "Proof of loss" means any ~~document accepted~~ *claim documentation received* by an insurer upon which payment of ~~benefits~~ *claims* is ~~made~~ *requested*."

Section 2. Section 33-18-232, MCA, is amended to read:

"33-18-232. Time for payment of claims. (1) ~~If~~ *An insurer shall pay or deny a claim* within 30 days after receipt of a proof of loss~~, the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer~~ *unless the insurer makes a reasonable request for additional information or documents in order to evaluate the claim. If an insurer makes a reasonable request for additional information or documents, the insurer shall pay or deny the claim within 60 days of receiving the proof of loss unless the insurer has notified the insured, the insured's assignee, or the claimant of the reasons for failure to pay the claim in full or unless the insurer has a reasonable belief that insurance fraud has been committed and the insurer has reported the possible insurance fraud to the commissioner. This section does not eliminate an insurer's right to conduct a thorough investigation of all the facts necessary to determine payment of a claim.*

(2) ~~Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay became unreasonable.~~ *If an insurer fails to comply with this section and the insurer is liable for payment of the claim, the insurer shall pay an amount equal to the amount of the claim due plus 10% annual interest calculated from the date on which the claim was due. For purposes of calculating the amount of interest, a claim is considered due 30 days after the insurer's receipt of the proof of loss or 60 days after receipt of the proof of loss if the insurer made a reasonable request for information or documents. Interest payments must be made to the person who receives the claims payment.*

(3) A private cause of action under 33-18-201 or 33-18-242 may not be based on the compliance or noncompliance with the requirements of this section and

evidence of compliance or noncompliance with this section is not admissible in any private action based on 33-18-201 or 33-18-242."

Section 3. Section 33-18-233, MCA, is amended to read:

"33-18-233. Administrative penalty for failure to pay promptly. (1) The commissioner may, after a hearing, impose an administrative fine as ~~set forth in subsection (2)~~ *provided in 33-1-317* on an insurer if ~~he~~ *the commissioner* finds that the insurer as a general course of business practice in this state fails to:

(a) use due diligence in processing all claims;

(b) pay claims in a timely manner;

(c) provide proper notice, when required, with respect to the reasons for the insurer's failure to make claim payments when due; ~~or~~

(d) pay, without just cause, proper claims arising under coverage provided by its policies, whether ~~such~~ *the* claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to ~~such~~ *the* third person, or in favor of any other person entitled to the benefits of a policy*; or*

(e) pay interest pursuant to 33-18-232(2).

~~(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed $1,000 for each separate violation.~~

~~(3)~~*(2)* If an insurer can demonstrate that it has consistently paid 90% of the total *dollar* amount outstanding in claims *to each claimant* within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine ~~imposed under subsection (2)~~ *described in subsection (1)*."

Section 4. Prompt payment of motor vehicle damage claims. (1) Except for providers who are prepaid or agree to a different payment schedule, an insurer shall make an offer to pay or shall pay all approved claims for covered services or damages that solely involve the recovery of property damages in an amount of $2,500 or less arising out of the ownership, maintenance, or use of a motor vehicle within 30 working days of receipt of a proof of loss that is correctly completed and submitted to the insurer.

(2) Subsection (1) does not apply to an insurer who has notified the insured or the insured's assignee of the reasons for the insurer's failure to pay the claim in full or to an insurer that has made a reasonable request for additional information or documents.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [section 4].

Ap proved April 18, 2003

CHAPTER NO. 379

[HB 141]

AN ACT REDEFINING THE CRIMINAL CONDUCT OF AND INCREASING THE PENALTIES FOR FLEEING FROM OR ELUDING A PEACE OFFICER; AND AMENDING SECTIONS 61-5-205, 61-8-301, 61-8-715, 61-9-402, AND 61-9-431, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fleeing from or eluding peace officer. (1) A person operating a motor vehicle commits the offense of fleeing from or eluding a peace officer if a uniformed peace officer operating a police vehicle in the lawful performance of the peace officer's duty gives the person a visual or audible signal by hand, voice, emergency light, or siren directing the person to stop the motor vehicle and the person knowingly fails to obey the signal by increasing the speed of the motor vehicle, continuing at a speed that is 10 or more miles an hour above the applicable speed limit, extinguishing the motor vehicle's lights, or otherwise fleeing from, eluding, or attempting to flee from or elude the peace officer.

(2) (a) Except as provided in subsection (2)(b), a person convicted of or pleading guilty or nolo contendere to an offense under subsection (1) shall be imprisoned for a term not to exceed 1 year or fined an amount not to exceed $2,000, or both.

(b) A person convicted of an offense of fleeing from or eluding a peace officer during which the person causes serious bodily injury to or the death of any other person shall be imprisoned for a term not to exceed 10 years or fined an amount not to exceed $10,000, or both.

Section 2. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon proper authority. (1) The department upon proper authority shall revoke the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(e) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; ~~or~~

(g) fleeing from or eluding a peace officer; or

~~(g)~~*(h)* negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense."

Section 3. Section 61-8-301, MCA, is amended to read:

"61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if the person:

(a) operates a vehicle in willful or wanton disregard for the safety of persons or property; *or*

~~(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or~~

~~(c)~~*(b)* operates a vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus that has stopped and is displaying the visual flashing red signal, as provided in 61-8-351 and 61-9-402. This subsection~~(1)(c)~~ *(1)(b)* does not apply to situations described in 61-8-351(5).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

(3) A person who is convicted of the offense of reckless driving is subject to the penalties provided in 61-8-715."

Section 4. Section 61-8-715, MCA, is amended to read:

"61-8-715. Reckless driving — reckless endangerment of highway workers — penalty. (1) Except as provided in subsection ~~(3)~~ *(2)*, a person convicted of reckless driving under 61-8-301(1)(a) or ~~(1)(c)~~ *(1)(b)* or convicted of reckless endangerment of highway workers under 61-8-315 shall be punished upon a first conviction by imprisonment for a term of not more than 90 days, by a fine of not less than $25 or more than $300, or both. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 10 days or more than 6 months, by a fine of not less than $50 or more than $500, or both.

~~(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than $300 or more than $500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than $500 or more than $1,000.~~

~~(3)~~*(2)* A person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person shall be punished by a fine in an amount not exceeding $10,000, by incarceration for a term not to exceed 1 year, or both. Section 61-8-351(6) does not apply to a prosecution under 61-8-301~~(1)(c)~~*(1)(b)* that is punishable under this subsection."

Section 5. Section 61-9-402, MCA, is amended to read:

"61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section. The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no

greater than is reasonable and proper under the conditions existing at the point of operation.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(a) The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation subject to the provisions of 61-8-209 and 61-8-303.

(b) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (4)(a).

(5) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-1-118 may display blue lights, lenses, or globes.

(6) A police car and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(7) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(8) A violation of 61-9-402(4)(a) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715~~(2)~~*(1)*."

Section 6. Section 61-9-431, MCA, is amended to read:

"61-9-431. Use of warning signs, flares, reflectors, lanterns, flag persons. (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "hazard ahead", "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715~~(2)~~*(1)*."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61 apply to [section 1].

Ap proved April 17, 2003

CHAPTER NO. 380

[HB 145]

AN ACT GENERALLY REVISING THE STATE INSURANCE CODE; ALLOWING INSURANCE COMPANIES TO USE BOOK-ENTRY SYSTEMS WITH RESPECT TO THEIR SECURITIES AND PROVIDING THE INSURANCE COMMISSIONER WITH RULEMAKING AUTHORITY; DEFINING "DISABILITY INCOME INSURANCE"; MODIFYING REQUIREMENTS AND PENALTIES FOR SURPLUS LINES PRODUCERS; PROVIDING THAT CERTAIN FEES AND PENALTIES BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE STATE AUDITOR RATHER THAN DEPOSITING THEM INTO THE GENERAL FUND; REVISING VARIOUS INCORPORATION REQUIREMENTS; CHANGING REPORTING REQUIREMENTS WITH RESPECT TO AN INDIVIDUAL OBTAINING 10 PERCENT OR MORE OF ANY CLASS OF EQUITY SECURITY IN A DOMESTIC STOCK INSURANCE COMPANY; REVISING THE DEFINITION OF "INSOLVENT INSURER"; CHANGING THE PENALTY FOR MISAPPROPRIATION OF INSURANCE PREMIUMS; MODIFYING INCONTESTABILITY PROVISIONS FOR DISABILITY BENEFITS AND CERTAIN DEATH BENEFITS; ALLOWING A GROUP INSURER TO CONTRACT WITH ANOTHER INSURER FOR CONVERSION POLICIES; MODIFYING COVERAGE FOR WELL-CHILD CARE; MODIFYING THE DEFINITION OF "THEFT" TO INCLUDE MISAPPROPRIATION OF INSURANCE PREMIUMS; AMENDING SECTIONS 33-1-408, 33-1-705, 33-1-1202, 33-2-115, 33-2-307, 33-2-326, 33-2-708, 33-3-201, 33-3-441, 33-4-101, 33-4-202, 33-10-102, 33-10-207, 33-16-403, 33-17-503, 33-17-511, 33-17-1102, 33-17-1204, 33-20-101, 33-20-103, 33-20-105, 33-20-114, 33-20-1202, 33-20-1203, 33-20-1204, 33-20-1205, 33-20-1206, 33-20-1207, 33-20-1209, 33-20-1210, 33-20-1213, 33-22-101, 33-22-107, 33-22-303, 33-22-512, 33-22-1512, 33-22-1513, 33-23-212, 33-30-102, 33-30-107, 33-30-204, 33-31-111, 33-31-212, 33-35-306, 45-6-301, AND 50-3-109, MCA; AND REPEALING SECTION 17-2-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 4] is to authorize domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates, subject to appropriate rules adopted by the commissioner.

Section 2. Definitions. As used in this chapter, the following definitions apply:

(1) "Clearing corporation" has the meaning provided in 30-8-112, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business in the foreign country, a clearing corporation may include a corporation that is organized or existing under the laws of any foreign country and is legally qualified under those laws to effect transactions in securities by computerized book entry.

(2) "Direct participant" means a bank, trust company, or other institution that maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(3) "Federal reserve book-entry system" means the computerized systems sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and those agencies and instrumentalities, respectively, in federal reserve banks through banks that are members of the federal reserve system or that otherwise have access to the computerized systems.

(4) "Member bank" means a national bank, state bank, or trust company that is a member of the federal reserve system and through which an insurance company participates in the federal reserve book-entry system.

(5) "Security" has the meaning provided in 30-8-112.

Section 3. Use of book-entry systems — rules. (1) (a) Other provisions of law may not be construed as prohibiting a domestic insurance company from depositing or arranging for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the federal reserve book-entry system.

(b) When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities. Certificates representing securities of small denominations may be merged into one or more certificates of larger denominations.

(c) The records of any member bank through which an insurance company holds securities in the federal reserve book-entry system and the records of any custodian bank through which an insurance company holds securities in a clearing corporation at all times must show that the securities are held for the insurance company and for which accounts of the insurance company.

(d) Ownership and other interests in securities subject to this subsection (1) may be transferred by bookkeeping entry on the books of a clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing the securities.

(2) The commissioner may adopt rules that include but are not limited to rules governing the deposit by insurance companies of securities with clearing corporations and in the federal reserve book-entry system and rules pertaining to evidence that must be provided to the commissioner with respect to the recording of securities.

Section 4. Deposit of securities by insurance companies. (1) Securities qualified for deposit under [sections 1 through 4] may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system may not be withdrawn by the insurance company without the approval of the commissioner.

(2) An insurance company holding securities in the manner provided for in this section shall provide to the commissioner evidence issued by its custodian or member bank through which the insurance company has deposited the securities in a clearing corporation or through which the securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian, other direct participant, or member bank and that the records of the custodian,

other direct participant, or member bank reflect that the securities are held subject to the order of the commissioner.

Section 5. Disability income insurance. "Disability income insurance" means an individual or group policy of insurance that primarily provides payment to or for the benefit of the policyholder or certificate holder based, in whole or in part, upon lost wages or other earned income or business or financial losses as a result of an inability to work due to sickness, injury, or a combination of sickness and injury.

Section 6. Section 33-1-408, MCA, is amended to read:

"33-1-408. Conduct of examinations — records — correction of accounts — appraisals. (1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, ~~the~~ *an* examiner shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the NAIC. The commissioner may also employ other guidelines or procedures as the commissioner considers appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners is grounds for suspension, refusal, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. A proceeding for suspension, revocation, or refusal of any license or authority must be conducted pursuant to 33-1-318 *and 33-1-701*.

(3) The commissioner or any examiner has the power to issue subpoenas, administer oaths, and examine under oath any person concerning any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or to produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this part, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining the personnel must be borne by the company that is the subject of the examination.

(5) This part may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in any legal or regulatory action.

(6) This part may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may consider appropriate."

Section 7. Section 33-1-705, MCA, is amended to read:

"33-1-705. Rehearing. Upon written request of a party to a hearing filed with the commissioner within 30 days after any order made pursuant to ~~a~~ *the* hearing has been mailed or delivered to the persons entitled to receive the ~~same~~ *order*, the commissioner may~~, in his discretion,~~ grant a rehearing or reargument of the matters involved in ~~such~~ *the* hearing. ~~Notice of such rehearing or reargument shall be given as provided in 33-1-703.~~"

Section 8. Section 33-1-1202, MCA, is amended to read:

"33-1-1202. Insurance fraud. A person commits the act of insurance fraud when the person:

(1) for the purpose of obtaining any money or benefit, presents or causes to be presented to any insurer, purported insurer, ~~broker~~ *producer*, or ~~agent~~ *administrator, as defined in 33-17-102,* any written or oral statement, including computer-generated documents, containing false, incomplete, or misleading information concerning any fact or thing material to, as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy;

(2) assists, abets, solicits, or conspires with another to prepare or make any written or oral statement containing false, incomplete, or misleading information concerning any fact that is intended to be presented to any insurer or purported insurer or in connection with, material to, or in support of any claim for payment or other benefit pursuant to an insurance policy or contract;

(3) presents or causes to be presented to or by an insurer, purported insurer, ~~broker~~ *producer*, or ~~agent~~ *administrator, as defined in 33-17-102,* a materially false or altered application of insurance;

(4) accepts premium money knowing that coverage will not be provided;

(5) as a health care provider, submits a false or altered bill or report of physical condition to an insurer; or

(6) offers or accepts a direct or indirect inducement to file a false statement of claim with the intent of deceiving an insurer."

Section 9. Section 33-2-115, MCA, is amended to read:

"33-2-115. Application for certificate of authority. To apply for an original certificate of authority, an insurer shall file with the commissioner its application ~~therefor~~ accompanied by the applicable fees as specified in 33-2-708, showing its name, location of its home office or principal office in the United States, if an alien insurer, kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and ~~such~~ *any* additional information ~~as~~ *that* the commissioner may reasonably require~~,~~. ~~together with~~ *The application must be accompanied by* the following documents, as applicable:

(1) if a foreign insurer, a copy of its corporate charter or articles of incorporation, with all amendments ~~thereto~~, certified by the public officer with whom the originals are on file in the state or country of domicile;

(2) if a mutual insurer, a copy of its bylaws as amended, certified by its secretary or other officer having custody ~~thereof~~ *of the bylaws*;

(3) if a reciprocal insurer, copies of the power of attorney of its attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-fact;

(4) a copy of its financial statement as of *the preceding* December 31 ~~next preceding~~, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States;

(5) a copy of report of last examination, if any, made of the insurer, certified by the insurance supervisory official of its state of domicile or of entry into the United States;

(6) appointment of the commissioner pursuant to 33-1-601, as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public official having supervision of insurance in its state or country of domicile or state of entry into the United States, showing that it is authorized to transact the kinds of insurance proposed to be transacted in this state;

(8) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records;

(9) if a foreign insurer, certificate as to deposit if to be tendered pursuant to 33-2-111;

(10) *if a domestic insurer*, specimen copies of policies proposed to be offered in this state, together with premiums or premium rates applicable, or a declaration that ~~such~~ *the* rates as applicable will be those promulgated by designated rating organizations authorized to file ~~such~~ *the* rates in this state on behalf of the insurer."

Section 10. Section 33-2-307, MCA, is amended to read:

"33-2-307. Requirements for eligible surplus lines insurers. (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) ~~$10~~ *$15* million. An insurer possessing less than ~~$10~~ *$15* million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon factors of the quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $7 million.

(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and that is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

Section 11. Section 33-2-326, MCA, is amended to read:

"33-2-326. Penalties. A surplus lines insurance producer who in this state represents or aids an unauthorized insurer in violation of this part is ~~guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for a term no longer than 6 months, or both~~ *subject to the penalties and procedures in 33-1-317 and 33-1-318*."

Section 12. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, ~~.....100.00~~ *$100;*

(B) annual renewal of license, ~~.....10.00~~ *$10;*

(ii) surplus lines insurance producer license:

(A) application for original license and for issuance of license, if issued, ~~.....50.00~~ *$50;*

(B) annual renewal of license, ~~.....50.00~~ *$50;*

(iii) 50 cents for each page for copies of documents on file in the commissioner's office.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received

pursuant to 33-2-311, 33-2-705, ~~and~~ 33-28-201*, and 50-3-109*. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 13. Section 33-3-201, MCA, is amended to read:

"33-3-201. Incorporation. (1) This section applies to stock and mutual insurers ~~hereafter~~ incorporated in this state.

(2) Five or more individuals, none of whom are less than 18 years of age, may incorporate a stock insurer. Ten or more of ~~such~~ individuals*, none of whom are less than 18 years of age,* may incorporate a mutual insurer. At least a majority of the incorporators ~~shall~~ *must* be citizens of the United States. At least a majority of the incorporators ~~shall~~ *must* be residents of this state.

(3) The incorporators shall execute articles of incorporation in ~~quadruplicate~~ *triplicate* and acknowledge their execution ~~thereof~~ in the same manner as provided by law for the acknowledgment of deeds. The articles of incorporation ~~shall~~ *must* state the purpose for which the corporation is formed and ~~shall~~ *must* show:

(a) the name of the corporation. If a mutual *corporation*, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in jurisdictions ~~wherein~~ *where a* conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance ~~therein~~ *in that jurisdiction*.

(b) the duration of its existence, which may be perpetual;

(c) the kinds of insurance, as defined in this code, which the corporation is formed to transact;

(d) if a stock corporation, its authorized capital stock, the number of shares of common stock ~~into which divided~~*, and* the par value of each ~~such~~ share~~,~~. ~~which~~ *The* par value ~~shall~~ *must* be at least $1. Shares without par value or other than one class of voting common stock ~~shall~~ *are* not ~~be~~ authorized. The articles of incorporation may limit or deny present or future stockholders preemptive or preferential rights to acquire additional issues of the stock, ~~or~~ bonds, debentures, or other obligations convertible into stock, of the corporation, subject to the laws of Montana fixing the required representation and proportion of outstanding capital stock required to be represented and voted, for specified action, at any and all corporate meetings, elections, votes, or consent proceedings.

(e) if a stock corporation, the extent, if any, to which shares of its stock are subject to assessment;

(f) if a stock corporation, the number of shares subscribed, if any, by each incorporator;

(g) if a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. ~~Such~~ *Any* liability ~~shall~~ *must* be stated in the articles of incorporation but ~~shall~~ *may* not be less than one or more than six times the premium for the member's policy at the annual premium rate for a term of 1 year.

(h) the minimum, not less than 5, and the maximum, not more than 21, number of directors who ~~shall~~ constitute the board of directors and conduct the affairs of the corporation~~; also~~, *and* the names, addresses, and terms of the members of the initial board of directors. The term of office of initial directors ~~shall~~ *may not* be for ~~not~~ more than 1 year after the date of incorporation.

(i) the name of the county, and the city, town, or place within the county, in which its principal office or principal place of business is to be located in this state;

(j) ~~such~~ *any* other provisions, not inconsistent with law, ~~deemed~~ *considered* appropriate by the incorporators;

(k) the name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States."

Section 14. Section 33-3-441, MCA, is amended to read:

"33-3-441. Equity securities of domestic stock insurance company — statement of ownership. (1) When used in 33-3-441 through 33-3-447, the term "equity security" means*:*

(a) any stock or similar security;

(b) any security convertible, with or without consideration, into ~~such a~~ *an equity* security or carrying any warrant or right to subscribe to or purchase ~~such a~~ *an equity* security;

(c) any ~~such~~ warrant or right *described in subsection (1)(b)*; or

(d) any other security ~~which~~ *that* the commissioner ~~shall deem~~ *considers* to be of *a* similar nature and ~~consider~~ *considers* necessary or appropriate, by ~~such~~ rules as ~~he~~ *the commissioner* may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(2) ~~Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company or who is a director or an officer of such company shall file with the commissioner, within 10 days after he becomes such beneficial owner, director, or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter.~~ *A domestic stock insurance company shall report to the commissioner the name of any person who acquires 10% or more of any class of equity security of the company. The company shall report the name of the person within 30 days of the person's acquiring 10% or more of any class of equity security of the company. The company shall provide any other information about the person that the commissioner may require.*

(3) ~~If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.~~ *If a person has not acquired at least a 10% interest of any class of equity security of a domestic stock insurance company during the last calendar year preceding the annual statement filing date, the company is only required to report in the annual statement the names and percentages of those persons holding at least 10% interest in any class of equity security.*"

Section 15. Section 33-4-101, MCA, is amended to read:

"33-4-101. Scope of chapter — provisions applicable. (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as provided in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions of this chapter: chapter 1, parts 1 through 4, 7, 12, and 13; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; 33-2-1212; chapter 2, parts 13 and 16; 33-2-1501; 33-2-1517(2); 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and ~~chapter~~ *chapters* 18 *and 19*."

Section 16. Section 33-4-202, MCA, is amended to read:

"33-4-202. Declaration of intention to incorporate — articles of incorporation — fee. (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form the corporation signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) ~~four~~ *three* copies of proposed articles of incorporation executed by three or more of the incorporators. The signatures of the incorporators must be notarized.

(2) The articles of incorporation must state:

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name must contain the words "farm mutual" or "rural mutual" together with the name of the county in which its principal place of business is to be located. The name may not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether the insurer intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of the corporation's existence, which may be perpetual;

(g) the number of its directors, which may not be less than 5 or more than 11, and the names and addresses of the members of the initial board of directors

appointed to manage the affairs of the corporation until the first annual meeting of the members at which time successors ~~are~~ *must be* elected and qualified;

(h) other provisions, not inconsistent with law, considered appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of their property to be insured in the county or counties where the operations of the corporation are to be transacted.

(3) At the time of filing of the articles of incorporation as provided in subsection (1), the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit the fees with the state treasurer to the credit of the general fund."

Section 17. Section 33-10-102, MCA, is amended to read:

"33-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part applies issued by an insurer, if the insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) Covered claim does not include any amount:

(i) awarded as punitive or exemplary damages;

(ii) sought as a return of premium under a retrospective rating plan; or

(iii) due a reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, or indemnification. A reinsurer, insurer, insurance pool, or underwriting association may not assert a claim for any amount against the insured of the insolvent insurer other than to the extent that the claim exceeds the policy limits of the insolvent insurer's policy.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) ~~determined to be insolvent by a court of competent jurisdiction~~ *against whom an order of liquidation has been entered with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.*

(4) "Member insurer" means a person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) (a) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return

premiums on the policies and dividends paid or credited to policyholders of policies to which this part applies.

(b) Net direct written premiums does not include premiums on contracts between insurers or reinsurers.

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization."

Section 18. Section 33-10-207, MCA, is amended to read:

"33-10-207. Immunity. There ~~shall be no~~ *is not any* liability on the part of and ~~no~~ *a* cause of action of any nature ~~shall arise~~ *may not be brought* against any member insurer or its ~~insurance producers~~ *agents* or employees, the association or its insurance producers or employees, members of the board of directors, or the commissioner or ~~his~~ *the commissioner's* representatives for any action taken by them in the performance of their powers and duties under this part."

Section 19. Section 33-16-403, MCA, is amended to read:

"33-16-403. Examination of application and investigation of applicant — issuance of license — fee. (1) The commissioner shall examine each application for a license to act as a rating or advisory organization pursuant to this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed with the application and may make a further investigation of the applicant, its affairs, and its proposed plan of business as the commissioner considers appropriate.

(2) The commissioner shall issue the license applied for within 60 days of its filing if, from the examination and investigation, the commissioner is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish; and

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after a hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of the decision and the reasons for the denial.

(4) The commissioner may grant an application in part only and issue a license to act as a rating, advisory, or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions of the classes of insurance or class of risk, or a part or combination of a class of risk as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section remain in effect until revoked as provided in this chapter. The fee for the license is $100 annually and must be deposited in the ~~general~~ *state special revenue* fund *to the credit of the state auditor's office*.

(b) Each workers' compensation advisory organization is required to renew its license annually."

Section 20. Section 33-17-503, MCA, is amended to read:

"33-17-503. Application — fee — expiration. (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file ~~in~~ *with* the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee ~~of $50~~ *pursuant to 33-2-708*, which the commissioner shall ~~deposit with~~ *forward to* the state treasurer to be ~~credited to the state's general~~ *deposited in the state special revenue* fund *to the credit of the state auditor's office*.

(2) ~~Each consultant license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated~~ *A consultant license continues in force until lapsed, suspended, revoked, or terminated*."

Section 21. Section 33-17-511, MCA, is amended to read:

"33-17-511. Consideration for services only on written memorandum. A person licensed as an insurance consultant under this part may not receive a fee for examining, appraising, reviewing, or evaluating an insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum *that includes the insurance consultant's Montana insurance license number and is* signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. An insurance consultant shall retain a copy of every memorandum or contract for not less than 3 years after those services have been fully performed."

Section 22. Section 33-17-1102, MCA, is amended to read:

"33-17-1102. Reporting and accounting for premiums — misappropriation. (1) All insurance premiums or return premiums received by an insurance producer must be held in a separate trust account. The insurance producer shall at all times act in a fiduciary capacity and shall, in the applicable regular course of business, account for and pay the insurance premiums or return premiums ~~he~~ *the insurance producer* receives to the insured, insurer, or insurance producer entitled to them. Except for a title insurance producer as defined in 33-25-105, an insurance producer may deposit and commingle in the same separate deposit all funds belonging to others so long as the amount of the deposit held for each respective person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any insurance producer not lawfully entitled to the funds may not divert or appropriate the funds or any portion of the funds to ~~his~~ *the insurance producer's* own use.

(3) An insurance producer who ~~unlawfully~~ *purposely or knowingly* diverts or ~~appropriates~~ *misappropriates* insurance premiums ~~or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law~~ *commits theft pursuant to 45-6-301*."

Section 23. Section 33-17-1204, MCA, is amended to read:

"33-17-1204. Review and approval of continuing education courses by commissioner — advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the

commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the ~~national~~ *Montana* association of insurance and financial ~~advisors Montana~~ *advisors*, one representative of the professional insurance agents of Montana, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318."

Section 24. Section 33-20-101, MCA, is amended to read:

"33-20-101. Scope. (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) Sections 33-20-114, 33-20-131, and 33-20-150 also apply to group life insurance, and *33-20-114, 33-20-124, and 33-20-150 also apply to* group annuities."

Section 25. Section 33-20-103, MCA, is amended to read:

"33-20-103. Standard provisions required — exceptions. (1) ~~No~~ *A* policy of life insurance, other than group and pure endowments with or without return of premiums or of premiums and interest, ~~shall~~ *may not* be delivered or issued for delivery in this state unless it contains in substance all of the applicable provisions as required by 33-20-104 through 33-20-108, 33-20-110 through 33-20-116, and 33-20-131.

(2) This section ~~shall~~ *does* not apply to annuity contracts or to any provision of a life insurance policy, or contract supplemental ~~thereto~~ *to an annuity contract or life insurance policy*, relating to disability benefits or to additional benefits in the event of death by accident or accidental means. *However, the provisions of 33-20-114 do apply to annuity contracts.*

(3) Any ~~of such provisions~~ *provision* or portions ~~thereof~~ *of a provision* not applicable to single premium or term policies ~~shall~~ *may not* to that extent ~~not~~ be incorporated ~~therein~~ *in single premium or term policies*."

Section 26. Section 33-20-105, MCA, is amended to read:

"33-20-105. Incontestability. *(1)* There ~~shall~~ *must* be a provision that the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, ~~shall be~~ *is* incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue.

(2) A policy issued in connection with an exchange or a conversion is incontestable from the time of issue."

Section 27. Section 33-20-114, MCA, is amended to read:

"33-20-114. Payment of claims — interest. (1) There ~~shall~~ *must* be a provision, which may be made by endorsement, that when a claim is made upon the death of the insured, settlement ~~shall~~ *must* be made upon receipt of proof of death and, at the insurer's option, surrender of the policy ~~and/or~~ *or* proof of the interest of the claimant*, or both*.

(2) There ~~shall~~ *must* be a provision, which may be made by endorsement, that settlement *must* be made within 60 days of receipt of proof of death and that if settlement is made after the first 30 days, the settlement ~~shall~~ *must* include interest from the 30th day until settlement. Interest ~~shall~~ *must* be paid at the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district at the time of proof of death *or at the rate stated in the policy, whichever is greater.* The settlement period and interest provisions of this subsection apply to all claims upon deaths filed with an insurer ~~after October 1, 1985~~, regardless of whether those provisions are included in the policy."

Section 28. Section 33-20-1202, MCA, is amended to read:

"33-20-1202. Grace period. The group life insurance policy ~~shall~~ *and certificate must* contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage ~~shall~~ *must* continue in force, unless the policyholder ~~shall have~~ *has* given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder ~~shall be~~ *is* liable to the insurer for the payment of a pro rata premium for the time the policy was in force during ~~such~~ *the* grace period."

Section 29. Section 33-20-1203, MCA, is amended to read:

"33-20-1203. Incontestability. The group life insurance policy ~~shall~~ *and certificate must* contain a provision that the validity of the policy ~~shall~~ *may* not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue and that ~~no~~ *a* statement made by any person insured under the policy relating to ~~his~~ *the person's* insurability ~~shall~~ *may not* be used in contesting the validity of the insurance with respect to which ~~such~~ *the* statement was made after ~~such~~ *the* insurance has been in force prior to the contest for a period of 2 years during ~~such~~ *the* person's lifetime or unless it is contained in a written instrument signed by ~~him~~ *the person*."

Section 30. Section 33-20-1204, MCA, is amended to read:

"33-20-1204. Application — statements ~~deemed~~ *considered* representations. The group life insurance policy ~~shall~~ *and certificate must* contain a provision that a copy of the application, if any, of the policyholder ~~shall~~ *must* be attached to the policy when issued, that all statements made by the

policyholder or by the persons insured ~~shall~~ *must* be ~~deemed~~ *considered* representations and not warranties, and that ~~no~~ *a* statement made by any person insured ~~shall~~ *may not* be used in any contest unless a copy of the instrument containing the statement is or has been furnished to ~~such~~ *the* person or to ~~his~~ *the person's* beneficiary."

Section 31. Section 33-20-1205, MCA, is amended to read:

"33-20-1205. Insurability. The group life insurance policy ~~shall~~ *and certificate must* contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of ~~his~~ *the person's* coverage."

Section 32. Section 33-20-1206, MCA, is amended to read:

"33-20-1206. Misstatement of age. The group life insurance policy ~~shall~~ *and certificate must* contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated~~,~~. ~~such~~ *The* provision ~~to~~ *must* contain a clear statement of the method of adjustment to be used."

Section 33. Section 33-20-1207, MCA, is amended to read:

"33-20-1207. Payment of benefits. (1) The group life insurance policy ~~shall~~ *and certificate must* contain a provision that any ~~sum~~ *benefits* becoming due by reason of the death of the person insured ~~shall be~~ *are* payable to the beneficiary designated by the person insured, subject to the provisions of the policy. ~~in~~ *In* the event there is ~~no~~ *not a* designated beneficiary ~~as to all or any part of such sum living at the death of the person insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding $500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured~~ *with regard to all or some of the benefits, then those benefits must be considered a part of the intestate estate, pursuant to 72-2-111. In addition, the insurer may pay a benefit amount not exceeding $500 to any person appearing to the insurer to be equitably entitled to that amount by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.*

(2) The provisions of 33-20-114(2) ~~shall~~ *must* be incorporated into the group life insurance policy *and certificate* and are applicable as set out in that subsection."

Section 34. Section 33-20-1209, MCA, is amended to read:

"33-20-1209. Conversion on termination of eligibility. (1) The group life insurance policy or certificate must contain a provision that if the insurance or any portion of it on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, the person is entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of life insurance if the application for the individual policy is made and the first premium is paid to the insurer within 31 days after termination and provided that:

(a) the individual policy must, at the option of the person, be on any one of the forms, including but not limited to term insurance, if the group policy provides for term insurance, then customarily issued by the insurer at the age

and for the amount applied for, and must offer benefits at least equal to those under the group coverage;

(b) the individual policy must, at the option of the insured, be in an amount not in excess of the amount of life insurance that ceases because of the termination, less the amount of any life insurance for which the person is insured under any other group policy within 31 days after the termination, provided that any amount of insurance that has matured on or before the date of the termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, may not, for the purposes of this provision, be included in the amount that is considered to cease because of the termination; and

(c) the premium on the individual policy is the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk that the person belongs, and to the person's age attained on the effective date of the individual policy.

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsection (1). The conversion carrier must be authorized to act as an insurer in this state and shall submit the conversion policies to the commissioner.

~~(2)~~*(3)* With the consent of the employer, a person covered under a group life insurance policy issued to an employer or to the trustees of a fund established by an employer under 33-20-1101 may continue the person's coverage under the group policy during the person's employment ~~notwithstanding~~ *even if there has been* a reduction of the person's regular work schedule to less than the minimum number of hours required for eligibility for membership. The premium charged for the continued coverage must be equal to that charged other members of the group. The person's coverage under the group will cease if the person subsequently becomes eligible for coverage under another group policy because of employment elsewhere."

Section 35. Section 33-20-1210, MCA, is amended to read:

"33-20-1210. Conversion on termination of policy or certificate. *(1)* The group life insurance policy or certificate must contain a provision that if the group policy or certificate terminates or is amended to terminate the insurance of any class of insured persons, every person insured under the group policy or certificate at the date of the termination whose insurance terminates and who has been insured for at least 3 years prior to the termination date is entitled to have issued to the person by the insurer an individual policy of life insurance, subject to the same conditions and limitations that are provided by 33-20-1209, except that the group policy or certificate may provide that the amount of the individual policy may not exceed the smaller of:

~~(1)~~*(a)* the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy or certificate, less the amount of any life insurance for which the person is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after the termination; or

~~(2)~~*(b)* $10,000.

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsection (1). The conversion carrier must be authorized to act as an insurer in this state and shall submit the conversion policies to the commissioner."

Section 36. Section 33-20-1213, MCA, is amended to read:

"33-20-1213. Policy *and certificate* provisions — conformity with state statutes. Each policy *and certificate* regulated by this part must contain a provision or ~~the~~ *its* equivalent ~~thereto~~ as follows:

"Conformity with Montana statutes. The provisions of this policy *or certificate* conform to the minimum requirements of Montana law and control over any conflicting statutes of any state in which the insured resides on or after the effective date of this policy *or certificate*.""

Section 37. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, *33-22-129*, 33-22-130 through 33-22-136, *33-22-140*, 33-22-141, 33-22-142, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance ~~as~~ *that*:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 38. Section 33-22-107, MCA, is amended to read:

"33-22-107. Premium increase restriction — exception. (1) An insurer or a health service corporation that issues *or renews* a policy, certificate, or membership contract covering a resident of this state may not increase a premium in an individual's or an individual's group disability insurance policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the insurer in violation of the laws of this state; or

(b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government."

Section 39. Section 33-22-303, MCA, is amended to read:

"33-22-303. Coverage for well-child care. (1) Each medical expense policy of disability insurance or certificate issued under the policy that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage

are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, *accident-only*, medicare supplement, or hospital indemnity policies.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a policy of disability insurance or a certificate issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state."

Section 40. Section 33-22-512, MCA, is amended to read:

"33-22-512. Coverage for well-child care. (1) Each group disability policy or certificate of insurance that is delivered, issued for delivery, renewed, extended, or modified in this state by a disability insurer and that provides coverage for a family member of the insured or subscriber must provide coverage for well-child care for children from the moment of birth through 2 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the policy or certificate issued under the policy.

(2) Coverage for well-child care under subsection (1) must include:

(a) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(b) routine immunizations according to the schedule for immunizations recommended by the immunization practices advisory committee of the U.S. department of health and human services.

(3) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section.

(4) This section does not apply to disability income, specified disease, *accident-only,* medicare supplement, or hospital indemnity policies *or certificates*.

(5) For purposes of this section:

(a) "well-child care" means the services described in subsection (2) and delivered by a physician or a health care professional supervised by a physician; and

(b) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics.

(6) When a group disability policy or certificate of insurance issued under the policy provides coverage or benefits to a resident of this state, it is considered to be delivered in this state within the meaning of this section, whether the insurer that issued or delivered the policy or certificate is located inside or outside of this state."

Section 41. Section 33-22-1512, MCA, is amended to read:

"33-22-1512. Association plan and association portability plan premium. (1) The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of association plan premiums for eligible persons may not exceed 200% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The schedule of association portability plan premiums for federally defined eligible individuals may not at any time exceed 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers or health service corporations used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually at the request of the commissioner. The association shall use generally acceptable actuarial principles and structurally compatible rates.

(2) (a) The association, with the approval of the commissioner, may adopt a reduced premium rate schedule that is equitably proportional to the income level for eligible persons who have an income less than or equal to 150% of the federal poverty level. ~~The association may not adopt a reduced premium rate schedule unless it has secured federal or private funding specifically for that purpose and limits participation to the available funding.~~ *The association may not adopt a reduced premium rate schedule unless it has secured federal, state, or private funding specifically for that purpose and the use of the reduced premium rate schedule is limited to the available federal, state, or private funding.*

(b) The association, with the approval of the commissioner, may adopt as many income categories as it finds necessary.

(c) Any person who qualifies for coverage under this section may apply to the association for a reduced premium. However, eligible persons with coverage in the traditional association plan must receive first priority for reduced premiums. By agreement of the association and the commissioner, reduced premiums may be made available to persons eligible for the portability plan.

(d) The association may grant as many reduced premiums as funding sources allow but may not increase overall premium rates to subsidize the

reduced premium rate schedule. The association may limit the number of people receiving reduced premiums when funds are not available and may establish a waiting list for reduced premiums, if necessary."

Section 42. Section 33-22-1513, MCA, is amended to read:

"33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(4) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(5) (a) Each participating member of the association shall share the losses because of claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount not to exceed 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (5)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.

(ii) (A) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. After 30 days, the association shall charge a member:

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections (5)(a)(ii)(A)(I) and (5)(a)(ii)(A)(II).

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iii) An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $50.

(b) For purposes of this subsection (5), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(6) The proportion of the annual assessment allocated to the operation and expenses of the association plan, not to include any amount of late payment penalty or interest charged, may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member.

(7) The association may also accept funding from the federal government, private foundations, and other private funding sources."

Section 43. Section 33-23-212, MCA, is amended to read:

"33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception ~~— penalty~~. (1) ~~Notwithstanding any other provision of this code, a~~ *A* cancellation by an insurer of a motor vehicle liability insurance policy ~~may~~ *is* not ~~be~~ effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating the date on which, not less than 30 days after the date of ~~such~~ *the* mailing or delivery, the cancellation becomes effective. *Other provisions of this code may not be construed as affecting the requirements provided in this subsection (1).*

(2) A notice of cancellation of a policy to which 33-23-211 applies ~~may~~ *is* not ~~be~~ effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation~~;~~. ~~provided, however, that where~~ *However, if* cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of

cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 21 days prior to the effective date of cancellation, the insurer shall specify the reason for the cancellation.

(3) Subsection (2) does not apply to nonrenewal.

~~(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding $500 for each violation thereof.~~"

Section 44. Section 33-30-102, MCA, is amended to read:

"33-30-102. Application of this chapter — construction of other related laws. (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212; 33-3-307; 33-3-308; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; *Title 33, chapter 2, part 19;* Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail."

Section 45. Section 33-30-107, MCA, is amended to read:

"33-30-107. Annual statement. (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on the national association of insurance commissioners' health blank form with the commissioner of insurance. This annual statement must be completed in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the insurer's reserves.

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic versions of its annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for submission of the quarterly statement electronic filing are as follows:

(i) the first quarter filing is due May 15;

(ii) the second quarter filing is due August 15; and

(iii) the third quarter filing is due November 15.

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements.

(c) The health service corporation shall pay all fees and costs associated with preparing the annual statement and other filings and submitting them to the national association of insurance commissioners.

(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's license or impose a fine not to exceed $100 a day and

not to exceed $1,000 upon a health service corporation that fails to file an annual statement as required by this part."

Section 46. Section 33-30-204, MCA, is amended to read:

"33-30-204. Fees. (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

~~(a) filing any statement or report.....$1~~

~~(b)~~*(a)* for a certified copy of any document or other paper filed in the office of the commissioner, per page,.....~~$ .50~~ *50 cents;*

~~(c) for a certificate with affixed seal.....$10~~

~~(d)~~*(b)* filing of a membership contract,.....~~$25~~*;*

~~(e)~~*(c)* filing of a membership contract package,.....~~$100~~*;*

~~(f)~~*(d)* filing annual statement,.....~~$25~~*;*

~~(g)~~*(e)* issuance of health service corporation license,.....~~$300~~*; and*

~~(h)~~*(f)* annual continuation of health service corporation license,.....~~$300~~.

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the ~~general~~ *state special revenue* fund *of the state auditor's office*, all fees and license fees received under this section."

Section 47. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) ~~Chapter~~ *Title 33, chapter* 1, parts 12 and 13, ~~of this title,~~ *Title 33, chapter 2, part 19,* 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, *Title 33, chapter 19,* 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 48. Section 33-31-212, MCA, is amended to read:

"33-31-212. Fees. (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment ~~thereto~~ *to a certificate of authority*, $300;

(b) for filing an amendment to the organization documents that requires approval, $25;

(c) for filing each annual statement, $25;

(d) for annual continuation of certificate of authority, $300.

(2) All fees, miscellaneous charges, fines, penalties, and those amounts received pursuant to 33-31-211(3) and 33-31-405 collected by the commissioner pursuant to this chapter and the rules adopted ~~thereunder~~ *under this chapter* must be deposited in the ~~general~~ *state special revenue* fund *to the credit of the state auditor's office*."

Section 49. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions ~~of Title 33~~:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) Title 33, chapter 19;

~~(e)~~*(f)* 33-22-131, 33-22-134, and 33-22-135; and

~~(f)~~*(g)* 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 50. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) *(a)* A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302*; or*

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) A person convicted of the offense of theft of property not exceeding $1,000 in value shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding $1,000 in value or theft of any commonly domesticated hoofed animal shall be fined an amount not to exceed $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(c) A person convicted of the offense of theft of property exceeding $10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed $50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 51. Section 50-3-109, MCA, is amended to read:

"50-3-109. Tax on fire insurance premiums. (1) Each insurer authorized to effect insurance on risks enumerated in subsection (2) that is doing business in this state shall pay to the state auditor during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, taxes on the fire portion of the direct premiums on the enumerated risks received during the previous calendar year after deducting cancellations and return premiums. A tax of 2 1/2% must be deposited in the general fund as provided in ~~17-2-121~~ *33-2-708*.

(2) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of a vehicle."

Section 52. Repealer. Section 17-2-121, MCA, is repealed.

Section 53. Codification instruction. (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 33, chapter 3, and the provisions of Title 33, chapter 3, apply to [sections 1 through 4].

(2) [Section 5] is intended to be codified as an integral part of Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [section 5].

Section 54. Coordination instruction. If House Bill No. 169 and [this act] are both passed and approved and if both amend 33-17-503, then [section 18 of House Bill No. 169], amending 33-17-503, is void.

Ap proved April 17, 2003

CHAPTER NO. 381

[HB 157]

AN ACT REPEALING THE REQUIREMENT FOR PROCUREMENT AND SALE OF ARTWORK FOR A MIGRATORY BIRD STAMP; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF MIGRATORY GAME BIRD LICENSES BE EXPENDED FOR THE PROTECTION, CONSERVATION, AND DEVELOPMENT OF WETLANDS IN MONTANA; PROVIDING THAT MIGRATORY GAME BIRD HUNTERS MUST BE REPRESENTED ON THE ADVISORY COUNCIL THAT REVIEWS PROPOSALS FOR EXPENDITURE OF THE FUNDS; AMENDING SECTIONS 2-15-3405, 87-1-601, AND 87-2-411, MCA; REPEALING SECTION 87-2-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3405, MCA, is amended to read:

"2-15-3405. Appointment of wetlands protection advisory council. (1) The director of fish, wildlife, and parks shall appoint an advisory council pursuant to 2-15-122 to review proposals developed by the department of fish, wildlife, and parks ~~which~~ *that* involve the use of money received by the department under ~~87-2-412~~ *87-2-411* for the protection, conservation, and development of wetlands in Montana.

(2) Members must be appointed to the advisory council who represent Montana ~~sportsmen~~ *migratory game bird hunters*, nonconsumptive users of wildlife, and the agricultural industry."

Section 2. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, ~~87-2-412~~ *87-2-411*, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) ~~The~~ *Except as provided in 87-2-411, the* money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."

Section 3. Section 87-2-411, MCA, is amended to read:

"87-2-411. License required to hunt migratory game birds — *fees* — *disposition of proceeds.* *(1)* ~~It is unlawful for any~~ *A* person 16 years of age or older ~~to~~ *may not* hunt migratory game birds without first having obtained a valid migratory bird license from the department. The fee for a resident to purchase the license is $5. The fee for a nonresident to purchase the license is $50.

(2) Money received from the sale of migratory game bird licenses must be deposited in an account in the state special revenue fund for the use of the

department and may be expended only for the protection, conservation, and development of wetlands in Montana."

Section 4. Repealer. Section 87-2-412, MCA, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 382

[HB 161]

AN ACT CLARIFYING THE LAW RELATING TO THE RIGHT OF A YOUTH TO WAIVE A PAROLE REVOCATION HEARING; AMENDING SECTION 52-5-129, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-5-129, MCA, is amended to read:

"52-5-129. Hearing on alleged violation of parole agreement — *waiver of hearing* — right to appeal outcome. (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's parole agreement, the youth must be granted a hearing*, unless a hearing is waived as provided in subsection (3),* at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to a youth correctional facility or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or when the youth may abscond or be removed from the community. The department shall determine the place and manner of detention pursuant to 41-5-348 and is responsible for the cost of the detention. Procedures for taking a youth into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321.

(3) The youth, upon advice of an attorney, may waive the right to a hearing.

(4) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the hearings officer.

(5) The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

(6) *(a)* ~~If~~ *The hearings officer shall make a decision for the placement of the youth if:*

(i) after a hearing the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation~~, the hearings officer shall make a decision for the placement of the youth~~*; or*

(ii) the youth acknowledges, either during the hearing or by written waiver, upon advice of an attorney, that the youth has violated the terms of the youth's parole agreement.

(b) In making ~~this~~ *a placement* decision, the hearings officer may consider mitigating or aggravating circumstances.

(c) The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

(7) The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(8) If the decision made under subsection (6) is to return the youth to a youth correctional facility and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility.

(9) If a decision is made under subsection (6) to revoke the parole of a youth who was placed in and released from an alternative facility under 41-5-355 because of overcrowding in a state youth correctional facility, the youth may be placed in a state youth correctional facility if the state youth correctional facility is no longer overcrowded."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved April 17, 2003

CHAPTER NO. 383

[HB 179]

AN ACT REVISING THE LAWS RELATING TO CAPTIVE INSURANCE COMPANIES; PROVIDING FOR SPONSORED CAPTIVE AND BRANCH CAPTIVE INSURANCE COMPANIES; ALLOWING RECIPROCAL INSURERS TO BE AN ASSOCIATION CAPTIVE INSURANCE COMPANY; ALLOWING AN ASSOCIATION CAPTIVE INSURANCE COMPANY OR INDUSTRIAL INSURED GROUP FORMED AS A STOCK OR MUTUAL CORPORATION TO CONVERT TO OR MERGE WITH A RECIPROCAL INSURER; ALLOWING A CAPTIVE INSURANCE COMPANY TO PROVIDE EXCESS WORKERS' COMPENSATION INSURANCE, PROPERTY INSURANCE, CASUALTY INSURANCE, LIFE INSURANCE, DISABILITY INCOME INSURANCE, AND HEALTH INSURANCE COVERAGE; DEFINING "DISABILITY INCOME INSURANCE"; REQUIRING CAPTIVE INSURANCE COMPANIES TO FILE REPORTS WITH THE COMMISSIONER OF INSURANCE; REQUIRING CAPTIVE INSURANCE AND BRANCH BUSINESS COMPANIES TO PAY A TAX ON PREMIUMS; REQUIRING A CAPTIVE INSURANCE COMPANY TO OBTAIN A CERTIFICATE FROM THE COMMISSIONER OF INSURANCE BEFORE ITS FORMATION; AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-105, 33-28-107, 33-28-108, 33-28-201, AND 33-28-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sponsored captive insurance company. (1) One or more sponsors may form a sponsored captive insurance company.

(2) A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(a) The shareholders of the sponsored captive insurance company must be limited to its participants and sponsors.

(b) Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

(c) The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the sponsored captive insurance company.

(d) A sale, exchange, or other transfer of assets may not be made by a sponsored captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

(e) A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

(f) Each sponsored captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(g) Each sponsored captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meets its claim or expense obligations.

(h) A participant contract may not take effect without the commissioner's prior written approval.

(i) An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the sponsored captive insurance company and may not be effective without the commissioner's prior written approval.

(j) The business written by a sponsored captive insurance company, with respect to each cell, must be:

(i) fronted by an insurance company licensed under the laws of any state;

(ii) reinsured by a reinsurer authorized or approved by the commissioner; or

(iii) secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:

(A) the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

(B) the commissioner may require the sponsored captive insurance company to increase the funding of any trust;

(C) if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

(D) the trust and trust instrument must be in a form and with terms approved by the commissioner.

Section 2. Qualification of sponsors. A sponsor of a sponsored captive insurance company must be an insurer licensed under the laws of any state, a reinsurer licensed under the laws of any state, a captive insurance company formed or licensed under this chapter, or an insurance producer licensed under chapter 17 of this title and approved by the commissioner.

Section 3. Delinquency of sponsored captive insurance company. If delinquency proceedings have been taken against a sponsored captive insurance company:

(1) the assets of a protected cell may not be used to pay any expenses other than those attributable to the protected cell; and

(2) the capital and surplus of the sponsored captive insurance company must be available at all times to pay expenses of or claims against the sponsored captive insurance company.

Section 4. Participants in sponsored captive insurance companies. (1) An association, corporation, limited liability company, partnership, trust, or other business entity may be a participant in a sponsored captive insurance company.

(2) A sponsor may be a participant in a sponsored captive insurance company.

(3) A participant is not required to be a shareholder of a sponsored captive insurance company or its affiliate.

(4) A participant shall insure only its own risks through a sponsored captive insurance company.

Section 5. Excess workers' compensation insurance — reinsurance of self-insured plans. (1) A captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless the laws of the state having jurisdiction over the transaction prohibit providing the insurance.

(2) A captive insurance company may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies.

Section 6. Conversion to or merger with reciprocal insurer. (1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be converted to or merged with a reciprocal insurer in accordance with the provisions of this section.

(2) A plan for conversion or merger must:

(a) be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and

(b) provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer.

(3) In order to convert to a reciprocal insurer, the conversion must be accomplished under a reasonable plan and procedure approved by the commissioner. The commissioner may not approve the plan unless it:

(a) provides for a hearing upon notice to the insurer, directors, officers, and stockholders or policyholders who have the right to appear at the hearing, unless the commissioner waives or modifies the requirements for the hearing;

(b) provides for the conversion of the existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests;

(c) (i) in the case of a stock insurer, is approved, by a majority of the shareholders who are entitled to vote and who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; or

(ii) in the case of a mutual insurer, by a majority of the voting interests of the policyholders who are represented at a regular or special meeting at which a quorum is present either in person or by proxy; and

(d) meets the requirements of 33-28-105.

(4) If the commissioner approves a plan of conversion, the certificate of authority for the converting insurer must be amended to state that it is a reciprocal insurer. The conversion is effective and the corporate existence of the converting entity ceases to exist upon the date on which the amended certificate

is issued to the attorney-in-fact of the reciprocal insurer. The resulting reciprocal insurer shall notify the secretary of state of the conversion.

(5) The commissioner may not approve a plan for a merger unless it:

(a) meets the requirements of:

(i) 33-3-217, with respect to the merger with a captive stock insurer; or

(ii) 33-3-218, with respect to the merger with a captive mutual insurer; and

(b) meets the requirements of 33-28-105.

Section 7. Disability income insurance. "Disability income insurance" means an individual or group policy of insurance that primarily provides payment to or for the benefit of the policyholder or certificate holder based, in whole or in part, upon lost wages or other earned income or business or financial losses as a result of an inability to work due to sickness, injury, or a combination of sickness and injury.

Section 8. Section 33-28-101, MCA, is amended to read:

"33-28-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of sole proprietorships, corporations, partnerships, limited liability companies, or associations that has been in continuous existence for at least 1 year *unless the 1-year requirement is waived by the commissioner,* the member organizations of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; ~~or~~

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer*; or*

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(3) "Association captive insurance company" means any company that insures risks of the member organizations of an association and their affiliated companies.

(4) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(5) "Branch captive insurance company" means any foreign captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) "Branch operations" means any business operations of a branch captive insurance company in this state.

~~(4)~~*(7)* "Captive insurance company" means any pure captive insurance company, association captive insurance company, *sponsored captive insurance company,* or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(8) "Cash equivalent" means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(9) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified perincident or aggregate limit established by the commissioner.

(10) "Foreign captive insurance company" means any captive insurance company formed under the laws of any jurisdiction other than this state.

~~(5)~~*(11)* "Industrial insured" means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least $25,000; and

(c) who has at least 25 full-time employees.

~~(6)~~*(12)* "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

~~(7)~~*(13)* "Industrial insured group" means any group of industrial insureds that collectively:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(b) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.

~~(8)~~*(14)* "Member organization" means a sole proprietorship, corporation, partnership, or association that belongs to an association.

~~(9)~~*(15)* "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurance company.

(16) "Participant" means an entity, as enumerated in [section 4], and any affiliates of the entity that are insured by a sponsored captive insurance company in which the losses of the participant are limited through a participant contract to the participant's pro rata share of the assets of one or more protected cells identified in the participant contract.

(17) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

(18) "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company with respect to the participants as set forth in the participant contracts.

~~(10)~~*(19)* "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

(20) "Sponsor" means any entity that meets the requirements of [sections 1 and 2] and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a sponsored captive insurance company.

(21) "Sponsored captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account."

Section 9. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing — authority. (1) A captive insurance company, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the commissioner for a license to provide ~~property and casualty insurance~~ *property insurance, casualty insurance, life insurance, disability income insurance, and health insurance coverage as defined in 33-22-140*, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the member organizations of its association or their affiliated companies; ~~and~~

(d) a captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203; *or*

(iii) provide health ~~or disability insurance or life~~ insurance *coverage, unless the captive insurance company is a pure captive insurance company*; ~~or~~ *and*

~~(iv) provide workers' compensation insurance in any manner or form.~~

(e) a sponsored captive insurance company may not insure any risks other than those of its participants.

(2) A captive insurance company may not do any insurance business in this state unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors *or a reciprocal insurer's subscribers' advisory committee* holds at least one meeting each year in this state; and

(c) it maintains its principal place of business in this state.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) *with respect to a captive insurance company formed as a corporation:*

(A) file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

~~(ii)~~*(B)* submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require~~.~~*;*

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any ~~item~~ *of the items* in the description provided for in subsection (3)(a)~~(ii)~~, the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a sponsored captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the sponsored captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

~~(d)~~*(e)* Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of $300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Section 10. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus — letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than $250,000;

(b) in the case of an industrial insured captive insurance company, not less than $500,000; ~~and~~

(c) in the case of an association captive insurance company, not less than $750,000*;*

(d) in the case of a sponsored captive insurance company, not less than $1 million; or

(e) in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through (1)(d), as determined based upon the organizational form of the foreign captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash*, cash equivalent,* or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner.

(4) Despite the requirements of subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of $1 million.

(5) In the case of a branch captive insurance company, security in an amount not less than the minimum capital and surplus required in this section must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner."

Section 11. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A pure captive insurance company *or a sponsored captive insurance company* must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders; ~~or~~

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations*; or*

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) ~~A captive insurance company shall deliver to the commissioner a draft of its proposed articles of incorporation. The commissioner shall examine the proposed articles of incorporation, and if the commissioner finds that the proposed articles comply with this chapter and the applicable provisions of Title 33, the commissioner shall approve, in writing, the draft articles~~ *In the case of a captive insurance company formed as a corporation and before the articles of incorporation are transmitted to the secretary of state, the incorporators shall file a copy of the proposed articles of incorporation and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed corporation will promote the*

general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner *does not issue a certificate or* finds that the proposed articles of incorporation of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the articles of incorporation and shall return the draft to the proposed incorporators, together with a written statement explaining the refusal.

(c) ~~The~~ *If the commissioner issues a certificate and approves the draft articles of incorporation, the* commissioner shall forward *the certificate and* an approved draft of articles of incorporation to the proposed incorporators. The incorporators shall prepare two sets of the approved articles of incorporation and shall file one set of articles of incorporation with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(7) (a) A captive insurance company *formed as a corporation* has the privileges and is subject to the provisions of general corporation law, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control. If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies.

(d) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

~~(c)~~*(9)* ~~The~~ *Except as provided in [section 6], the* provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company may apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued."

Section 12. Section 33-28-107, MCA, is amended to read:

"33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) On or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

(c) On or before March 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction."

Section 13. Section 33-28-108, MCA, is amended to read:

"33-28-108. Examinations and investigations. (1) (a) At least once in 3 years, or more frequently if the commissioner considers it prudent, the commissioner or some competent person appointed by the commissioner shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter.

(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:

(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and

(ii) the audit is conducted by independent auditors approved by the commissioner.

(c) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(5) (a) Except as provided in subsection (5)(b), the provisions of this section apply to all business written by a captive insurance company.

(b) The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(c) to the satisfaction of the commissioner."

Section 14. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company in this state during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

(i) 0.4% on the first 20 million dollars;

(ii) 0.3% on the next 20 million dollars;

(iii) 0.2% on the next 20 million dollars; and

(iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first 20 million dollars of assumed reinsurance premiums;

(ii) 0.150% on the next 20 million dollars of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than $5,000 in any year, the captive insurance company shall pay a tax of $5,000 for that year.

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual corporations, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more corporations by the same member or members.

(6) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section."

Section 15. Section 33-28-207, MCA, is amended to read:

"33-28-207. Applicable laws. (1) The *definitions of property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage provided in 33-22-140, and disability income insurance provided in [section 7], the* provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13, and the provisions of 33-18-201, *33-18-203, 33-18-205,* and 33-18-242 apply to captive insurance companies.

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

(3) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

Section 16. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 28, and the provisions of Title 33, chapter 28, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified in Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [section 7].

Section 17. Coordination instruction. If House Bill No. 145 is passed and approved and includes [section 5] defining "disability income insurance",

then [section 7 of this act] is void and the reference to "[section 7]" in [section 15 of this act], amending 33-28-207, is changed to "[section 5 of House Bill No. 145]".

Section 18. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 384

[HB 183]

AN ACT REQUIRING 45-DAY OR 60-DAY NOTICES FOR HEALTH INSURANCE POLICY RATE CHANGES OR BENEFIT MODIFICATIONS AND PROVIDING FOR DELIVERY OF THE NOTICES; REQUIRING NOTICE FOR CANCELLATION FOR NONPAYMENT OF GROUP HEALTH INSURANCE PREMIUMS; REVISING REQUIREMENTS REGARDING CERTIFICATES OF CREDITABLE COVERAGE; AMENDING SECTIONS 33-22-107, 33-22-122, 33-22-141, 33-22-142, 33-30-1007, 33-31-111, AND 33-35-306, MCA; REPEALING SECTION 33-30-307, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-107, MCA, is amended to read:

"33-22-107. Premium increase restriction — exception — *notice of rate increase and policy changes.* (1) An insurer or a health service corporation that issues a policy, certificate, or membership contract covering a resident of this state may not increase a premium in an individual's or an individual's group disability insurance policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the insurer in violation of the laws of this state; or

(b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government.

(3) (a) Every health insurance issuer delivering or issuing for delivery group or individual health insurance coverage shall give a group policyholder at least 60 days' advance notice and an individual policyholder at least 45 days' advance notice of a change in rates or a change in terms or benefits.

(b) A notice given under this subsection (3) must be delivered in the following manner:

(i) it must be mailed to the policyholder's last-known address as shown by the records of the insurer; and

(ii) if a health insurance issuer bills any certificate holder directly at the certificate holder's home address for premiums, the notice must be mailed by the health insurer directly to each certificate holder's last-known home address.

(c) If the health insurance issuer fails to provide the notice required by this subsection (3), the coverage must remain in effect at the existing rate with the

existing benefits until the full notice period has expired or until the effective date of the replacement coverage obtained by the insured, whichever occurs first."

Section 2. Notice required for cancellation for nonpayment of group health insurance. (1) A health insurance issuer shall provide at least 15 days prior notification of cancellation for nonpayment of premium for group health insurance coverage.

(2) The notice must be sent to the policyholder at the policyholder's last-known address and must specify the date of cancellation of coverage. The insurer shall attach a properly executed proof of mailing to this notice and maintain a copy of the proof of mailing in its records.

(3) The health insurance issuer shall hold for processing of payment any claims received during the 15-day notification period for nonpayment of premium for group health insurance coverage. Upon receipt of the premium, claims held for the 15-day notification period must be processed for payment.

(4) The policy continues in full force and effect, subject to the requirements of subsection (3), until the proper 15-day notice has been given, unless the coverage has already been replaced.

(5) The 15-day period begins to run from the date of the proof of mailing.

(6) The issuer may collect premiums for any time period that the coverage remains in effect.

(7) When coverage is actually canceled, notice must also be mailed to all certificate holders at:

(a) their last-known home addresses if available; or

(b) the business address of the group policyholder.

(8) The notice of cancellation to certificate holders must be separate from the certificate of creditable coverage required in 33-22-142, although it may be mailed simultaneously with the certificate.

Section 3. Section 33-22-122, MCA, is amended to read:

"33-22-122. Contents of notice — proof — limitation on recovery — exemptions. (1) (a) The notice of cancellation ~~shall~~ *must* state:

(i) the amount of the premium, installment, or interest due on ~~such~~ *the* policy;

(ii) the place where it must be paid; and

(iii) the name and address of the person or company to which the premium is payable.

(b) The notice must also state that unless the premium or other sums are paid to the company or its insurance producer, the policy will lapse or be forfeited.

(2) "Policyowner", as used in this section, means the owner of the policy or any other person designated as the person to receive premium notices, as shown by the records of the insurance company.

(3) The affidavit of any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice that it is the standard practice of the company to mail to policyowners the notice required by this section is prima facie evidence that the notice has been duly given.

(4) ~~No~~ *An* action may*not* be maintained to recover under a lapsed or forfeited policy on the ground that the insurance company failed to comply with this section unless the action is instituted within 2 years from *the* due date upon which default was made in paying the premium, installment, or interest for which lapse or forfeiture is claimed.

(5) Section 33-22-121 does not apply to:

(a) group or group-type policies; *or*

(b) industrial life or industrial disability policies~~; or~~

~~(c) policies upon which premiums are payable monthly or at more frequent intervals~~."

Section 4. Section 33-22-141, MCA, is amended to read:

"33-22-141. Crediting previous coverage. (1) *(a)* A period of creditable coverage may not be counted, with respect to enrollment of an individual under a group health plan, if there was a 63-day break in coverage~~, during which the individual was not covered under any creditable coverage~~.

(b) The 63-day period provided for in subsection (1)(a) must be counted from the date that the certificate of creditable coverage was issued to the individual.

(2) The time that an individual is in a waiting period for coverage under a group health plan or for group health insurance coverage or is in an affiliation period, as defined in 33-31-102, may not be considered in determining the continuous period under subsection (1).

(3) Except as provided in subsection (4), for the purposes of applying 33-22-514, a group health plan or a health insurance issuer offering group health insurance coverage shall count a period of creditable coverage without regard to the specific benefits coverage during the period.

(4) (a) A group health plan or a health insurance issuer offering group health insurance may elect to apply the provisions of 33-22-514 based on coverage of benefits within each of several classes or categories of benefits specified in regulations implementing Public Law 104-191, rather than as provided under subsection (3). If electing to apply the provisions of 33-22-514 pursuant to this subsection (4), a group health plan or a health insurance issuer shall:

(i) make the election on a uniform basis for all participants and beneficiaries; and

(ii) count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

(b) In the case of an election under this subsection (4), a group health plan shall:

(i) prominently state in a disclosure statement concerning the group health plan to each enrollee at the time of enrollment that the group health plan has made an election; and

(ii) include a description of the effect of the election in the statement.

(c) In the case of an election under this subsection (4), a health insurance issuer shall:

(i) prominently state in a disclosure statement concerning the health insurance coverage to each employer at the time of the offer or sale of the health insurance coverage that the health insurance issuer has made an election; and

(ii) include a description of the effect of the election in the statement.

(5) Periods of creditable coverage with respect to an individual must be established through presentation of certifications described in 33-22-142 or in such other manner as may be specified in regulations implementing Public Law 104-191."

Section 5. Section 33-22-142, MCA, is amended to read:

"33-22-142. Certification of creditable coverage. (1) A group health plan and a health insurance issuer offering group health insurance coverage shall ~~provide~~ *issue* the certification described in subsection (3):

(a) ~~at the time that~~ *within 10 days after* an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;

(b) not later than 10 days after cancellation for nonpayment of premium is effective pursuant to the provisions of [section 2] or after termination of coverage for any other reason;

~~(b)~~*(c)* in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and

~~(c)~~*(d)* at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or ~~(1)(b)~~ *(1)(c),* whichever is later.

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan; ~~and~~

(c) certification of the date of issuance of the certificate specified on the form; and

~~(c)~~*(d)* notification to the individual of:

(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of ~~termination of creditable coverage~~ *issuance of a certificate of creditable coverage*;

(ii) the individual's conversion rights;

(iii) the availability of COBRA continuation coverage;

(iv) the telephone number and address of the Montana comprehensive health association; and

(v) other notification as determined necessary and in the form prescribed by rule by the commissioner.

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

(5) In the case of an election described in 33-22-141 by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

(6) This section applies to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market."

Section 6. Section 33-30-1007, MCA, is amended to read:

"33-30-1007. Conversion on termination of eligibility. (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person or a person's dependents or family members covered under the policy ceases because of termination of the person's employment or of a person's membership in the class or classes eligible for coverage under the policy as a result of an employer discontinuing the employer's business or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan, a person must, if the person has been insured for a period of 3 months and if the person is not insured under another major medical disability insurance policy or plan, be entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on the person or the person's dependents or family members. Application for the individual policy must be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy must, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity. In addition, the health service corporation shall make available a conversion policy as required by subsection (4).

(3) The premium on the individual policy ~~must~~ *may not* be ~~at no~~ more than 200% of the insurer's then customary rate applicable to the coverage of the individual policy. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(4) The health service corporation shall make available an individual conversion policy that provides the level of benefits provided by its lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under chapter 22, part 18, the insurer shall make available an individual conversion policy that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan.

(5) The premium rate for an individual policy converted from a group plan in accordance with the provisions of subsection (3) may not be increased during the first 6 months of coverage of the individual policy."

Section 7. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135;

(d) network adequacy and quality assurance requirements provided under chapter 36; or

(e) the requirements of Title 33, chapter 18, part 9.

(7) Chapter 1, parts 12 and 13, of this title, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, *33-22-107*, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

Section 8. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions of Title 33:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) *33-22-107,* 33-22-131, 33-22-134, and 33-22-135; and

(f) 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 9. Repealer. Section 33-30-307, MCA, is repealed.

Section 10. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, part 5, apply to [section 2].

Section 11. Effective date — applicability. [This act] is effective January 1, 2004, and applies to policies or certificates issued or renewed on or after January 1, 2004.

Ap proved April 17, 2003

CHAPTER NO. 385

[HB 205]

AN ACT REVISING MONTANA'S INSURANCE PRIVACY LAWS TO COMPLY WITH THE FEDERAL GRAMM-LEACH-BLILEY ACT AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; ALLOWING A LIMITED EXEMPTION FROM THE PRIVACY ACT FOR ENTITIES COVERED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 PRIVACY REGULATIONS; REQUIRING NATIONAL NOTICE FORMS TO REFER TO THE SPECIFIC STATE NOTICE FORM; AUTHORIZING DISCLOSURE OF CERTAIN NONMEDICAL INFORMATION TO A LIENHOLDER, MORTGAGEE, ASSIGNEE, OR LESSOR; AMENDING SECTIONS 33-19-104, 33-19-105, 33-19-202, 33-19-301, 33-19-306, AND 33-19-307, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-19-104, MCA, is amended to read:

"33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, *fraud prevention*, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, subrogation, grievance procedures, insurance transactions, ~~and~~ internal administration of compliance and policyholder service functions*, and technical, administrative, or professional services related to the provision of the functions described in this subsection*.

(11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

(12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(13) (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

(14) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

(16) "Licensee" means:

(a) an insurance institution, insurance producer, or other person who is licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to this title; or

(b) a surplus lines insurer.

(17) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(18) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.

(19) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(20) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(21) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(22) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(23) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

(24) "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

(25) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(26) "Separate, written authorization" means an individual's written authorization that is:

(a) ~~given to~~ *obtained by* the recipient of personal or privileged information that has been disclosed *to the recipient* pursuant to ~~33-19-306(3) through (22)~~ *33-19-306(10), (11), (14), (15), and (17)*; and

(b) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization.

(27) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(28) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 2. Section 33-19-105, MCA, is amended to read:

"33-19-105. Exemption based on federal ~~medical privacy rules~~ *standards for privacy of individually identifiable health information* — notice to commissioner required. (1) ~~If a licensee is subject to and in compliance with a~~ *Beginning on [the effective date of this act], the obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of* federal ~~rule~~ *regulations* that ~~is~~ *are* part of the federal ~~health insurance portability and accountability privacy rules~~ *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, 45 CFR, parts 160 and 164, ~~and the federal rule with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter~~ *standards for privacy of individually identifiable health information as*

to any use or disclosure of personal information that is covered under the HIPAA privacy regulations, except for the following provisions:

(a) Notices of insurance information practices described as notices of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) Reasons for adverse underwriting decisions must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

~~(2)~~*(3)* If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption *and a brief statement describing why it is a HIPAA-covered entity*. ~~The notice must include a statement of the reason for the claimed exemption.~~

(4) A licensee may claim an exemption only as to those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A third-party administrator that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activities of the third-party administrator that fall outside of the scope of that agreement are subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, 2005:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption, unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption."

Section 3. Section 33-19-202, MCA, is amended to read:

"33-19-202. Notice of insurance information practices — delivery of notice. A licensee shall provide a clear and conspicuous notice of information practices that accurately reflects its privacy policies and practices to individuals about whom personal information is collected *and disclosed* by the licensee in connection with insurance transactions as follows:

(1) (a) Except as provided in subsection (2), in the case of a policyholder or certificate holder, a notice must be delivered by an insurance institution:

(i) in the case of policies issued after July 1, 2001, no later than at the time of the delivery of the insurance policy or certificate, unless the notice delivered to the policyholder or certificate holder pursuant to subsection ~~(4)(a)~~ *(5)(a)* when the policyholder or certificate holder was an applicant is still accurate;

(ii) at least annually, the 12-month period for which may be defined by the insurance institution and must be used consistently. The notice to certificate holders required in this subsection (1)(a)(ii) is not required if the insurance institution has not had any communication, including receiving a claim, from a certificate holder since the initial or last annual notice provided to the certificate holder.

(iii) in the case of a policy renewed after July 1, 2001, no later than the policy renewal date, except that notice is not required in connection with a policy renewal if~~:~~

~~(A) personal information is collected only from the policyholder or from public records; or~~

~~(B)~~ a notice meeting the requirements of this section has been given within the previous 12 months.

(b) When a policyholder or certificate holder obtains a new insurance product or service or when a policy is reinstated and any notices already provided are no longer accurate with respect to the new product, service, or reinstatement, a new or revised and accurate notice must be delivered to the policyholder or certificate holder no later than the time that the product or service is provided by the licensee or at the time of reinstatement~~, except that notice is not required if personal information is collected only from the policyholder or from public records~~.

(2) (a) An insurance institution is not required to meet the requirements of this section with respect to certificate holders until the insurance institution has personally identifiable information regarding the certificate holder.

(b) Until the notice requirements of subsection (1) are met, a third-party administrator or other agent or representative of an insurance institution may not disclose personal information, except as allowed in 33-19-306(2).

(3) The notice required in subsection (1) must be in writing and must state:

(a) the categories of personal information that may be collected from persons other than the individual or individuals covered;

(b) if a licensee discloses personal or privileged information to a third party without an authorization pursuant to an exception in 33-19-306 or 33-19-307, a separate description of the categories of information and the categories of third parties to whom the licensee discloses personal information;

(c) the categories of personal information about a former policyholder or certificate holder that the licensee discloses pursuant to 33-19-306 and 33-19-307 and the categories of persons to whom the disclosure may be made;

(d) any disclosure that the licensee makes pursuant to section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; *and*

(e) the licensee's policies and practices with respect to protecting the confidentiality and security of personal and privileged information~~;~~.

(4) The following information must be contained in the initial notice delivered at the time of application and in any subsequent annual notice if the policy renews periodically:

~~(f)~~*(a)* a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised;

~~(g)~~*(b)* that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons if the licensee collects or uses information from *or discloses personal information to* an insurance-support organization; and

~~(h)~~*(c)* that an individual is entitled to receive, upon written request to the licensee, a record of any subsequent disclosures of medical record information*, as described in 33-19-301,* made by the licensee pursuant to 33-19-306~~that must include:~~

~~(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 3 years;~~

~~(ii) the date of the receipt or examination; and~~

~~(iii) to the extent practicable, a description of the information disclosed~~ *and 33-19-307*.

~~(4)~~*(5)* In the case of individuals who are not policyholders or certificate holders:

(a) except as provided in subsection ~~(7)~~ *(8)*, in the case of an applicant, an insurance institution shall provide a notice as described in subsection (3) when the applicant submits an application;

(b) for all other individuals, a notice must be given when a licensee seeks an authorization pursuant to 33-19-306(2) to make a disclosure that is not allowed by a disclosure exception provided for in 33-19-306(3) through ~~(22)~~ *(24)* or 33-19-307. A notice given pursuant to this subsection ~~(4)(b)~~ *(5)(b)* may be in an abbreviated form and must state that:

(i) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(ii) the information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(iii) a right of access and correction exists with respect to all personal information collected; and

(iv) the notice prescribed in subsection (3) must be furnished upon request. The abbreviated notice provided for in this subsection ~~(4)(b)~~ *(5)(b)* must explain a reasonable means by which an individual may obtain that notice.

~~(5)~~*(6)* The obligations imposed by this section upon a licensee may be satisfied:

(a) by another licensee authorized to act on its behalf;

(b) by sending a notice to the primary policyholder of an individual policy or to the primary certificate holder.

~~(6)~~*(7)* A licensee shall provide a notice required by this section so that an intended recipient can reasonably be expected to receive actual notice in writing or, if the intended recipient agrees, electronically, as follows:

(a) by hand-delivering a printed copy of the notice to the intended recipient;

(b) by mailing a printed copy of the notice to the last-known address of the individual separately or in a policy, billing, or other written communication; or

(c) for an individual who has agreed to conduct transactions electronically, as provided in applicable law, by posting the notice on the electronic site and requiring the individual to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

~~(7)~~*(8)* An insurance institution may provide the notice required in subsection ~~(4)(a)~~ *(5)(a)* telephonically if an application is submitted by telephone. A telephone notice under this subsection may be in abbreviated form as provided for in subsections ~~(4)(b)(i) through (4)(b)(iv)~~ *(5)(b)(i) through (5)(b)(iv)*.

~~(8)~~*(9)* ~~If a licensee is required to provide notice concerning privacy in addition to the notice required by this section, the~~ *A* licensee may satisfy the notice requirements in this section through the use of combined or separate notices. If more than one notice form is used, ~~a notice containing provisions specific to Montana must conspicuously refer to any other notice form.~~ *the licensee shall refer the individual to state specific notice forms that may be used. Any national notice form must give individuals clear and conspicuous notice that when state law is more protective of individuals than federal privacy law, the licensee will protect information in accordance with state law*."

Section 4. Section 33-19-301, MCA, is amended to read:

"33-19-301. Access to recorded personal information. (1) If an individual, after proper identification, submits a written request to an insurance institution, insurance producer, or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, insurance producer, or insurance-support organization, the insurance institution, insurance producer, or insurance-support organization shall, within 30 business days from the date ~~such~~ *that the* request is received:

(a) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance institution, insurance producer, or insurance-support organization prefers;

(b) permit the individual to see and copy, in person, the recorded personal information pertaining to ~~him~~ *the individual* or to obtain a copy of the recorded personal information by mail, whichever the individual prefers. If the recorded personal information is in coded form, an accurate translation in plain language must be provided in writing.

(c) *except for the tracking of disclosures of medical record information that must be recorded and disclosed under subsection (2),* disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, insurance producer, or insurance-support organization has disclosed the

personal information within 2 years prior to the request and, if the identity is not recorded, the names of those insurance institutions, insurance producers, insurance-support organizations, or other persons to whom ~~such~~ *the* information is normally disclosed; and

(d) provide the individual with a summary of the procedures ~~he~~ *that the individual* may use to request correction, amendment, or deletion of recorded personal information.

(2) (a) If an individual, after proper identification, submits a written request to a licensee for a record of disclosures of medical record information, the licensee shall provide to the individual a record of all disclosures of medical record information made by the licensee pursuant to 33-19-306(8), (9), other than disclosures made to law enforcement authorities, (10)(b), (12)(a)(iii), (13), (14), only as to medical record information that has not been deidentified, (15), (21), only as to medical record information that has not been deidentified, or (22) or 33-19-307. The record of those disclosures must include:

(i) the name, address, and institutional affiliation, if any, of each person receiving or examining the medical information during the preceding 2 years;

(ii) the date of the receipt or examination; and

(iii) to the extent practicable, a description of the information disclosed.

(b) If an individual submits a written request to a licensee for a record of disclosures of medical record information and the licensee may have made medical record information disclosures pursuant to 33-19-306(4)(b), (5), (11), (12)(a)(i), (12)(a)(ii), (12)(b), (16), (18), or (19), the licensee must provide the individual with a description of the types of medical record information that the licensee may disclose under those exceptions, along with a general description of the usual recipients of that information. Individual tracking of each disclosure of medical record information is not required.

~~(2)~~*(3)* Personal information provided pursuant to subsection (1) must identify the source of the information if ~~such~~ *the* source is an institutional source.

~~(3)~~*(4)* Medical record information supplied by a medical care institution or medical professional and requested under subsection (1), together with the identity of the medical professional or medical care institution that provided the information, ~~shall~~ *must* be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, insurance producer, or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, insurance producer, or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional. The medical professional may review and interpret the information and, at the request of the affected individual, shall consult with the affected individual.

~~(4)~~*(5)* Except for personal information provided under 33-19-303, an insurance institution, insurance producer, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

~~(5)~~*(6)* The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or

insurance producer authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (1), an insurance institution, insurance producer, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

~~(6)~~*(7)* The rights granted to individuals in this section extend to all natural persons to the extent information about them is collected, ~~and~~ maintained, *and disclosed* by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them, *except for the tracking of medical record information as provided for in subsection (2)*.

~~(7)~~*(8)* For the purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency"."

Section 5. Section 33-19-306, MCA, is amended to read:

"33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, a licensee may not disclose personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual. The authorization must be in the form provided in 33-19-206.

(3) Disclosure limited to that which is reasonably necessary may be made to a person to enable the person to provide information to the disclosing licensee for the purpose of detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction. A person to whom information is disclosed pursuant to this subsection shall agree in writing not to further disclose the information, but this requirement for an agreement does not prevent disclosure of information that is necessary to obtain further information for the purposes set forth in this subsection.

(4) (a) Disclosure may be made between licensees if the information disclosed is limited to that which is reasonably necessary:

(i) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(ii) for either the disclosing or receiving licensee to perform its insurance function ~~in connection with an insurance transaction involving an individual~~.

(b) A licensee receiving information pursuant to this subsection (4) may not further disclose the information unless otherwise permitted by this section.

(5) Disclosure may be made to a medical care institution, a medical professional, or the individual to whom the information pertains if that information is reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware;

(c) conducting an operations or services audit; or

(d) determining the reasonableness or necessity of medical services.

(6) Disclosure:

(a) may be made to an insurance regulatory authority ~~that agrees not to further disclose the information without the individual's separate, written authorization~~;

(b) must be made as required by law; and

(c) must be or may be made to the commissioner as required or permitted by law.

(7) Disclosure may be made by a licensee or an insurance-support organization to a law enforcement or other government authority or to an insurance regulatory agency:

(a) to protect the interests of a licensee in preventing, investigating, or prosecuting the perpetration of fraud upon a licensee; or

(b) if the licensee or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies if:

(i) an individual is not identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed sale, transfer, merger, or consolidation of all or part of the business of the licensee or insurance-support organization if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to a licensee's affiliate as follows:

(i) to allow use of the information in connection with an audit of the licensee;

(ii) to enable a licensee to perform an insurance function; or

(iii) as allowed by 33-19-307.

(b) A licensee disclosing pursuant to this section must have a written agreement with the affiliate that the affiliate will not use or further disclose information received except to carry out the purposes set forth in subsection (12)(a) and that if further disclosure is necessary to meet those purposes, the disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibition on use and disclosure. A disclosure allowed by 33-19-307 is governed by that section.

(13) Disclosure that is limited to that which is reasonably necessary may be made to an insurance-support organization to perform insurance-support services for the licensee. The insurance-support organization may redisclose the information to the extent necessary to provide its services to its member or subscriber licensees and other insurance-support organizations or as otherwise permitted by law, but not for a marketing purpose.

(14) ~~Notwithstanding any other provision of this section, disclosure~~ *Disclosure* may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the licensee's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization. ~~Information~~ *Medical record information* disclosed pursuant to this subsection must be edited to prevent the identification of the applicant, policyholder, or certificate holder. *Employer audits that are required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended, are not subject to the provisions of this subsection.*

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction. Disclosure pursuant to this subsection may not be made to a group policyholder without a separate, written authorization from the individual.

(18) Disclosure may be made to a person contractually engaged to provide services to enable a licensee to perform an insurance function, or to perform an insurance function on behalf of a licensee, if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement and that if further disclosure is necessary to perform the insurance function, that disclosure will be made only to the licensee or to a person who agrees in writing to be bound by the same prohibitions on use and disclosure.

(19) If a licensee has to disclose personal *or privileged* information in order to perform an insurance function and disclosure is not permitted under another

exception in this section, disclosure may be made to a person other than a licensee if the disclosure is limited to that which is reasonably necessary to enable the person to perform services or an insurance function for the disclosing licensee and if the person is notified by the licensee that the person is prohibited from:

(a) using the information other than to carry out the limited purpose for which the information is disclosed; and

(b) disclosing the information other than to the licensee and as allowed in subsection (3).

(20) Disclosure may be made to a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or insurance producer as having a legal interest in a policy of insurance if:

(a) medical record information is not disclosed; and

(b) the information disclosed is limited to that which is reasonably necessary to permit the person with a legal interest in the policy to protect that person's interests in that policy.

(21) Disclosure may be made to provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors, if the disclosure is limited to that which is reasonably necessary to enable the person or entity to perform services or an insurance function for the disclosing licensee and if the person or entity is notified by the licensee that the person or entity is prohibited from using the information, other than to carry out the limited purpose for which the information is disclosed.

~~(20)~~*(22)* Notwithstanding any other provision of this chapter, disclosure for a marketing purpose may be made only as allowed by 33-19-307.

~~(21)~~*(23)* Nothing in this section may be construed to prevent the disclosure of personal information that is otherwise discoverable pursuant to the Montana Rules of Civil Procedure.

~~(22)~~*(24)* The commissioner may adopt rules creating additional exceptions to disclosure restrictions for the purpose of allowing a licensee or insurance-support organization to carry out a necessary insurance function. The commissioner shall adopt rules establishing the methods that must be used by licensees to prevent identification as described in subsection (14)."

Section 6. Section 33-19-307, MCA, is amended to read:

"33-19-307. Personal information used for marketing purposes — restrictions. (1) Except as permitted in this section, a licensee may not use or disclose personal information for a marketing purpose. For the purposes of this section, an insurance producer who describes to the producer's clients products or services available through the producer is not engaged in marketing.

(2) A licensee may use or disclose to another licensee personal information that is reasonably necessary to enable the licensee to market insurance products or services. A licensee may use or disclose to another licensee personal information, excluding medical record information, that is reasonably necessary to enable the licensee to market financial products and services. A licensee that receives personal information under this section from a disclosing licensee may not further disclose the information or use the information for any purpose other than marketing insurance and financial products and services.

(3) A licensee may disclose personal information that is reasonably necessary to enable an affiliate that is not a licensee to market insurance products and services. A licensee may disclose to an affiliate that is not a licensee personal information, excluding medical record information, that is reasonably necessary to enable the affiliate to market financial products and services. Disclosures under this subsection may be made only with a written agreement with the affiliate that the affiliate will not further disclose the information and will use it only for marketing insurance or financial products and services.

(4) A licensee may disclose personal information that is reasonably necessary to enable a person contractually engaged to provide services for or on behalf of the licensee to market insurance or financial products or services if the person agrees in writing that the person will not use or further disclose information obtained or developed pursuant to the engagement except to carry out the limited purpose of the engagement. A licensee shall adopt~~,~~ *and* maintain~~, and monitor~~ policies and procedures reasonably designed to ensure that third parties with whom the licensee contracts under this subsection comply with the requirements of this section.

(5) A licensee may use or disclose personal information for purposes other than those specified in subsections (2) ~~and (3)~~ *through (4)* only with an individual's ~~separate~~ written authorization *as described in 33-19-306(2).* In addition to meeting the requirements of 33-19-206, the authorization must:

(a) clearly and conspicuously state that the disclosed information is intended to be used for marketing purposes;

(b) specify each entity or type of entity to which the licensee intends to disclose the information;

(c) specify what information the licensee intends to disclose; and

(d) specify the type of marketing that the individual might receive pursuant to the disclosure."

Section 7. Effective dates — applicability. (1) [Section 2 and this section] are effective on passage and approval.

(2) [Sections 1 and 3 through 6] are effective January 1, 2004, and apply to policies issued or renewed on or after January 1, 2004.

Ap proved April 17, 2003

CHAPTER NO. 386

[HB 222]

AN ACT ALLOWING A JUDGE WHO REVOKES A SENTENCE SUSPENSION TO IMPOSE ANY SENTENCE THAT COULD HAVE BEEN IMPOSED THAT IS NOT LONGER THAN THE ORIGINAL SENTENCE; IMPOSING A SUPERVISORY FEE ON PERSONS SUPERVISED BY THE DEPARTMENT OF CORRECTIONS UNDER INTENSIVE SUPERVISION OR CONDITIONAL RELEASE OR TRANSFERRING THEIR SUPERVISION TO ANOTHER STATE; PROVIDING A PROCEDURE FOR SUSPENDING ALL OR PART OF THE REMAINING IMPRISONMENT SENTENCE OF A PERSON WHO SUCCESSFULLY COMPLETES THE STATE BOOT CAMP; GIVING PROBATION AND PAROLE OFFICERS AUTHORITY TO DETAIN

A PERSON UNDER LIMITED CIRCUMSTANCES AND TO TURN THE PERSON OVER TO A LAW ENFORCEMENT AGENCY OR PEACE OFFICER; AMENDING SECTIONS 46-18-203, 46-23-1031, AND 53-30-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence or any condition of a deferred imposition of sentence, the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any ~~lesser~~ sentence *that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence*; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit~~, however,~~ must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released."

Section 2. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection (1)(b), a probationer, ~~or~~ parolee, *or person committed to the department who is supervised by the department under intensive supervision or conditional release* shall pay *to the clerk of the district court that has jurisdiction over the person during the person's supervision* a supervisory fee of no less than $120 a year and no more than $360 a year, prorated at no less than $10 a month for the number of months under supervision. *A person allowed to transfer supervision to another state shall pay a fee of $50 to cover the cost of processing the transfer.* The ~~fee~~ *interstate transfer fees required by this subsection* must be collected by the ~~clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part~~ *department*.

(b) The court, *department,* or ~~the~~ board may reduce or waive ~~the~~ *a* fee *required by subsection (1)(a)* or suspend the monthly payment of the *supervisory* fee if it determines that the payment would cause the ~~probationer or parolee~~ *person* a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the *supervisory* fees collected under the provisions of this section.

(b) ~~(i) Prior to July 1, 2003, district court clerks~~ *Prior to July 1, 2003, district court clerks* shall deduct from the total *supervisory* fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a). *After June 30, 2003, district court clerks shall deposit the total supervisory fees collected pursuant to subsection (1) into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator.*

~~(ii) After June 30, 2003, district court clerks shall deposit the fees into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator.~~"

Section 3. Section 53-30-402, MCA, is amended to read:

"53-30-402. ~~Sentence reduction for offenders~~ *Completion of boot camp — suspension of sentence*. A sentencing court retains jurisdiction for purposes of this section. ~~A sentencing court may order a reduction of sentence for a convicted offender who:~~

~~(1) is certified by the department as having successfully completed the boot camp incarceration program; and~~

~~(2) applies to the court within 1 year after beginning to serve a sentence at a correctional institution.~~ *At the time of sentencing, the sentencing court may order that if the convicted person successfully completes the boot camp incarceration program:*

(1) the court will consider a petition from the person, after which the court may suspend all or part of the remainder of the person's sentence of imprisonment; or

(2) a part or all of the remainder of the person's sentence of imprisonment, as determined by the court at the time of sentencing, is automatically suspended on conditions imposed by the court at the time of sentencing."

Section 4. Arrest by probation and parole officer. A probation and parole officer who, while in the course of conducting the officer's duties, has a reasonable suspicion that a person is interfering or will interfere with the officer's duties or has probable cause to believe that the person is committing or has committed an offense may detain the person. The probation and parole officer shall immediately notify the nearest available law enforcement agency or peace officer, and the law enforcement agency or peace officer shall either take the person into custody or release the person.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 46, chapter 6, part 5, and the provisions of Title 46 apply to [section 4].

Section 6. Coordination instruction. *If House Bill No. 29 and [this act] are both passed and approved, then [section 1 of House Bill No. 29], amending 53-30-402, is void.*

Section 7. Effective date. [This act] is effective on passage and approval.

Ap proved April 17, 2003

CHAPTER NO. 387

[HB 269]

AN ACT REVISING THE DEPARTMENT OF JUSTICE'S AND THE DEPARTMENT OF ADMINISTRATION'S RESPONSIBILITIES REGARDING FIRE PROTECTION AND FIRE PREVENTION; REMOVING CERTAIN REQUIREMENTS FOR KEEPING FIRE INCIDENT RECORDS; REMOVING THE REQUIREMENT THAT FIRE PREVENTION AND INVESTIGATION RULES ADOPTED BY THE DEPARTMENT OF JUSTICE INCLUDE CERTAIN BUILDING EQUIPMENT AND SYSTEMS; REQUIRING GENERAL LIABILITY INSURANCE RATHER THAN A BOND

FOR PUBLIC DISPLAYS OF FIREWORKS; REDEFINING OCCUPANCY OF BUILDINGS OR STRUCTURES FOR A BROAD RANGE OF PURPOSES; CHANGING THE FREQUENCY FOR FIRE INSPECTIONS IN SCHOOLS FROM 12 MONTHS TO 18 MONTHS; REMOVING CERTAIN REQUIREMENTS FOR FIRE INCIDENT REPORTS; REVISING CERTAIN PROVISIONS RELATED TO FIRE PROTECTION AND HAZARDOUS MATERIALS STORAGE FOR STATE-OWNED BUILDINGS AND ELIMINATING REVIEW RESPONSIBILITIES FOR ARCHITECTURAL PLANS PRESENTED TO LOCAL GOVERNMENTS; AMENDING SECTIONS 2-17-112, 50-3-102, 50-3-103, 50-37-108, 50-61-101, 50-61-103, 50-61-114, AND 50-63-203, MCA; AND REPEALING SECTIONS 50-61-112 AND 50-61-113, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-112, MCA, is amended to read:

"2-17-112. Fire protection for state-owned buildings — department of administration ~~— state fire prevention and investigation program~~. ~~(1)~~ The department of administration shall obtain information necessary to prepare a budget for each biennium for fire protection services for state-owned buildings that present particular firefighting *and hazardous materials storage* problems ~~as determined by the state fire prevention and investigation program of the department of justice~~. In preparing the budget, the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services provided to state agencies, all of which are subject to appropriation by the legislature.

~~(2) The department of justice shall review provisions for protection of state-owned buildings in connection with inspections conducted under 50-3-102.~~"

Section 2. Section 50-3-102, MCA, is amended to read:

"50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules. (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as ~~its budget and other inspection~~ duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local fire and law enforcement authorities in arson investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services; *and*

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices~~; and~~

~~(h) keep a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating to the fires that have been determined by investigations under the provisions of chapter 63. Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, the record must be open at all times to public inspection~~.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

(5) Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, all records maintained by the department must be open at all times to public inspection."

Section 3. Section 50-3-103, MCA, is amended to read:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

~~(f) flue and chimney construction;~~

~~(g) heating devices;~~

~~(h) electrical wiring and equipment;~~

~~(i) air conditioning, ventilating, and other duct systems;~~

~~(j) refrigeration systems;~~

~~(k)~~*(f)* flammable liquids;

~~(l) oil and gas wells;~~

~~(m)~~*(g)* application of flammable finishes;

~~(n)~~*(h)* explosives, acetylene, liquefied petroleum gas, and similar products;

~~(o)~~*(i)* calcium carbide and acetylene generators;

~~(p)~~*(j)* flammable motion picture film;

~~(q)~~*(k)* combustible fibers;

~~(r)~~*(l)* hazardous chemicals or materials;

~~(s)~~*(m)* rubbish;

~~(t)~~*(n)* open-flame devices;

~~(u)~~*(o)* parking of vehicles;

~~(v)~~*(p)* dust explosions;

~~(w)~~*(q)* lightning protection;

~~(x)~~*(r)* storage of smokeless powder and small arms primers; and

~~(y)~~*(s)* other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 4. Section 50-37-108, MCA, is amended to read:

"50-37-108. ~~Damage indemnity bond~~ *General liability insurance* required for public display. The state fire prevention and investigation program or the governing body of the city, town, or county shall require ~~a bond considered adequate by the state fire prevention and investigation program or governing body from the licensee in a sum not less than $500, conditioned for the~~

~~payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors~~ *a person planning a public display of fireworks to provide proof of general liability insurance in a reasonable amount as determined by rules adopted by the department of justice*."

Section 5. Section 50-61-101, MCA, is amended to read:

"50-61-101. Purpose of chapter. The purpose and intent of this chapter are to provide for the public safety in case of fire in those occupancies specified in 50-61-103 and to ~~provide~~ *allow* for inspection of the buildings and premises by specified officers."

Section 6. Section 50-61-103, MCA, is amended to read:

"50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or *a* structure or any portion ~~thereof~~ *of a building or a structure* by a gathering of *50 or more* persons for *purposes such as* civic, political, ~~travel,~~ religious, *or* social *functions; recreation, education, or instruction; food or drink consumption; or awaiting transportation*~~, or recreational purposes, including among others:~~

~~(a) armories;~~

~~(b) assembly halls;~~

~~(c) auditoriums;~~

~~(d) bowling alleys;~~

~~(e) broadcasting studios;~~

~~(f) chapels;~~

~~(g) churches;~~

~~(h) club rooms;~~

~~(i) dance halls;~~

~~(j) exhibition rooms;~~

~~(k) gymnasiums;~~

~~(l) lecture halls;~~

~~(m) lodge rooms;~~

~~(n) motion picture theaters;~~

~~(o) museums;~~

~~(p) night clubs;~~

~~(q) opera houses;~~

~~(r) passenger stations;~~

~~(s) pool rooms;~~

~~(t) recreation areas;~~

~~(u) restaurants;~~

~~(v) skating rinks;~~

~~(w) television studios;~~

~~(x) theaters; and~~

~~(y) taverns~~.

(2) "Business occupancy" means the occupancy or use of a building or *a* structure or any portion ~~thereof~~ *of a building or a structure* for *office, professional, or service transactions. A business occupancy includes the use of a structure for the storage of records and accounts or for an eating or drinking business establishment with an occupant load of less than 50 persons* ~~the transaction of business or the rendering or receiving of professional services, including among others:~~

~~(a) banks;~~

~~(b) barbershops;~~

~~(c) beauty parlors;~~

~~(d) office buildings;~~

~~(e) radio stations;~~

~~(f) telephone exchanges; and~~

~~(g) television stations~~.

(3) "Educational occupancy" means the occupancy or use of a building or *a* structure or any portion ~~thereof~~ *of a building or a structure* by persons assembled for the purpose of learning or receiving educational instruction. *An educational occupancy includes but is not limited to any building used for*~~, including among others~~:

(a) ~~academies;~~ *educational purposes through the 12th grade for more than 12 hours a week or 4 hours in any 1 day; or*

(b) ~~colleges;~~ *day-care purposes for more than 12 persons*

~~(c) libraries;~~

~~(d) schools; and~~

~~(e) universities~~.

(4) "Industrial occupancy" means the occupancy or use of a building or *a* structure or any portion ~~thereof~~ *of a building or a structure* for assembling, *disassembling,* fabricating, finishing, manufacturing, packaging, *repairing,* or processing operations~~, including among others:~~

~~(a) assembly plants;~~

~~(b) creameries;~~

~~(c) electric substations;~~

~~(d) factories;~~

~~(e) ice plants;~~

~~(f) laboratories;~~

~~(g) laundries;~~

~~(h) manufacturing plants;~~

~~(i) mills;~~

~~(j) power plants;~~

~~(k) processing plants;~~

~~(l) pumping stations;~~

~~(m) repair garages;~~

~~(n) smokehouses; and~~

~~(o) workshops~~.

(5) "Institutional occupancy" means the occupancy or use of a building or *a* structure or any portion ~~thereof~~ *of a building or a structure* by *more than five* persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained. *An institutional occupancy includes but is not limited to*~~, including among others~~:

(a) ~~asylums;~~ *nurseries for the full-time care of children under the age of 6;*

~~(b) homes for the aged;~~

~~(c)~~*(b)* hospitals*, sanitariums, or nursing homes*; *and*

~~(d) houses of correction;~~*(c) mental hospitals, mental sanitariums, jails, prisons, reformatories, or buildings where personal liberties of those harbored or detained are similarly restrained.*

~~(e) day care facilities;~~

~~(f) infirmaries;~~

~~(g) jails;~~

~~(h) nurseries;~~

~~(i) orphanages;~~

~~(j) nursing homes;~~

~~(k) penal institutions;~~

~~(l) reformatories;~~

~~(m) sanitariums;~~

~~(n) long-term care facilities; and~~

~~(o) boarding homes.~~

(6) "Residential occupancy" means the occupancy or use of a building or *a* structure or any portion ~~thereof~~ *of a building or a structure* by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment ~~or~~ *and who* are not involuntarily detained. *A residential occupancy includes but is not limited to hotels, motels, apartment houses, dwellings, and lodging houses. A residential occupancy does not include a building used only for private residential purposes for a family*~~, including among others (but not including single-family private houses):~~

~~(a) apartments;~~

~~(b) clubhouses;~~

~~(c) convents;~~

~~(d) dormitories;~~

~~(e) dwellings;~~

~~(f) hotels;~~

~~(g) motels;~~

~~(h) multifamily houses; and~~

~~(i) lodging houses~~."

Section 7. Section 50-61-114, MCA, is amended to read:

"50-61-114. Fire chief and fire inspector to make inspections. ~~The~~ *For the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter, the* chief of the fire department of each municipality, district, or fire service area, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist~~, for the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter~~:

(1) shall enter into school buildings at least once each ~~12~~ *18* months; and

(2) may enter into all other buildings and upon all other premises within the jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises."

Section 8. Section 50-63-203, MCA, is amended to read:

"50-63-203. ~~Reports to be filed with~~ *Notification to* department of justice. (1) If it appears that ~~the~~ *a* fire was of suspicious origin, if there was a loss of human life, or if it is determined that a criminal investigation is necessary, the official responsible for the investigation shall notify the department of justice and the appropriate law enforcement agency within 24 hours and shall file a written report of the cause ~~with the department~~ within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the department *of justice* of the amount of adjustment and the apparent cause and circumstances of the fire ~~on forms furnished by the department~~.

~~(3) Each official responsible for investigating fires shall file a fire incident report on each fire with the department. Reports shall be on forms and shall contain information prescribed by the department. These reports shall be sent to the department on a monthly basis or at intervals determined necessary by the department.~~"

Section 9. Repealer. Sections 50-61-112 and 50-61-113, MCA, are repealed.

Section 10. Coordination instruction. If House Bill No. 196 and [this act] are both passed and approved, then [section 22] of House Bill No. 196, amending 50-61-103, is void.

Ap proved April 17, 2003

CHAPTER NO. 388

[HB 289]

AN ACT INCREASING THE SANCTIONS IMPOSED UPON A DRIVER WHO REFUSES TO SUBMIT TO A BLOOD OR BREATH TEST BY PROVIDING A REBUTTABLE INFERENCE THAT A PERSON WHO REFUSES A TEST IS UNDER THE INFLUENCE; AND AMENDING SECTION 61-8-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged

to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. *The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.*

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Ap proved April 18, 2003

CHAPTER NO. 389

[HB 358]

AN ACT GENERALLY REVISING THE LAWS GOVERNING MUNICIPAL COURTS AND JUSTICES' COURTS; REVISING THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR MUNICIPAL COURT JUDGES; ALLOWING A COUNTY TO ESTABLISH A JUSTICE'S COURT AS A COURT OF RECORD; PROVIDING THAT THE QUALIFICATIONS AND TRAINING REQUIREMENTS FOR A JUSTICE OF THE PEACE SERVING IN A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE THE SAME AS FOR A MUNICIPAL COURT JUDGE; PROVIDING THAT APPEALS FROM A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AUTHORIZING A

MUNICIPAL COURT JUDGE OR A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT ESTABLISHED AS A COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A DISTRICT COURT; PROVIDING A GRANDFATHER CLAUSE FOR EXISTING JUSTICES OF THE PEACE; AMENDING SECTIONS 3-5-114, 3-6-102, 3-6-202, 3-6-204, 3-10-101, 3-10-203, 3-10-207, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;

(2) a retired judge of the district court;

(3) a justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;

(4) a municipal court judge; or

~~(3)~~*(5)* a retired justice of the supreme court."

Section 2. Section 3-6-102, MCA, is amended to read:

"3-6-102. Abolition of city court. (1) In cities in which a municipal court is established, the office of city judge is abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which ~~he~~ *the judge* served as city judge for the remainder of ~~his~~ *the judge's* term and until the office of municipal court judge is filled by election, as provided under 3-6-201 ~~and 3-6-202~~."

Section 3. Section 3-6-202, MCA, is amended to read:

"3-6-202. Qualifications — certification — training. (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the ~~1972~~ Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least ~~2~~ *3* years prior to the date of appointment or election.

(2) A municipal court judge ~~must be a resident and voter in the city in which he is elected at the time of his election~~ *shall reside in the county in which the court is located and shall meet the residency requirements provided in 3-10-204*.

~~(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.~~

~~(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.~~

~~(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and~~

~~creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause.~~

(3) The commission on courts of limited jurisdiction, upon finding compliance with subsections (1) and (2), shall issue a certificate, as required in 3-1-1502, prior to the municipal court judge assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(4) A municipal court judge shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(5) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (4).

(6) A municipal court judge is entitled to reimbursement by the city in which the judge holds or will hold court for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(7) On or before December 31 of each year, a municipal court judge shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a municipal court judge or declare a vacancy in the office of the judge for failure to meet the training requirements established in this section."

Section 4. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification — judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, ~~he~~ *the judge* shall call in *a justice of the peace for a justice's court established as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or* ~~some practicing~~ *an* attorney of the county in which ~~his~~ *the* court is located~~, who shall be~~ *to act as a* judge pro tempore. *The judge pro tempore* ~~with~~ *has* the same ~~powers for the purposes of the cause~~ *power and authority* as the *municipal court* judge ~~of the court~~."

Section 5. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts — authorization to combine with city court — *justice's court established as court of record*. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A

justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a justice's court established as a court of record and, in addition to the provisions of this chapter, is also subject to the provisions of [sections 8 through 10]. The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record. A justice's court established as a court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

Section 6. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course — annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ *must* be paid to the elected or appointed justice of the peace for attending the course by the county in which ~~he~~ *the justice of the peace* holds or will hold court and ~~shall~~ *must* be charged against that county.

(2) ~~There shall~~ *Subject to subsection (4), there must* be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials ~~shall~~ *must* be paid to the elected or appointed justice of the peace for attending the sessions by the county in which ~~he~~ *the justice of the peace* holds or will hold court and ~~shall~~ *must* be charged against that county.

(3) ~~Each~~ *Except as provided in subsection (4), each* justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies ~~him~~ *the justice of the peace* from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

(4) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, must meet the requirements provided for in [section 10]."

Section 7. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) ~~The~~ *Subject to subsections (2) through (4), the* board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504(1).

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

Section 8. Appeal to district court from justice's court established as court of record — record on appeal. (1) A party may appeal to district court from a justice's court established as a court of record judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals from the justice's court established as a court of record to district court.

Section 9. Disqualification of justice of peace for justice's court established as court of record — judge pro tempore. When a justice of the peace for a justice's court established as a court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the justice's court established as a court of record.

Section 10. Minimum judicial education requirements — justice of peace for justice's court established as court of record. (1) The commission on courts of limited jurisdiction shall issue a certificate, as required in 3-1-1502, prior to the justice of the peace for a justice's court established as a court of record assuming office. The certificate must be conditioned upon continued compliance with the minimum judicial education requirements provided for in this section. The certificate must be filed with the clerk and recorder as provided in 3-1-1502.

(2) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, shall complete a minimum of 15 hours of continuing judicial education requirements each year or a greater number established by the supreme court. Attendance at the two annual training sessions under 3-10-203 may fulfill the requirement provided for in this subsection.

(3) Completion of a course approved for continuing judicial or legal education hours applies to the judicial education requirements under subsection (2).

(4) A justice of the peace for a justice's court established as a court of record is entitled to reimbursement by the county in which the justice of the peace holds or will hold court for all actual and necessary expenses and costs incurred in attending a continuing judicial or legal education course.

(5) On or before December 31 of each year, a justice of the peace for a justice's court established as a court of record shall file an affidavit of compliance with the continuing judicial education requirements established in this section with the commission on courts of limited jurisdiction. The supreme court may sanction a justice of the peace for a justice's court established as a court of record or declare a vacancy in the office of the justice of the peace for failure to meet the training requirements established in this section.

Section 11. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo — pleadings~~,~~ — conduct of trial. (1) ~~All~~ *Except as provided in subsection (3), all* appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on ~~such~~ terms ~~as may be~~ *that are* just, ~~allow~~ *allows* other or amended pleadings to be filed in ~~such~~ *the* action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the record as provided in [section 8]."

Section 12. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110*, and an appeal from a justice's court established as a court of record is governed by [section 8]*.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court*, other than a justice's court established as a court of record,* or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

Section 13. Grandfather clause. An incumbent justice of the peace on [the effective date of this act], in a county in which a justice's court established as a court of record is established, who meets the minimum education requirements for a justice of the peace is eligible to run for the justice of the

peace for a justice's court established as a court of record in that county at the next and subsequent elections held for the justice of the peace for the justice's court established as a court of record unless the justice of the peace has a break in service.

Section 14. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. Codification instruction. [Sections 8 through 10] are intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [sections 8 through 10].

Section 16. Effective date. [This act] is effective July 1, 2003.

Ap proved April 18, 2003

CHAPTER NO. 390

[HB 481]

AN ACT IMPOSING A UTILIZATION FEE ON HOSPITAL FACILITIES FOR INPATIENT BED DAYS; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT AND DEPOSIT FEES IN A STATE SPECIAL REVENUE ACCOUNT FOR FUNDING INCREASES IN MEDICAID PAYMENTS TO HOSPITALS; PROVIDING FOR ASSESSMENT, COLLECTION, AND ADJUSTMENT OF THE FEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, A TERMINATION DATE, AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For purposes of [sections 1 through 13], the following definitions apply:

(1) (a) "Hospital" means a facility licensed as a hospital pursuant to Title 50, chapter 5.

(b) The term does not include Montana state hospital.

(2) (a) "Inpatient bed day" means a day of inpatient care provided to a patient in a hospital. A day begins at midnight and ends 24 hours later. A part of a day, including the day of admission, counts as a full day. The day of discharge or death is not counted as a day. If admission and discharge or death occur on the same day, the day is considered a day of admission and counted as one inpatient bed day. Inpatient bed days include all inpatient hospital benefit days as defined for medicare reporting purposes in section 216 of the centers for medicaid and medicare services publication 10, the Hospital Manual. Inpatient bed days also include all nursery days during which a newborn infant receives care in a nursery.

(b) The term does not include observation days or days of care in a swing bed, as defined in 50-5-101.

(3) "Patient" means an individual obtaining skilled medical and nursing services in a hospital. The term includes newborn infants.

(4) "Report" means the report of inpatient bed days required in [section 3].

(5) "Utilization fee" or "fee" means the fee required to be paid for each inpatient bed day, as provided in [section 2].

Section 2. Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee in the amount of:

(a) $32.44 for each inpatient bed day between July 1, 2003, and December 31, 2003; and

(b) $19.43 for each inpatient bed day between January 1, 2004, and June 30, 2005.

(2) (a) All proceeds from the collection of utilization fees, including penalties and interest, must be deposited to the credit of the department of public health and human services in a state special revenue fund as provided in [section 14].

(b) A hospital may not place a fee created in [sections 1 through 13] on a patient's bill.

Section 3. Reporting and collection of fee. (1) (a) On or before January 31, 2004, a hospital shall file with the department an annual report of the number of inpatient bed days in the hospital during the 6-month period beginning July 1, 2003, and ending December 31, 2003. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under [section 2(1)(a)].

(b) On or before January 31, 2004, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the 6-month period beginning July 1, 2003, and ending December 31, 2003.

(2) (a) Except as provided in subsection (1), on or before January 31 of each year, a hospital shall file with the department an annual report of the number of inpatient bed days during the preceding year beginning January 1 and ending December 31. The report must be in the form prescribed by the department. The report must be accompanied by a payment in an amount equal to the fee required to be paid under [section 2(1)(b)].

(b) Except as provided in subsection (1), on or before January 31 of each year, the department of public health and human services shall provide the department with a list of hospitals licensed and operating in the state during the preceding year beginning January 1 and ending December 31.

Section 4. Audit — records. (1) The department may audit the records and other documents of any hospital to ensure that the proper utilization fee has been collected.

(2) The department may require the hospital to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify the proper amount of the utilization fee paid.

(3) A hospital shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of inpatient bed days in the facility subject to the utilization fee. The facility shall maintain these records for a period of at least 5 years from the date the report is due.

Section 5. Periods of limitation. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a report is filed unless the notice of additional fees proposed to be assessed

is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the fee, the hospital consents in writing to an assessment after the 5-year period, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the year for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the hospital files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the hospital has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit is filed or a credit or refund is allowed if a claim is not filed is automatically extended.

Section 6. Penalty and interest for delinquent fees — waiver. If the fee for any hospital is not paid on or before the due date of the report as provided in [section 3], penalty and interest, as provided in 15-1-216, must be added to the fee.

Section 7. Estimated fee on failure to file. For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of inpatient bed day use of any hospital for which information has been obtained, the department may:

(1) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(2) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(3) take testimony and require production of any other material for its information.

Section 8. Deficiency assessment — hearing. (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the hospital a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the hospital may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fees liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the hospital has requested, shall grant the hospital an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the hospital.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand for payment to the hospital, and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Any deficiency assessment bears interest from the date

specified in [section 3] for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notice.

Section 9. Closing agreements. (1) The director of the department or any person authorized in writing by the director may enter into an agreement with a hospital relating to the liability of the hospital with respect to the fees imposed by [sections 1 through 13] for any period.

(2) An agreement under this section is final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) in a case involving the agreement, the agreement may not be reopened as to matters agreed upon or modified by any officer, employee, or agent of this state; and

(b) the agreement may not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding concerning the agreement or concerning any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement.

Section 10. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest due for any period is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest due from the hospital at that time and the balance must be refunded to the hospital or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the hospital to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) Interest is not allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(4) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by [sections 1 through 13] is not considered an overpayment with respect to which interest is allowable.

Section 11. Warrant for distraint. If the utilization fee is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

Section 12. Relation to other taxes and fees. The utilization fee imposed under [section 2] is in addition to any other taxes and fees required to be paid by hospitals.

Section 13. Rulemaking. The department may adopt rules necessary to implement and administer [sections 1 through 13].

Section 14. State special revenue fund account — administration. (1) There is a hospital medicaid reimbursement account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under [section 2] must be deposited in the account.

(3) Money in the account must be used by the department of public health and human services to provide funding for increases in medicaid payments to hospitals and for the costs of collection of the fee and other administrative activities associated with the implementation of increases in the medicaid payments to hospitals.

Section 15. Appropriation. (1) The following money is appropriated to the department of public health and human services from the account in the state special revenue fund created in [section 14] to fund increases in medicaid payments to hospitals:

Fiscal Year 2004	$ 7,225,925
Fiscal Year 2005	$ 8,732,387

(2) The following money is appropriated to the department of public health and human services from the federal special revenue fund to match state special revenue in subsection (1) to fund increases in medicaid payments to hospitals:

Fiscal Year 2004	$19,418,341
Fiscal Year 2005	$22,941,125

(3) The increases to medicaid payments must be distributed no later than February 28 of each fiscal year.

Section 16. Codification instruction. (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 14].

Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. Contingent voidness — payment of fees. (1) If federal law or policy is amended so that the utilization fees collected pursuant to [sections 1 through 13] may not be considered as the state's share in claiming federal financial participation under the medicaid program, [sections 1 through 13] are void as of the effective date of the change in federal law or policy.

(2) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to hospitals on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, [sections 1 through 13] are void as of the date of receipt by the department of public health and human services of notice of an official determination of any refusal or denial.

(3) If the federal government determines that a part of [sections 1 through 13] violates federal law or regulations, that part is void as of the date of receipt by the department of public health and human services of notice of an official determination by the federal government. All valid parts of [sections 1 through 13] remain in effect. If the federal government determines that a part of [sections 1 through 13] violates federal law or regulations in one or more of its

applications, then the department of public health and human services may not administer [sections 1 through 13] in a manner that violates the pertinent federal law or regulations after the date of receipt by the department of public health and human services of notice of an official determination by the federal government. All valid applications remain in effect.

(4) If [sections 1 through 13] or any part of [sections 1 through 13] imposing a fee on a specific facility becomes void under the provisions of this section, all fees due, received, or collected by the department of revenue prior to the date upon which [sections 1 through 13] or any part of [sections 1 through 13] becomes void must be paid and deposited in accordance with [section 2] and a person or party may not receive a refund of any fees received or collected by the department of revenue prior to the date upon which [sections 1 through 13] or any part of [sections 1 through 13] becomes void. Any fees owing as of the date on which [sections 1 through 13] becomes void are considered waived.

(5) The department of public health and human services shall notify the code commissioner of the occurrence of any determination made pursuant to subsection (1) or (2) and the date of the occurrence.

Section 19. Effective date. [This act] is effective July 1, 2003.

Section 20. Termination. [This act] terminates June 30, 2005.

Ap proved April 17, 2003

CHAPTER NO. 391

[HB 499]

AN ACT REVISING EMERGENCY HEALTH POWERS AND COMMUNICABLE DISEASE LAWS TO ENSURE THE ABILITY TO ADEQUATELY RESPOND TO INCIDENTS AND DISASTERS INVOLVING BIOTERRORISM AND WEAPONS OF MASS DESTRUCTION; DEFINING TERMS; AMENDING SECTIONS 10-3-103, 45-5-623, 50-1-101, 50-1-202, 50-1-204, 50-2-101, 50-2-116, 50-2-118, 50-2-130, AND 50-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or ~~man-made~~ *artificial* cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, ~~or~~ accidents involving radiation byproducts or other hazardous materials*, bioterrorism, or incidents involving weapons of mass destruction*.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(7) *(a)* "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency~~;~~.

(b) ~~but the~~ *The* term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(8) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

Section 2. Section 45-5-623, MCA, is amended to read:

"45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if the person knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age;

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; or

(e) tattoos a child under the age of majority without the explicit in-person consent of the child's parent or guardian. For purposes of this subsection, "tattoo" has the meaning provided in ~~50-2-116(2)(k)(vi)~~ *50-2-116*. Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.

(2) A person convicted of the offense of unlawful transactions with children shall be fined an amount not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 50-1-101, MCA, is amended to read:

"50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Communicable disease" means ~~a disease designated communicable by the department~~ *an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.*

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

(4) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(5) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from nonquarantined individuals, to prevent or limit the transmission of the communicable disease to nonquarantined individuals."

Section 4. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. The department ~~shall~~:

(1) *shall* study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) *shall* make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, *shall* administer any federal health program for which responsibilities are delegated to states;

(4) *shall* inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), *shall* submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) *shall* advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) *shall* develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) *shall* develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) *shall* conduct health education programs;

(10) *shall* provide consultation to school and local community health nurses in the performance of their duties;

(11) *shall* consult with the superintendent of public instruction on health measures for schools;

(12) *shall* develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) *shall* provide consultation to local boards of health;

(14) *shall* bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) *shall* accept and expend federal funds available for public health services;

(16) *must* have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) *shall* adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) *shall* adopt and enforce rules regarding ~~the definition of communicable diseases and~~ the reporting and control of communicable diseases;

(19) *shall* adopt and enforce rules regarding the transportation of dead human bodies;

(20) *shall* adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; ~~and~~

(21) *shall* adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease*; and*

(22) shall enact or take measures to prevent and alleviate injury from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death."

Section 5. Section 50-1-204, MCA, is amended to read:

"50-1-204. Quarantine *and isolation* measures. The department may adopt and enforce quarantine *or isolation* measures ~~against a state, county, or municipality~~ to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than $10 or more than $100. Receipts from fines, except justice's court fines, ~~shall~~ *must* be deposited in the state general fund."

Section 6. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means ~~a disease designated as communicable by the department~~ *an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.*

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

~~(3)~~*(4)* "Institutional control" means a legal or regulatory mechanism designed to protect public health and safety or the environment that:

(a) limits access to or limits or conditions the use of environmentally contaminated property or media;

(b) provides for the protection or preservation of environmental cleanup measures; or

(c) informs the public that property is or may be environmentally impaired or that there are limitations on the access to or use of environmentally contaminated properties or media.

(5) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

~~(4)~~*(6)* "Local board" means a county, city, city-county, or district board of health.

~~(5)~~*(7)* "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

~~(6)~~*(8)* "Physician" means a physician legally authorized to practice medicine in this state.

(9) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from nonquarantined individuals, to prevent or limit the transmission of the communicable disease to nonquarantined individuals."

Section 7. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) *adopt and enforce isolation and* quarantine ~~persons who have~~ *measures to prevent the spread of* communicable diseases;

~~(b) require isolation of persons or things that are infected with communicable diseases;~~

~~(c)~~*(b)* furnish treatment for persons who have communicable diseases;

~~(d)~~*(c)* prohibit the use of places that are infected with communicable diseases;

~~(e)~~*(d)* require and provide means for disinfecting places that are infected with communicable diseases;

~~(f)~~*(e)* accept and spend funds received from a federal agency, the state, a school district, or other persons;

~~(g)~~*(f)* contract with another local board for all or a part of local health services;

~~(h)~~*(g)* reimburse local health officers for necessary expenses incurred in official duties;

~~(i)~~*(h)* abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

~~(j)~~*(i)* adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.

~~(k)~~*(j)* adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives;

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and

(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors.

~~(l)~~*(k)* adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7."

Section 8. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth ~~which~~ *that* might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) ~~as prescribed by rules adopted by the department,~~ establish and maintain ~~quarantines~~ *quarantine and isolation measures as enacted by the local board of health*;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of ~~his~~ *the local health officer's* appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician ~~shall~~ *may* not act as a physician to anyone."

Section 9. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under 50-2-116(1)(i), ~~(2)(k)(iii)~~ *(2)(j)(iii)*, or ~~(2)(k)(v)~~ *(2)(j)(v)* that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement 50-2-116(1)(i), ~~(2)(k)(iii)~~ *(2)(j)(iii)*, or ~~(2)(k)(v)~~ *(2)(j)(v)* that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or ~~by~~ making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the

petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

Section 10. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or ~~their~~ *the entity's* authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease *or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection*;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 11. Effective date. [This act] is effective on passage and approval.

Ap proved April 17, 2003

CHAPTER NO. 392

[HB 525]

AN ACT REVISING THE CLASSIFICATION FOR A THIRD-CLASS ENGINEER LICENSE TO OPERATE A STEAM BOILER; ALLOWING A PERSON TO BE LICENSED AS OTHER THAN A FIRST-CLASS OR SECOND-CLASS ENGINEER TO OPERATE A STEAM BOILER BY

COMPLETING A COURSE OF INSTRUCTION APPROVED BY THE DEPARTMENT, BY PASSING A WRITTEN EXAMINATION, AND BY HAVING AN ENGINEER INFORM THE DEPARTMENT THAT THE APPLICANT IS COMPETENT TO OPERATE THE TYPE OF BOILER FOR WHICH LICENSURE IS SOUGHT; AND AMENDING SECTIONS 50-74-303 AND 50-74-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-74-303, MCA, is amended to read:

"50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into five classes, ~~namely:~~ *including* first-class engineers, second-class engineers, third-class engineers, agricultural-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into five classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of ~~100~~ *150* pounds per square inch gauge saturated steam pressure *and not in excess of 150 horsepower per hour* and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Agricultural-class engineers are licensed to operate steam boilers that operate not in excess of 150 pounds per square inch saturated steam pressure and that:

(i) are not operated for more than 6 months of the year; and

(ii) are not operated for purposes other than the harvesting or processing of agricultural products.

(e) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature."

Section 2. Section 50-74-304, MCA, is amended to read:

"50-74-304. Requirements for engineer's license. Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and ~~shall~~ *must* meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) ~~An~~ *Except as provided in subsection (6), an* applicant for a low-pressure engineer's license must be 18 years of age or older, must have at least 3 months' full-time experience in the operation of a boiler in this classification under an engineer who holds a valid low-pressure or higher license, is required to

successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

(2) ~~An~~ *Except as provided in subsection (6), an* applicant for an agricultural-class engineer's license must be 18 years of age or older, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification *by the department*.

(3) ~~An~~ *Except as provided in subsection (6), an* applicant for a third-class engineer's license must be 18 years of age or older, must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler in this classification by the department.

(4) ~~An~~ *An* applicant for a second-class engineer's license must be 18 years of age or older and:

(a) must have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or

(b) ~~shall~~ *must* hold a valid third-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.

(5) ~~An~~ *An* applicant for a first-class engineer's license must be 18 years of age or older and:

(a) must have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department;

(b) ~~shall~~ *must* hold a valid second-class engineer's license, must have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department; or

(c) ~~shall~~ *must* hold a valid third-class engineer's license, must have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, is required to successfully pass a written examination prescribed by the department, and must be found competent to operate a boiler and steam-driven machinery in this classification by the department.

(6) As an alternative to the requirements of subsections (1) through (3), an applicant who is 18 years of age or older may apply for and be issued a license for any of the three classes of licenses provided for in subsections (1) through (3) if:

(a) the applicant completes a training course acceptable to the department that is specific to the class of boiler license sought by the applicant and successfully passes a written examination administered by the department that is specific to the class of boiler license sought by the applicant; and

(b) an engineer with a license at least equal to the class of boiler license sought by the applicant informs the department that the applicant has worked with the type of boiler for which a license is sought under the engineer's supervision for a minimum of 40 hours and that the applicant is competent to operate a boiler of the class for which licensure is sought by the applicant."

Ap proved April 18, 2003

CHAPTER NO. 393

[HB 556]

AN ACT REVISING THE REGISTRATION PERIOD FOR CERTAIN VEHICLES THAT ARE REGISTERED IN A MANNER THAT ALLOWS THEM TO DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES THAT PROVIDE A SEPARATE REGISTRATION PERIOD FOR MOTOR HOMES THAT DISPLAY AMATEUR RADIO OPERATOR LICENSE PLATES; AMENDING SECTIONS 61-3-313 AND 61-3-526, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-313, MCA, is amended to read:

"61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c)(i)(A)~~,~~ *or* 61-3-411~~, or 61-3-421~~;

(4) trucks exceeding a 1-ton rated capacity;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318; and

(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Section 61-3-526, MCA, is amended to read:

"61-3-526. Registration of motor homes and travel trailers — reregistration by mail allowed. (1) ~~All~~ *Except for a motor home displaying amateur radio operator license plates as provided in 61-3-421, all* registrations

of motor homes and travel trailers expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. Reregistration may be made by mail in the manner provided in 61-3-535. If the ownership of a motor home or travel trailer is transferred during the registration year, it must be reregistered and relicensed as provided by statute.

(2) The owner of a motor home or travel trailer registered under the provisions of this section is entitled to operate ~~such~~ *the* vehicle between May 1 and June 15 without displaying the registration certificate of the current registration year if the owner, during that period, displays upon the motor home or travel trailer the number plates, plate, or decal assigned ~~thereto~~ *to the motor home or travel trailer* for the previous registration year.

(3) The department shall adopt rules to assign a registration period for motor homes that display amateur radio operator license plates."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 394

[HB 569]

AN ACT PROVIDING FOR THE MONTANA AT-HOME INFANT CARE PROGRAM FOR LOW-INCOME PARENTS IN LIEU OF CHILD CARE ASSISTANCE; PROVIDING ELIGIBILITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. At-home infant care program — definition. (1) There is an at-home infant care program for low-income families in which a parent provides full-time child care for the family's infant under 2 years of age that will be funded if a specific appropriation is added to the general appropriations act or by budget amendment if funds become available from federal or private sources. Subject to subsection (2), the family may receive a payment in lieu of child-care assistance if the family meets the following eligibility requirements:

(a) The family is not receiving financial assistance under Title 53, chapter 4, parts 2 and 6.

(b) The family has not previously received a total of 24 months of at-home infant care assistance under this section.

(c) The family is at or below 150% of the federal poverty level.

(d) The family has fulfilled the following work requirements for 1 out of the 3 months prior to entering the program:

(i) 120 hours a month for two-parent families, which may be the contribution of one or both parents;

(ii) 60 hours a month for single-parent families;

(iii) 40 hours a month for single-parent families who are attending postsecondary education or training.

(e) A parent must be 18 years of age or older or, if under 18 years of age, have attained an equivalency of completion of secondary education, as provided in 20-7-131, or a high school diploma.

(f) A parent must meet any additional requirements as provided in administrative rules.

(2) A parent who is under 18 years of age and attending high school or a program for equivalency of completion of secondary education, as provided in 20-7-131, may receive benefits for months outside of the regular school year.

(3) For the purposes of this section, "parent" means a birth parent, a stepparent, a foster parent, or a guardian who is acting in loco parentis.

(4) The maximum rate of assistance allowed is equal to the amount of child-care assistance for infant family care for the appropriate district, as adopted by the department by rule. The family may not receive subsidies for child care for other children in the family.

(5) A participating family shall report income and other family changes as specified by rule. State agencies shall treat income received under this program as earned income.

(6) Family members may participate in education and work activities as long as one or both parents provide care full time for the infant.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 7, and the provisions of Title 52, chapter 2, part 7, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved April 17, 2003

CHAPTER NO. 395

[HB 610]

AN ACT MODIFYING THE PUBLIC HEARING PROCEDURES OF WATER AND SEWER DISTRICTS RELATING TO RATE INCREASES; AMENDING SECTION 7-13-2275, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2275, MCA, is amended to read:

"7-13-2275. Procedure relating to ordinances and resolutions — rates, fees, and charges established. (1) The ayes and noes must be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. An ordinance or resolution may not be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board must be in these words: "Be it ordained by the board of directors of .... district as follows:"

(3) All resolutions and ordinances must be signed by the president of the board and attested by the secretary.

(4) ~~Prior~~ *Except as provided in subsection (5), prior* to the passage or enactment of an ordinance or resolution imposing, establishing, changing, or

increasing rates, fees, or charges for services or facilities, the board shall order a public hearing.

(a) Notice of the public hearing must be published as provided in 7-1-2121. The published notice must contain:

(i) the date, time, and place of the hearing;

(ii) a brief statement of the proposed action; and

(iii) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(b) The notice must also be mailed to all persons who own property in the district and to all customers of the district at least 7 days and not more than 30 days prior to the public hearing. The mailed notice must contain an estimate of the amount that the property owner or customer will be charged under the proposed ordinance or resolution.

(c) Any interested person, corporation, or company may be present, represented by counsel, and testify at the hearing.

(d) The hearing may be continued by the board as necessary. After the public hearing, the board may, by resolution, impose, establish, change, or increase rates, fees, or charges.

(5) A public hearing is not required for a cumulative rate increase of less than or equal to 5% within a 12-month period if the board provides notification of the increase to persons within the district on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 396

[HB 647]

AN ACT GENERALLY REVISING THE LAWS GOVERNING HEALTH CARE INFORMATION TO CONFORM TO FEDERAL HEALTH CARE PRIVACY LEGISLATION, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996; IMPOSING A DUTY ON A PERSON AUTHORIZED TO ACT AS A HEALTH CARE REPRESENTATIVE FOR AN INDIVIDUAL WITH RESPECT TO THE INDIVIDUAL'S HEALTH CARE INFORMATION TO ACT IN GOOD FAITH TO REPRESENT THE BEST INTERESTS OF THE INDIVIDUAL; AMENDING SECTIONS 41-1-401, 41-1-402, 41-1-403, 50-5-106, 50-16-201, 50-16-502, 50-16-504, 50-16-535, 50-16-1009, 50-19-402, 50-19-405, 50-19-406, AND 53-24-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1-401, MCA, is amended to read:

"41-1-401. ~~Health professional defined~~ *Definitions.* *As used in this part, the following definitions apply:*

(1) "Emancipated minor" means an individual under 18 years of age who:

(a) is or has been married;

(b) is separated from the individual's parent, parents, or legal guardian and is self-supporting; or

(c) has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-3-438.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Health professional" ~~as used in this part shall include~~ *includes* only those persons licensed in Montana as physicians, psychiatrists, psychologists, *advanced practice registered nurses,* ~~or~~ dentists*, physician assistants-certified, professional counselors, or social workers*."

Section 2. Section 41-1-402, MCA, is amended to read:

"41-1-402. Validity of consent of minor for health services. *(1) This part does not limit the right of an emancipated minor to consent to the provision of health services or to control access to protected health care information under applicable law.*

~~(1)~~*(2)* The consent to the provision of ~~medical or surgical care or~~ *health* services *and to control access to protected health care information* by a ~~hospital or public clinic~~ *health care facility* or to the performance of ~~medical or surgical care or~~ *health* services by ~~a physician licensed to practice medicine in this state~~ *a health professional* may be given by ~~a~~ *a* minor who professes or is found to meet any of the following descriptions:

(a) a minor who ~~is or was ever~~ *professes to be or to have been* married or ~~has~~ *to have* had a child or graduated from high school ~~or is emancipated~~;

(b) a minor who ~~has been~~ *professes to be or is found to be* separated from the minor's parent, parents, or legal guardian for whatever reason and is providing self-support by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse also obliges the health professional, if the health professional accepts the responsibility for treatment, to counsel the minor or to refer the minor to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which the minor's health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as practical except under the circumstances mentioned in this subsection ~~(1)~~ *(2)*.

~~(2)~~*(3)* A minor who has had a child may give effective consent to health service for the child.

~~(3)~~*(4)* A minor may give consent for health care for the minor's spouse if the spouse is unable to give consent by reason of physical or mental incapacity."

Section 3. Section 41-1-403, MCA, is amended to read:

"41-1-403. Release of information by ~~physician~~ *health professional*. (1) ~~A treating physician or other~~ *Except with regard to an emancipated minor, a* health professional may~~, but shall not be obligated to,~~ inform the ~~spouse,~~ parent, custodian, or guardian of ~~any such~~ *a* minor in the circumstances ~~as~~ enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) ~~to inform~~ *informing* them would benefit the minor's physical and mental health and family harmony; or

(e) the ~~hospital~~ *health professional or health care facility providing treatment* desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the ~~spouse,~~ parent, parents, or legal guardian by the health professional ~~shall~~ *may* not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. ~~When~~ *If* the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from drug abuse or substance abuse, including alcohol, then ~~no~~ information with respect to any appointment, examination, test, or other health procedure ~~shall~~ *may not* be given to the parent, parents, or legal guardian, if they have not ~~been~~ already *been* informed as permitted in this part, without the consent of the minor."

Section 4. Section 50-5-106, MCA, is amended to read:

"50-5-106. Records and reports required of health care facilities — confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report must be on forms and contain information specified by the department. Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, *if applicable*, unless the disclosure was authorized ~~in writing by the patient, the patient's guardian, or the patient's agent in accordance with Title 50, chapter 16, part 5~~ *as permitted by law*. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public."

Section 5. Section 50-16-201, MCA, is amended to read:

"50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with *quality assessment or improvement activities, including* the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include*:*

(i) incident reports or occurrence reports*; or*

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) *(a)* "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, in order to ensure a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202(5) or licensed as a physician assistant-certified pursuant to 37-20-203."

Section 6. Section 50-16-502, MCA, is amended to read:

"50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in ~~assuring~~ *ensuring* that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of ~~his~~ *the patient's* health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

(6) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., require health care providers subject to that legislation to provide significant privacy protection for health care information and the provisions of this part are no longer necessary for those health care providers; and

(7) because the provisions of HIPAA do not apply to some health care providers, it is important that these health care providers continue to adhere to this part."

Section 7. Section 50-16-504, MCA, is amended to read:

"50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. ~~The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.~~

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information."

Section 8. Limit on applicability. The provisions of this part apply only to a health care provider that is not subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

Section 9. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has ~~consented~~ *authorized* in writing ~~to~~ the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ *the patient's* physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for ~~his~~ *the patient's* health care or unless authorized under subsection (1)(i);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 *or a similar federal law*.

(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law."

Section 10. Section 50-16-1009, MCA, is amended to read:

"50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure. (1) ~~Except as provided in subsection (2), a~~ *A* person may not disclose or be compelled to disclose the identity of a subject of an

HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, *the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law* .

~~(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.~~

~~(3)~~*(2)* If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

~~(4)~~*(3)* A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both."

Section 11. Section 50-19-402, MCA, is amended to read:

"50-19-402. Statement of policy — access to information. (1) The prevention of fetal, infant, and child deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths.

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in 44-5-303(4) and from a health care provider as ~~provided~~ *permitted* in ~~50-16-525 after the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6)~~ *Title 50, chapter 16, part 5, or applicable federal law*. The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may only:

(a) compile statistics of fetal, infant, and child mortality;

(b) analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and

(c) recommend measures to prevent future fetal, infant, and child deaths."

Section 12. Section 50-19-405, MCA, is amended to read:

"50-19-405. Unauthorized disclosure by review team member — civil penalty. A person aggrieved by the use of information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or by a disclosure of that information in violation of 50-19-402(2) by a member of a local fetal, infant, and child mortality review team may bring a civil action in the district court of the county of the person's residence for damages, costs, and fees as provided in 50-16-553(6) through (8) *or [section 23]*."

Section 13. Section 50-19-406, MCA, is amended to read:

"50-19-406. Unauthorized disclosure by review team member — misdemeanor. A member of a local fetal, infant, and child mortality review team who knowingly uses information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or who discloses that information in violation of 50-19-402(2) is guilty of a misdemeanor and upon conviction is punishable as provided in ~~50-16-551~~ *46-18-212*."

Section 14. Section 53-24-306, MCA, is amended to read:

"53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with Title 50, chapter 16, part 5, *or other applicable law* information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection ~~shall~~ *may* not be published in a way that discloses patients' names or other identifying information."

Section 15. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., provide significant privacy protection for health care information with respect to health care providers subject to HIPAA;

(3) for health care providers subject to the health care information privacy protections of HIPAA, the applicability of the provisions of Title 50, chapter 16, part 5, relating to health care privacy is unnecessary and may result in significant practical difficulties;

(4) it is in the best interest of the citizens of Montana to have certain requirements, with respect to the use or release of health care information by health care providers, that are more restrictive than or additional to the health care privacy protections of HIPAA.

Section 16. Applicability. [Sections 15 through 24] apply only to health care providers subject to the health care information privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

Section 17. Definitions. As used in [sections 15 through 24], unless the context indicates otherwise, the following definitions apply:

(1) "Health care" means care, services, or supplies provided by a health care provider that are related to the health of an individual. Health care includes but is not limited to the following:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to an individual's physical or mental condition; or

(b) the sale or dispensing of any drug, device, equipment, or other item in accordance with a prescription.

(2) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(3) "Health care information" means any information, whether oral or recorded in any form or medium, that:

(a) is created or received by a health care provider;

(b) relates to the past, present, or future physical or mental health or condition of an individual or to the past, present, or future payment for the provision of health care to the individual; and

(c) identifies or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(5) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(7) "Reasonable fee" means the charge, as provided for in [section 22], for duplicating, searching for, or handling recorded health care information.

Section 18. Representative of deceased patient's estate. A personal representative of a deceased patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person.

Section 19. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes. (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

Section 20. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(i);

(h) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(i) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or similar federal law.

(2) [Sections 15 through 24] do not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

Section 21. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding or investigation under [section 20(1)(h)], the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of [section 20] under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under [section 20(1)(b), (1)(d), or (1)(e)] or in a civil proceeding under [section 20(1)(h)], that the requirements of

subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of [section 20] identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in [section 22], and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under [section 20] and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

Section 22. Reasonable fees. Unless prohibited by federal law, a reasonable fee for providing copies of health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed $15 for searching and handling recorded health care information.

Section 23. Civil remedies. (1) A person aggrieved by a violation of [sections 15 through 24] may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with [sections 15 through 24] and may order any other appropriate relief.

(3) A disciplinary or punitive action may not be taken against a health care provider or the provider's employee or agent who brings evidence of a violation of [sections 15 through 24] to the attention of the patient or an appropriate authority.

(4) If the court determines that there is a violation of [sections 15 through 24], the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(5) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(6) An action under [sections 15 through 24] is barred unless the action is commenced within 3 years after the cause of action accrues.

(7) A health care provider who relies in good faith upon certification pursuant to [section 21] is considered to have received reasonable assurances and is not liable for disclosures made in reliance on that certification.

Section 24. Good faith. A person authorized to act as a health care representative for an individual with respect to the individual's health care information shall act in good faith to represent the best interests of the individual.

Section 25. Codification instruction. (1) [Section 8] is intended to be codified as an integral part of Title 50, chapter 16, part 5, and the provisions of Title 50, chapter 16, part 5, apply to [section 8].

(2) [Sections 15 through 24] are intended to be codified as an integral part of Title 50, chapter 16, and the provisions of Title 50, chapter 16, apply to [sections 15 through 24].

Section 26. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 397

[HB 663]

AN ACT ENHANCING ENFORCEMENT OF THE TOBACCO PRODUCTS RESERVE FUND LAW; REQUIRING TOBACCO PRODUCT MANUFACTURERS, AS A CONDITION TO THE ABILITY TO SELL THEIR PRODUCTS IN THIS STATE, TO CERTIFY COMPLIANCE WITH SECTION 16-11-403, MCA, TO IDENTIFY THE BRAND FAMILIES OF THEIR PRODUCTS, TO REGISTER TO DO BUSINESS IN THIS STATE, AND TO APPOINT AN AGENT FOR SERVICE OF PROCESS, IF NOT DOMICILED IN THIS STATE; REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND PUBLISH ON THE ATTORNEY GENERAL'S WEBSITE A DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND BRAND FAMILIES THAT ARE IN COMPLIANCE WITH THE TOBACCO PRODUCTS RESERVE FUND LAW; PROHIBITING WHOLESALERS FROM AFFIXING TAX INSIGNIA TO CIGARETTES OR BRAND FAMILIES MANUFACTURED BY TOBACCO PRODUCT MANUFACTURERS NOT INCLUDED IN THE ATTORNEY GENERAL'S DIRECTORY; REQUIRING WHOLESALERS TO REPORT INFORMATION REGARDING SALES OF NONPARTICIPATING MANUFACTURER CIGARETTES AND BRAND FAMILIES IN THIS STATE; ALLOWING THE ATTORNEY GENERAL TO PROVIDE BY RULE FOR THE MAKING OF ESCROW PAYMENTS IN INSTALLMENTS; ALLOWING THE ATTORNEY GENERAL TO RECOVER INVESTIGATION EXPENSES, ATTORNEY FEES, AND COSTS IN ACTIONS TO ENFORCE THE TOBACCO PRODUCTS RESERVE FUND LAW; STATUTORILY APPROPRIATING TO THE DEPARTMENT OF JUSTICE ANY EXPENSES, COSTS, OR ATTORNEY FEES AWARDED; PROVIDING PENALTIES; PROVIDING FOR JUDICIAL REVIEW OF DECISIONS BY THE ATTORNEY GENERAL REGARDING THE DIRECTORY; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE CALCULATION OF AMOUNTS THAT MAY BE WITHDRAWN FROM QUALIFYING ESCROW ACCOUNTS; AMENDING SECTIONS 16-11-403 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings and purpose. The legislature finds that violations of 16-11-401 through 16-11-403 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds that enacting procedural enhancements will help prevent violations of 16-11-401 through 16-11-403 and will safeguard the master settlement agreement, the fiscal soundness of the state, and the public health.

Section 2. Definitions. As used in [sections 1 through 12], the following definitions apply:

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and includes any use of a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.

(2) "Cigarette" has the meaning provided in 16-11-402(4).

(3) "Department" means the department of revenue.

(4) "Master settlement agreement" has the meaning provided in 16-11-402(5).

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning provided in section II(jj) of the master settlement agreement defined in 16-11-402(5) and all amendments thereto.

(7) "Qualified escrow fund" has the meaning provided in 16-11-402(6).

(8) "Tobacco product manufacturer" has the meaning provided in 16-11-402(9).

(9) "Units sold" has the meaning provided in 16-11-402(10).

(10) "Wholesaler" means a person that is authorized to affix tax insignia to packages or other containers of cigarettes under 16-11-113 or any person that is required to remit the tobacco tax imposed on cigarettes pursuant to 16-11-111.

Section 3. Certifications. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver, on a form prescribed by the attorney general, a certification to the director of the department and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with 16-11-403.

(2) A participating manufacturer must include in its certification a list of its brand families.

(3) (a) A nonparticipating manufacturer must include in its certification a list of all of its brand families, the number of units sold in the state during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year.

(b) The certification must indicate by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(c) The certification must identify by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) A tobacco product manufacturer must update its list of brand families 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and the director of the department.

(5) A nonparticipating manufacturer shall further certify:

(a) that the nonparticipating manufacturer is registered to do business in the state and has appointed an agent for service of process and has provided notice as required by [section 6];

(b) that the nonparticipating manufacturer has:

(i) established and continues to maintain a qualified escrow fund; and

(ii) executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(c) that the nonparticipating manufacturer is in full compliance with 16-11-403 and this section and any rules adopted pursuant to 16-11-403 and this section;

(d) (i) the name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by 16-11-403 and all rules adopted pursuant to 16-11-403;

(ii) the account number of the qualified escrow fund and any subaccount number for the state of Montana;

(iii) the amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification considered necessary by the attorney general to confirm the provisions of this subsection (5)(d)(iii); and

(iv) the amounts and dates of any withdrawal or transfer of funds that the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to 16-11-403 and all rules adopted pursuant to 16-11-403.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(a) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be considered its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

(b) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be considered to be its cigarettes for purposes of 16-11-403.

(7) [Sections 1 through 12] may not be construed to limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a

different tobacco product manufacturer for purposes of calculating payment under the master settlement agreement or for purposes of 16-11-401 through 16-11-403.

(8) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other similar information relied upon for its certifications for a period of 5 years unless otherwise required by law to maintain them for a longer period of time.

Section 4. Directory of cigarettes approved for stamping and sale. (1) Not later than [90 days after the effective date of this section], the attorney general shall develop and publish on the attorney general's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of [section 3] and all brand families that are listed in the certifications, except as otherwise provided in this section.

(2) The attorney general may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with [section 3], unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(3) Neither a tobacco product manufacturer nor a brand family may be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer that:

(a) an escrow payment required pursuant to 16-11-403 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(b) an outstanding final judgment, including interest on the judgment, for a violation of 16-11-403 has not been fully satisfied for the brand family or the manufacturer.

(4) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of [sections 1 through 12]. The attorney general shall post in the directory and transmit by electronic mail and certified mail, return receipt requested, to each wholesaler notice of the intended removal from the directory of a tobacco product manufacturer or brand family no less than 30 days prior to the removal. During that period, cigarettes of the tobacco product manufacturer or brand family subject to the notice are contraband under 16-11-147 and the affixing of tax insignia to or the sale or possession for sale of the cigarettes is unlawful as provided in [section 5], except that, notwithstanding the provisions of 16-11-147 and [section 5]:

(a) a wholesaler may affix tax insignia to, possess for sale, or sell at wholesale cigarettes of any tobacco product manufacturer or brand family subject to notice of removal under this subsection (4) if the cigarettes were shipped to the wholesaler on or before the date of issuance of the notice and if the total number of the cigarettes sold by the wholesaler following issuance of the notice of removal and prior to reinstatement of the tobacco product manufacturer or brand family in the directory does not exceed a number that is the average of the number of cigarettes of the tobacco product manufacturer or

brand family sold by the wholesaler during each of the 3 months preceding the issuance of the notice; and

(b) a licensed seller at retail may possess and sell cigarettes of a tobacco product manufacturer or brand family that the attorney general has removed from the directory or that is subject to notice of removal if the cigarettes were lawfully shipped to the retailer before the issuance of the notice of removal or after the issuance of notice of removal but before the attorney general removes the tobacco product manufacturer or brand family from the directory. A contract with a tobacco product manufacturer that has been removed from the directory that purports to require, contemplate, or provide for delivery of cigarettes or tobacco products in any applicable brand family after the date of removal from the directory is not valid or enforceable.

(5) Every wholesaler must provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications required by [sections 1 through 12].

Section 5. Prohibition against stamping or sale of cigarettes not in directory. It is unlawful for any person to:

(1) affix a tax insignia to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) sell, offer for sale, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory.

Section 6. Agent for service of process. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity must, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of [sections 1 through 12] and 16-11-403, may be served in any manner authorized by law. The service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer must provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer must provide notice to the attorney general at least 30 calendar days prior to termination of the authority of an agent and must further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment. If an agent terminates an agency appointment, the nonparticipating manufacturer must notify the attorney general of the termination within 5 calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

Section 7. Reporting of information. (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 or 16-11-203 and that the wholesaler

sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of [sections 1 through 12]. The department and attorney general shall share the information received under [sections 1 through 12] with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of [sections 1 through 12], 16-11-403, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

(a) the amount of money in the fund, exclusive of interest;

(b) the amount and dates of each deposit to the fund; and

(c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with [sections 1 through 12].

Section 8. Escrow installments. To promote compliance with the provisions of [sections 1 through 12], the attorney general may adopt rules requiring a tobacco product manufacturer to make the escrow deposits required in 16-11-403 in installments during the year in which the sales covered by the deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

Section 9. Penalties and other remedies. (1) In addition to any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated [section 5] or any rule adopted pursuant to that section, the license of the wholesaler may be revoked or suspended in the manner provided by 16-11-144, in a proceeding brought by the department or by the attorney general. For each violation of [section 5], a civil penalty in the amount of $250 for the first full or partial pack and $10 for each additional full or partial pack to which a tax insignia is affixed or that is sold, offered for sale, or possessed for sale in violation of [section 5] may be imposed. Each tax insignia affixed and each offer to sell cigarettes in violation of [section 5] constitutes a separate violation. The penalty may be imposed in the manner provided by 16-11-143(2) in a proceeding brought by the department or the attorney general.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of [section 5] may be considered contraband under 16-11-147. The cigarettes are subject to seizure and forfeiture as provided in 16-11-147, and all cigarettes seized and forfeited must be destroyed and not resold.

(3) The attorney general may seek an injunction to restrain a threatened or actual violation of [section 5 or 7(1) or (4)] by a wholesaler and to compel the wholesaler to comply with those sections.

(4) In any action brought pursuant to [sections 1 through 12], the prevailing party is entitled to recover the costs of the action and reasonable attorney fees calculated as provided in [section 13]. If the state is the prevailing party, its recoverable costs must include the state's costs of investigation of the violation.

(5) (a) It is unlawful for a person to:

(i) sell or distribute cigarettes; or

(ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of [section 5].

(b) A violation of this section is a misdemeanor punishable as provided in 16-11-148.

(6) If a court determines that a person has violated [sections 1 through 12], the court shall order any profits, gain, gross receipts, or other benefit from the violation to be paid to the state treasurer for deposit in the trust fund created by Article XII, section 4, of the Montana constitution.

(7) Unless otherwise expressly provided, the remedies or penalties provided by [sections 1 through 12] are cumulative to each other and to the remedies or penalties available under all other laws of this state.

Section 10. Contested case and judicial review of attorney general determinations. A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer is subject to review by the attorney general or an employee of the department of justice designated by the attorney general to issue final decisions under [sections 1 through 12] in the manner prescribed by Title 2, chapter 4, part 6. The decision of the attorney general or designated employee constitutes the final agency decision, and judicial review may be sought from the final decision as provided in Title 2, chapter 4, part 7.

Section 11. Rules. The attorney general may adopt rules necessary to implement [sections 1 through 12].

Section 12. Construction. If a court of competent jurisdiction finds that the provisions of [sections 1 through 12] and of 16-11-401 through 16-11-403 conflict and cannot be harmonized, then the legislature intends the provisions of 16-11-401 through 16-11-403 to control. Except as specifically provided in [sections 1 through 12], the provisions of [sections 1 through 12] are not intended to and may not be interpreted to override the provisions of 16-11-401 through 16-11-403.

Section 13. Attorney fees and costs. (1) In an action under 16-11-403(2)(c), the court, upon a finding that a tobacco product manufacturer has failed to comply with its obligations under 16-11-403(1) or (2)(a), must award the attorney general the expenses incurred in investigating the claim, the costs of suit, and reasonable attorney fees. In cases in which outside counsel represents the attorney general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney general for attorney fees and expenses in prosecuting the action. In all other cases, the attorney fees must be calculated by reference to the hourly rate charged by the agency legal services bureau for the provision of legal services to state agencies,

multiplied by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses reasonably incurred in the prosecution of the action.

(2) Investigation expenses, attorney fees, and costs recovered under this section are allocated to the department of justice for deposit in the attorney general's major litigation account and may be used by the attorney general for any purpose for which funds appropriated to that account may be used. The funds are statutorily appropriated as provided in 17-7-502.

Section 14. Section 16-11-403, MCA, is amended to read:

"16-11-403. Requirements. Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(1) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) (a) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) —

1999: $.0094241 per unit sold after the date of enactment of this Act;

2000: $.0104712 per unit sold;

for each of 2001 and 2002: $.0136125 per unit sold;

for each of 2003 through 2006: $.0167539 per unit sold;

for each of 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances-

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (A) in the order in which they were placed into escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow *on account of units sold in the state* in a particular year was greater than the ~~State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)~~ *Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement, including a final determination of all adjustments, that the manufacturer would have been required to make on account of those units* had it been a ~~participating manufacturer~~ *Participating Manufacturer*, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) to the extent not released from escrow under subparagraphs (i) or (ii), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall-

(i) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(ii) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(iii) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years. Each failure to make an annual deposit required under this section shall constitute a separate violation."

Section 15. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; *[section 13];* 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108;

75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 16. Contingent voidness. If any provision of [this act] causes 16-11-401 through 16-11-403 to no longer constitute a qualifying statute, as defined in section IX(d)(2)(E) of the master settlement agreement, then that provision of [this act] is void.

Section 17. Severability. (1) Except as provided in subsection (2), if a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

(2) If any part of the amendment to 16-11-403(2)(b)(ii) made by [section 14] is invalid, then 16-11-403(2)(b)(ii) is void in its entirety. If the voiding of 16-11-403(2)(b)(ii) is thereafter declared invalid, then [section 14] is void and 16-11-403(2)(b)(ii) is restored as it read on the day prior to [the effective date of this act]. If 16-11-403(2)(b)(ii) is voided under this section or is declared invalid, all other portions of 16-11-403 remain in effect in all valid applications that are severable from the voided or invalid applications.

Section 18. Transition. For the year 2003, if [the effective date of this act] is later than March 16, 2003, the first report of wholesalers required by [section 7] is due 30 calendar days after the publication of the directory described in [section 4], the certifications by a tobacco product manufacturer described in [section 3] are due 45 calendar days after [the effective date of this act], and the directory described in [section 4] must be published or made available within 90 calendar days after [the effective date of this act].

Section 19. Codification instruction. (1) [Sections 1 through 12] are intended to be codified as an integral part of Title 16, chapter 11, and the provisions of Title 16, chapter 11, apply to [sections 1 through 12].

(2) [Section 13] is intended to be codified as an integral part of Title 16, chapter 11, part 4, and the provisions of Title 16, chapter 11, part 4, apply to [section 13].

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Retroactive applicability. The legislature intends that [sections 13 and 15] apply to all pending actions in which a final judgment has not been entered prior to [the effective date of this act].

Ap proved April 17, 2003

CHAPTER NO. 398

[HB 703]

AN ACT REVISING LAWS GOVERNING CHILD ABUSE AND NEGLECT; AMENDING THE DEFINITION OF "PSYCHOLOGICAL ABUSE OR NEGLECT"; PROVIDING PROTECTIONS FOR VICTIMS OF PARTNER AND FAMILY MEMBER ASSAULT REGARDING CHILD REMOVAL AND EMERGENCY PROTECTIVE SERVICES; AMENDING SECTIONS 41-3-102 AND 41-3-301, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare;

(ii) substantial risk of harm to a child's health or welfare; or

(iii) abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some

but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) *(a)* "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including *the commission of* acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation

of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 2. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

~~(2)~~*(4)* A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

~~(3)~~*(5)* An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents. A show cause hearing must be held within 10 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

~~(4)~~*(6)* The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 3. Effective dates. (1) [Section 1 and this section] are effective on passage and approval.

(2) [Section 2] is effective October 1, 2003.

Ap proved April 18, 2003

CHAPTER NO. 399

[SB 65]

AN ACT GENERALLY REVISING VETERANS' BENEFIT LAWS; REVISING THE PROPERTY TAX EXEMPTION, VEHICLE REGISTRATION FEE, AND SPECIAL LICENSE PLATES PROVISIONS FOR ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; REVISING INCOME THRESHOLDS FOR THE VETERAN PROPERTY TAX EXEMPTION; AMENDING LANGUAGE RELATED TO DISABLED VETERANS ENTITLED TO RECEIVE COMPENSATION FROM THE U.S. DEPARTMENT OF VETERANS AFFAIRS AT THE 100 PERCENT DISABILITY RATE; CLARIFYING AND SIMPLIFYING PROVISIONS ON THE VEHICLE

REGISTRATION FEE WAIVERS AND SPECIAL LICENSE PLATE PROVISIONS AVAILABLE TO ELIGIBLE VETERANS AND THEIR SURVIVING SPOUSES; EXTENDING VEHICLE REGISTRATION FEE WAIVERS TO THE SPOUSES OF VETERANS WHO WERE KILLED WHILE ON ACTIVE DUTY OR WHO DIED AS A RESULT OF A SERVICE-CONNECTED DISABILITY; CLARIFYING SPECIAL PARKING PRIVILEGES ASSOCIATED WITH DISABLED VETERANS; AMENDING SECTIONS 15-1-121, 15-1-122, 15-6-211, 49-4-301, 49-4-302, 49-4-304, 61-3-313, 61-3-321, 61-3-332, 61-3-407, 61-3-426, 61-3-455, AND 61-3-560, MCA; REPEALING SECTIONS 61-3-452, 61-3-453, 61-3-454, AND 61-3-457, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special plates for military personnel, veterans, and spouses. (1) (a) Active military personnel, veterans, or the surviving spouse of an eligible veteran, if the spouse has not remarried, may be issued special military or veteran license plates as provided in this section.

(b) Subject to the provisions of 61-3-332 and except as otherwise provided in this chapter, special license plates issued pursuant to this section must be numbered in sets of two with a different number on each set and must be properly displayed as provided in 61-3-301.

(2) (a) Upon application, after paying all applicable vehicle registration fees and special license plate fees and providing an official certificate from the applicant's unit commander verifying the individual's eligibility and authorizing the department to issue the plates to the individual, eligible military personnel may be issued one set of special military license plates as provided in this subsection (2).

(b) A member of the Montana national guard who is a state resident may be issued special license plates with a design or decal displaying the letters "NG". However, the member shall surrender the plates to the department when the member becomes ineligible.

(c) A member of the reserve armed forces of the United States who is a state resident may be issued special license plates according to the member's branch of service verified in the application with a design or decal displaying one of the

following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); or United States marine corps reserve, MCR (globe and anchor). However, the member shall surrender the plates to the department when the member becomes ineligible.

(d) An active member of the regular armed forces of the United States who is a state resident may be issued special license plates inscribed with a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the member's branch of service verified in the application. However, the member shall surrender the plates to the department upon becoming ineligible.

(3) (a) Upon application, after presenting proper identification and a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment verifying the applicant's eligibility and paying the veterans' cemetery fee specified in [section 2] and all applicable vehicle registration fees under this chapter, subject to the provisions of [section 3], an eligible veteran must be issued any set and more than one set of the special license plates provided for in this subsection (3) that the member requests and is eligible to receive.

(b) A veteran may be issued special license plates displaying the letters "DV", which entitles the veteran to the parking privileges allowed to a person with a special parking permit issued under Title 49, chapter 4, part 3, if the veteran:

(i) has been awarded the purple heart and has been rated by the U.S. department of veterans affairs as 50% or more disabled because of a service-connected injury; or

(ii) is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability.

(c) A veteran who has been awarded the purple heart may be issued special license plates with the purple heart decal displaying the words "combat wounded".

(d) A veteran who was captured and held prisoner by the military force of a foreign nation may be issued special license plates with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) If the veteran was a member of the United States armed forces on December 7, 1941, and during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) was on station at Pearl Harbor on the island of Oahu or was offshore from Pearl Harbor at a distance of not more than 3 miles, the veteran may be issued special license plates designed to show that the veteran is a survivor of the Pearl Harbor attack.

(f) A person who is a member of the legion of valor may be issued special plates displaying a design or decal depicting the recognized legion of valor medallion.

(g) A veteran may be issued special license plates displaying the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the veteran's service record verified in the application.

(h) A member or former members of the Montana national guard eligible to receive a military retirement may be issued special license plates displaying the Montana national guard insignia and the words "National Guard veteran".

(4) Upon request, after paying the veterans' cemetery fee provided in [section 2] and all applicable vehicle registration fees under this chapter, subject to the provisions of [section 3], the surviving spouse of an eligible veteran, if the spouse has not remarried, may retain the special license plates issued to the deceased veteran, except the special "DV" plates provided for under subsection (3)(b).

(5) For purposes of this section, "veteran" has the meaning provided in 10-2-101.

Section 2. Veterans' cemetery fee for special veteran license plates — disposition. (1) Except as provided in [section 3], an applicant for special veteran license plates provided for under [section 1(3)] must pay $10 for each set issued, renewed, or transferred, in addition to any other taxes or fees applicable under this chapter.

(2) Fees collected under this section must be deposited in the state general fund and transferred as provided in 15-1-122 to the special revenue account for state veterans' cemeteries established in 10-2-603.

Section 3. Vehicle registration fee and veterans' cemetery fee waivers. (1) Except as otherwise provided in this section, a person eligible under subsection (2) is exempt from the veterans' cemetery fee provided in [section 2] for one set of special veteran license plates and all vehicle registration fees imposed by this chapter for one vehicle that is not used for commercial purposes.

(2) The following persons are eligible for the waiver provided in subsection (1):

(a) a veteran who was a prisoner of war who presents official documentation from the U.S. department of defense verifying the veteran's status, or the veteran's surviving spouse, if the spouse has not remarried;

(b) a veteran who is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs, or the veteran's surviving spouse, if the spouse has not remarried;

(c) a veteran determined by the U.S. department of veterans affairs to be 50% or more disabled because of a service-connected injury and who has been awarded the purple heart, as verified by official documentation from the U.S. department of veterans affairs and the veteran's military service record issued by the U.S. department of defense, or the veteran's surviving spouse, if the spouse has not remarried, except that the veteran or the surviving spouse must pay the veterans' cemetery fee as provided for in [section 2];

(d) the surviving spouse, if the spouse has not remarried, of a military service member killed while on active duty as verified in official documentation issued by the U.S. department of defense; and

(e) the surviving spouse, if the spouse has not remarried, of a military service member or veteran who died of a service-connected injury or disability as determined by and verified in official documentation from the U.S. department of veterans affairs.

Section 4. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-201;

(j) title and registration fees pursuant to 61-3-203;

(k) ~~disabled~~ veterans' ~~flat license plate fees and purple heart~~ *cemetery* license plate fees pursuant to ~~61-3-332~~ *[section 2]*;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507

Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

Section 5. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $75,000 in fiscal year 2003;

(b) $2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532~~;~~.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, ~~$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h)~~ *$10 for each veteran's license plate subject to the fee in [section 2]*;

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 6. Section 15-6-211, MCA, is amended to read:

"15-6-211. Certain disabled or deceased veterans' residences exempt. (1) A residence, including the lot on which it is built, that is owned and occupied by a veteran or a veteran's spouse is exempt from property taxation if the veteran:

(a) was killed while on active duty or died as a result of a service-connected disability; or

(b) if living:

(i) was honorably discharged from active service in any branch of the armed services; *and*

(ii) ~~has been rated 100% disabled because of a service-connected disability by~~ *is* ~~the United States department of veterans affairs or its successor~~ *currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs*~~; and~~

~~(iii) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $30,000 for a single person and $36,000 for a married couple~~.

(2) Property qualifying under subsection (1) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	*Income Married Couple*	*Percentage Multiplier*
0 - 30,000	*0 - 36,000*	*0%*
30,001 - 33,000	*36,001 - 39,000*	*20%*
33,001 - 36,000	*39,001 - 42,000*	*30%*
36,001 - 39,000	*42,001 - 45,000*	*50%*

~~(2)~~*(3)* The property tax exemption under this section remains in effect as long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the spouse:

(a) is the owner and occupant of the house;

~~(b) has an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $25,000;~~

~~(c)~~*(b)* is unmarried; and

~~(d)~~*(c)* has obtained from the ~~United States~~ *U.S.* department of veterans affairs a letter indicating that the veteran was ~~100% service-connected disabled at the time of death~~ *rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death* or that the veteran died while on active duty or as a result of a service-connected disability.

(4) Property qualifying under subsection (3) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

Income Surviving Spouse	*Percentage Multiplier*
0 - 25,000	*0%*
25,001 - 28,000	*20%*
28,001 - 31,000	*30%*
31,001 - 34,000	*50%*

(5) For the purposes of the exemption under this section, the income referred to in subsections (2) and (4) is the taxpayer's federal adjusted gross income, as reported on the latest federal income tax return.

(6) (a) The income levels contained in the tables in subsections (2) and (4) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(i) multiplying the appropriate dollar amount from the table by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 2002; and

(ii) rounding the product obtained in subsection (6)(a)(i) to the nearest dollar amount.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce."

Section 7. Section 49-4-301, MCA, is amended to read:

"49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and who, as determined by a licensed

physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, meets one of the following criteria:

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under ~~61-3-332(10)(g)~~ *61-3-332(11)*. If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a new certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

Section 8. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters "DV" issued under ~~61-3-332(10)(c)(i)(A) or (10)(g) or 61-3-426(2)~~ *[section 1(3)(b)] or displaying a wheelchair as provided in 61-3-332(11)*; and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under ~~61-3-332(10)(c)(i)(A) or (10)(g) or 61-3-426(2)~~ *[section 1(3)(b)] or displaying a wheelchair as provided in 61-3-332(11)* and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space."

Section 9. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle. (1) ~~The~~ *Unless the* department of justice ~~shall provide~~ *issued* a special license plate under ~~61-3-332(10)(g) or 61-3-426(1) or~~ *[section 1(3)(b)] or 61-3-332(11) indicating a special parking privilege, the department shall provide* a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a

vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability."

Section 10. Section 61-3-313, MCA, is amended to read:

"61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to ~~61-3-332(10)(c)(i)(A)~~ *[section 1(3)(b)]*, 61-3-411, or 61-3-421;

(4) trucks exceeding a 1-ton rated capacity;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318; and

(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733."

Section 11. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) ~~Registration~~ *Except as otherwise provided in this section, registration* or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, $13.75;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, $8.25;

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) over 2,850 pounds, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9;

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75;

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25;

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, $16.25;

(k) travel trailers, $11.75; and

(l) recreational vehicles, $3.50.

(2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(3) An additional fee of $5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(8) A person ~~qualifying~~*eligible for a waiver* under ~~61-3-332(10)(d)~~ *[section 3]* is exempt from the fees required under this section.

(9) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund."

Section 12. Section 61-3-332, MCA, is amended to read:

"61-3-332. (Temporary) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections (4)(c) and (4)(d) of this section, all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate

license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of

plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. ~~The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:~~

~~(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).~~

~~(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:~~

~~(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or~~

~~(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.~~

~~(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).~~

~~(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).~~

~~(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.~~

~~(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.~~

~~(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.~~

~~(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.~~

~~(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.~~

~~(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.~~

~~(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the~~

~~applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.~~

~~(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:~~

~~(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:~~

~~(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or~~

~~(B) a symbol representing the purple heart medal.~~

~~(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.~~

~~(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.~~

~~(g)~~*(11)* A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

~~(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.~~

~~(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The~~

~~member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.~~

~~(11)~~*(12)* The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

~~(12) Fees collected under this section must be deposited in the state general fund.~~ (Terminates July 1, 2005—sec. 21, Ch. 402, L. 2001.)

61-3-332. (Effective July 1, 2005) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in subsections (4)(c) and (4)(d), all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For motorcycles, quadricycles, and light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A motorcycle, quadricycle, or light vehicle that is permanently registered, as provided in 61-3-527 or 61-3-315 and 61-3-562, may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder

River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. ~~The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:~~

~~(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).~~

~~(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.~~

~~(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the~~

~~purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:~~

~~(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or~~

~~(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.~~

~~(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).~~

~~(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).~~

~~(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.~~

~~(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.~~

~~(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.~~

~~(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.~~

~~(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).~~

~~(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.~~

~~(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.~~

~~(c) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(c), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.~~

~~(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:~~

~~(i) Upon submission of a department of defense form 214(DD 214) or its successor or documents showing an other than dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:~~

~~(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or~~

~~(B) a symbol representing the purple heart medal.~~

~~(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.~~

~~(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.~~

~~(g)~~*(11)* A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

~~(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.~~

~~(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.~~

~~(11)~~*(12)* The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

~~(12) Fees collected under this section must be deposited in the state general fund.~~"

Section 13. Section 61-3-407, MCA, is amended to read:

"61-3-407. (Temporary) Personalized ~~veterans', national guard veterans', legion of valor members',~~ *special veteran* and generic specialty license plates. ~~(1)~~ Subject to the provisions of 61-3-405 and 61-3-406, an application for ~~veterans', national guard veterans', legion of valor members', or generic specialty license plates under 61-3-332(10)(a)(ii), (10)(f), or (10)(h) or~~ *special veteran license plates under [section 1(3)] or generic specialty license plates under* 61-3-472 through 61-3-481 may be combined with an application for personalized plates.

~~(2) An~~ *The* application ~~for personalized veterans', national guard veterans', legion of valor members', or generic specialty license plates~~ must be made on a form supplied by the department. (Terminates June 30, 2005—sec. 21, Ch. 402, L. 2001.)

61-3-407. (Effective July 1, 2005) Personalized ~~veterans', national guard veterans', or legion of valor members'~~ *special veteran* license plates. ~~(1)~~ Subject to the provisions of 61-3-405 and 61-3-406, an application for ~~veterans', national guard veterans', or legion of valor members'~~ *special veteran* license plates under ~~61-3-332(10)(a)(ii), (10)(f), or (10)(h)~~ *[section 1(3)]* may be combined with an application for personalized plates.

~~(2) An~~ *The* application ~~for personalized veterans', national guard veterans', or legion of valor members' license plates~~ must be made on a form supplied by the department."

Section 14. Section 61-3-426, MCA, is amended to read:

"61-3-426. Combined license plates. (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued ~~to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f)~~ *under [section 1(3)]* or with an application for special license plates issued to a person with a disability who complies with the provisions in ~~61-3-332(10)(g)~~ *61-3-332(11)*.

(2) ~~The applicant for the~~ *Issuance of* combined license plates is~~liable for the payment of all taxes and fees applicable to regular motor vehicle license plates and shall pay an additional fee of $5 for the original issuance as provided in~~ *subject to* 61-3-422.

~~(2) An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.~~

~~(3) An application for license plates for amateur radio operators may be combined with an application for license plates for ex-prisoners of war as provided in 61-3-332(10)(d). The fees required under 61-3-321(1) and (6) may not be assessed upon one set of combination license plates issued to an ex-prisoner of war. An ex-prisoner of war receiving combination license plates under this section is liable for the fees required under 61-3-422.~~

~~(4)~~*(3)* The combined license plates must be stamped with the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also be stamped with the design or decal provided for in~~61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g)~~ *[section 1(3)] or 61-3-332(11)*."

Section 15. Section 61-3-455, MCA, is amended to read:

"61-3-455. Violation a misdemeanor. A person who violates ~~61-3-452 or 61-3-453~~ *[section 1] or [section 3]* or who knowingly and wrongfully attempts to secure license plates under 61-3-332*, [section 1], or [section 3]* ~~shall be~~ *is* guilty of a misdemeanor and *shall be* punished by a fine of not less than $100 or imprisonment for not more than 30 days, or both."

Section 16. Section 61-3-560, MCA, is amended to read:

"61-3-560. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsections (2) and (3), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) The following vehicles are exempt from the fee imposed in subsection (1):

(a) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(b) a light vehicle owned by a ~~100% disabled veteran or by a 50% or more disabled veteran who has been awarded the purple heart qualifying for one set of special license plates under 61-3-332(10)(c) or 61-3-426~~ *person eligible for a waiver of registration fees under [section 3]*;

~~(c) a light vehicle owned by an ex-prisoner of war qualifying for one set of special plates under 61-3-332(10)(d) or a surviving spouse of an ex-prisoner of war under 61-3-457; and~~

~~(d)~~*(c)* a light vehicle registered under 61-3-456.

(3) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(4) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The

application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire 24-month registration period."

Section 17. Repealer. Sections 61-3-452, 61-3-453, 61-3-454, and 61-3-457, MCA, are repealed.

Section 18. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [sections 1 through 3].

Section 19. Coordination instruction. (1) If House Bill No. 250 and [this act] are both passed and approved, then House Bill No. 250 is void.

(2) If Senate Bill No. 377 and [this act] are both passed and approved, then Senate Bill No. 377 is void.

Section 20. Effective date. [This act] is effective January 1, 2004.

Ap proved April 18, 2003

CHAPTER NO. 400

[SB 98]

AN ACT PROVIDING THAT PERSONAL-CARE FACILITIES ARE COMMUNITY RESIDENTIAL FACILITIES FOR PURPOSES OF INCLUDING THOSE FACILITIES AS RESIDENTIAL USES OF PROPERTY UNDER ZONING REGULATIONS; AMENDING SECTION 76-2-411, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; ~~or~~

(4) a licensed adult foster family care home*; or*

(5) a personal-care facility licensed under 50-5-227."

Section 2. Coordination instruction. If House Bill No. 51 and [this act] are both passed and approved, then the phrase "a personal-care facility" in subsection (5) of [section 1] must read "an assisted living facility".

Section 3. Applicability. [This act] applies to personal-care facilities established in a residential zone after October 1, 2003.

Ap proved April 17, 2003

CHAPTER NO. 401

[SB 105]

AN ACT PROVIDING FOR THE ACCEPTANCE OF NATIONAL ACCREDITATION FOR OUTPATIENT CENTERS FOR SURGICAL SERVICES, BEHAVIORAL TREATMENT PROGRAMS, CHEMICAL DEPENDENCY TREATMENT PROGRAMS, RESIDENTIAL TREATMENT FACILITIES, AND MENTAL HEALTH CENTERS FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; ELIMINATING HEALTH MAINTENANCE ORGANIZATIONS FROM BEING LICENSED AS HEALTH CARE FACILITIES; AND AMENDING SECTIONS 50-5-101, 50-5-103, AND 53-6-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

~~(2)~~*(3)* "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

~~(3)~~*(4)* (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection ~~(3)~~ *(4)*, the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) *(A)* "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

~~(4)~~*(5)* "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

~~(5)~~*(6)* "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(6)~~*(7)* "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(7)~~*(8)* "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(8)~~*(9)* "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

~~(9)~~*(10)* "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(10)~~*(11)* "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

~~(11)~~*(12)* "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(12)~~*(13)* "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(14) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

~~(13)~~*(15)* "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

~~(14)~~*(16)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~*(17)* "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(16)~~*(18)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(17)~~*(19)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(18)~~*(20) (a)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, ~~health maintenance organizations,~~ home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.

~~(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.~~

~~(20)~~*(21)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~*(22)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~*(23)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~*(24)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~*(25)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation,

and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

~~(25)~~*(26)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(26)~~*(27)* "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(27)~~*(28)* "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(28)~~*(29)* "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(29)~~*(30)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(30)~~*(31)* "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

~~(31)~~*(32)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(32)~~*(33)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(33)~~*(34)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~*(35)* "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~*(36)* "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~*(37)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~*(38)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~*(39)* "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~*(40)* "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(40)~~*(41)* "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~*(42)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~*(43)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~*(44)* "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(44)~~*(45)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~*(46)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~*(47)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~*(48)* "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~*(49)* "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~*(50)* "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 2. Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards — accreditation ~~by joint commission~~. (1) The department shall adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter ~~must~~ *shall* comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital located in this state that furnishes written evidence required by the department, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of healthcare organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(6) The department may consider as eligible for licensure during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may inspect a rehabilitation facility

considered eligible for licensure under this section to ensure compliance with state licensure standards.

(7) The department may consider as eligible for licensure during the accreditation period any outpatient center for surgical services that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the accreditation association for ambulatory health care. The department may inspect an outpatient center for surgical services considered eligible for licensure under this section to ensure compliance with state licensure standards.

(8) The department may consider as eligible for licensure during the accreditation period any behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center considered eligible for licensure under this section to ensure compliance with state licensure standards."

Section 3. Section 53-6-702, MCA, is amended to read:

"53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in ~~50-5-101~~ *33-31-102*.

(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis.

(4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(5) "Program" means an element of the integrated health care system created by this part."

Ap proved April 18, 2003

CHAPTER NO. 402

[SB 110]

AN ACT REVISING CERTAIN OPTIONAL RETIREMENT PLAN MEMBERSHIP PROVISIONS; ALLOWING STATE AND LOCAL ELECTED

OFFICIALS WHO WERE DRAWING A RETIREMENT BENEFIT UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OR THE TEACHERS' RETIREMENT SYSTEM AT THE TIME OF THEIR ELECTION TO CERTAIN POSITIONS COVERED BY THE RETIREMENT SYSTEM TO DECIDE NOT TO RETURN TO ACTIVE MEMBERSHIP IN THE SYSTEM AND TO CONTINUE TO RECEIVE THEIR RETIREMENT BENEFITS; AMENDING SECTIONS 19-3-412, 19-3-1106, 19-20-302, AND 19-20-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) ~~The~~ *Except as provided in subsection (2), the* following employees in covered employment may become *active* members of the retirement system ~~at their option~~ *or decline this optional membership* by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who*:*

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; *or*

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service under this subsection (2)(b).

(c) (i) A member who is a local elected official and an active member on [the effective date of this act] and who is working in the member's elected position less than 960 hours in a calendar year may, until January 1, 2004, decline optional membership with respect to the member's elected position.

(ii) A member who after [the effective date of this act] is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

Section 2. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — ~~exception~~ *exceptions*. (1) A retired member under 65 years of age who is receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection

(1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) ~~A retired member 70 1/2 years of age or older~~ *The following members* who ~~returns~~ *return* to employment covered by the retirement system ~~is~~ *are* not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)*:*

(a) a retired member 70 1/2 years of age or older; or

(b) an elected official in a covered position who declines optional membership as provided in 19-3-412."

Section 3. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education; ~~and~~

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction*; and*

(f) a person elected to the office of county superintendent of schools.

(2) A ~~person~~ *retired member* elected to the office of county superintendent of schools *or appointed to complete the term of an elected county superintendent of schools* after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become *or to not become* an active member of the teachers' retirement system. The retirement system membership of an elected

county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-804.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom."

Section 4. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. (1) Upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

(2) Except as provided in subsection (4), a retired member may be employed part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) On July 1 of each year following the member's retirement effective date, the maximum earning amount allowed under subsection (2)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding year.

(4) (a) Except as provided in subsection (5), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning in the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning in the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (4)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(d) A retired member elected to the office of county superintendent or appointed to complete the term of an elected county superintendent and who elects, pursuant to 19-20-302(2), to not become an active member is exempt from the employment and earnings limits specified in subsection (2).

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 17, 2003

CHAPTER NO. 403

[SB 113]

AN ACT REVISING LAWS REGARDING HOSPITALS AND RELATED FACILITIES; DEFINING "INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED"; PROVIDING FOR THE LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES FOR LICENSURE OF INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED; ELIMINATING A HEALTH MAINTENANCE ORGANIZATION FROM THE DEFINITION OF "HEALTH CARE FACILITY"; AMENDING SECTIONS 50-5-101, 53-6-165, 53-6-171, AND 53-6-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) *(A)* "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(8) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(9) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(10) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) *(a)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive

care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, ~~health maintenance organizations,~~ home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, *intermediate care facilities for the developmentally disabled,* medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.

~~(19) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.~~

~~(20)~~*(19)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~*(20)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~*(21)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~*(22)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~*(23) (a)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for

psychiatric, ~~mentally retarded~~ *developmentally disabled*, and tubercular patients~~,~~.

(b) ~~but does~~ *The term does* not include critical access hospitals.

~~(25)~~*(24)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25)(a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-4-203.

(26) "Intermediate developmental disability care" means the provision of *intermediate* nursing care services, health-related services, and social services for persons with *a* developmental ~~disabilities~~ *disability*, as defined in 53-20-102, or for ~~individuals~~ *persons* with related problems.

(27) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(28) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(29) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(30) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(33) "Offer" means the representation by a health care facility that it can provide specific health services.

(34) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(35) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

(41) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(42) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(43) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(44) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(45) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(46) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(47) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(48) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(49) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 2. Section 53-6-165, MCA, is amended to read:

"53-6-165. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

(3) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

(a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the ~~mentally retarded~~ *developmentally disabled*, or institution for mental disease and, with respect to that institutionalization, the department determined under 53-6-171 that the person was not reasonably expected to be discharged and return home; or

(b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(4) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes."

Section 3. Section 53-6-171, MCA, is amended to read:

"53-6-171. Department lien upon real property of certain medicaid recipients — conditions. (1) Following notice and opportunity for hearing as provided in 53-6-172, the department shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after the imposition of the lien if:

(a) the recipient has been admitted to a nursing facility, an intermediate care facility for the ~~mentally retarded~~ *developmentally disabled*, or an institution for mental disease;

(b) the property upon which a lien is being imposed is the recipient's home and the home is not lawfully resided in by:

(i) the recipient's spouse;

(ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled; or

(iii) the recipient's sibling who was residing in the recipient's home for a period of at least 18 months immediately prior to the recipient's institutionalization; and

(c) the recipient has been determined by the department, pursuant to subsection (2), to be permanently institutionalized.

(2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department determines that the recipient cannot reasonably be expected to be discharged from the facility and to return home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for 6 months or longer without a discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation of discharge from the facility and a return home has the burden of demonstrating the reasonable expectation. The reasonable expectation must be established based upon medical evidence and medical opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable expectation of discharge from the facility and a return home.

(3) For purposes of this section, real property of a recipient includes any interest in real property that may be subject to a judgment lien."

Section 4. Section 53-6-702, MCA, is amended to read:

"53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a ~~health maintenance organization as defined in 50-5-101.~~ *health maintenance organization as defined in 33-31-102*.

(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis.

(4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(5) "Program" means an element of the integrated health care system created by this part."

Section 5. Licensure of intermediate care facility for developmentally disabled — rulemaking. (1) The department shall adopt procedures for licensing intermediate care facilities for the developmentally disabled. A person may not operate an intermediate care facility for the developmentally disabled without a license. The application for a license must include:

(a) the name and address of the applicant;

(b) the location of the intermediate care facility for the developmentally disabled;

(c) the name of the person or persons who will manage or supervise the intermediate care facility for the developmentally disabled;

(d) the number of persons with developmental disabilities who will receive care at the intermediate care facility for the developmentally disabled; and

(e) other information required by the department by rule.

(2) The department may adopt rules establishing standards for licensing intermediate care facilities for the developmentally disabled. The standards must address the protection of residents' rights, individual resident treatment and habilitation needs, staffing requirements, including qualifications, resident behavior and facility practices, health care services, physical environment, dietetic services, and recordkeeping.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 5].

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved April 18, 2003

CHAPTER NO. 404

[SB 137]

AN ACT GENERALLY REVISING THE METHOD OF LEASING STATE TRUST LAND; AUTHORIZING THE LEASING OF STATE TRUST LAND FOR COMMERCIAL PURPOSES; ESTABLISHING PROCEDURES FOR COMMERCIAL LEASES; AUTHORIZING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES; REVISING CONSIDERATION FOR EASEMENTS; AMENDING SECTIONS 77-1-204, 77-2-106, 77-6-109, AND 77-6-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Declaration of policy and purpose. (1) Pursuant to Article X of the Montana constitution, the legislature declares that it is the policy of the state that state trust land is to be treated as a sacred trust and is subject to fiduciary principles in its management. It is the intent of the legislature that

state trust land be managed in the best financial interest of current and future individual beneficiaries for whom this land is managed and held.

(2) A purpose of this chapter is to implement Article X of the Montana constitution. To fulfill its commitment to the management of state trust land in the best long-term financial interests of the beneficiaries, the Montana legislature finds that the state can prudently maximize the long-term revenue accruing to the beneficiaries by issuing commercial leases on land where the chief value exists in its use for commercial purposes.

Section 2. Definitions. As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, mineral, and geothermal resources;

(iv) single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

(4) "Termination" means the automatic completion or ending of the term of a contract according to its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease.

Section 3. Authority of board to determine development. The board shall determine how the development of state trust land for commercial purposes is to proceed before any state trust land is offered for lease. In making this determination, the board may consider the following factors:

(1) the purpose of any development or development plan;

(2) the allocation and location of specific uses of the land, including residential, commercial, industrial, recreational, or other appropriate uses;

(3) the densities and intensities of designated land uses;

(4) the timing and rate of development; and

(5) the timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, roads, and transportation facilities.

Section 4. Commercial leasing authorized. (1) State trust land may be leased for a term not to exceed 99 years for commercial purposes to the highest and best bidder responding to a department request for proposals for commercial uses of a specified tract.

(2) The board may enter into contracts with lessees of state trust land for commercial purposes upon terms and conditions that the board may reasonably determine to be in the best interests of the beneficiary.

(3) A request for proposals for the commercial leasing of state trust land must reserve the board's right to reject any and all bids and the right to reoffer the tract for lease if the bids received are not acceptable to the board.

Section 5. Rental provisions for commercial leasing — payments and credits — administration — lease options. (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market value of the rent calculated to be owed on any commercial lease. A lease issued under [sections 1 through 12] may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) The department may use up to 10% of the annual rent received from a commercial lease to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future.

Section 6. Requirements for commercial lease — improvements. (1) The board shall require, subject to the board's supervision and jurisdiction, that the lessee be solely responsible for the expense of maintenance and operation of

the enterprise, business, or venture and all improvements made and constructed in support of any commercial purpose during the term of the lease. This requirement does not apply to the installation and construction by the lessee of infrastructure and improvements, such as public roads, parks, sewers, or utilities, if they were required by a local government as a condition of development.

(2) Upon expiration of the lease, the title to all permanent improvements and fixtures located on the leased property and used in the operation and maintenance of the enterprise vests in the state. The lease must describe in detail the manner and subject matter of the transfer to the state.

Section 7. Qualifications for commercial lessees — bonds. (1) Before accepting any offer for a commercial lease, the board shall establish, to its satisfaction, the financial capability of the person seeking the commercial lease and the legal authority of the person to conduct business in the state. Prior to executing a commercial lease, the board may require the posting of bonds, sureties, guarantees, or a letter of credit sufficient to ensure that the commercial purposes will be conducted as proposed with no harm to the financial interests of the beneficiaries.

(2) All commercial leases of which the commercial purpose includes the use of a hazardous substance as defined in 75-10-602 must be bonded to ensure a degree of cleanup of the hazardous substance that ensures protection of public health, safety, and welfare and of the environment in a manner that protects the long-term financial interest of the beneficiaries.

Section 8. Land use license issuance following reclassification. Following cancellation of a preexisting lease due to a reclassification pursuant to 77-1-401 through 77-1-403, the department may issue a land use license for the commercial lands reclassified for a term the department considers necessary to protect the income to the trust and to protect the state.

Section 9. Cancellation or termination of commercial lease. A commercial lease may be canceled at the option of the board or its designated representative for any violation of a lease provision. Upon cancellation or termination of a lease, the department may seek a new lessee in accordance with [sections 1 through 12]. If the costs of the commercial development have not been recovered by the state at the time of cancellation or termination, a subsequent lessee under this section shall reimburse the state for development costs, assessments, or fees only to the extent that the proportionate part of the costs, assessments, and fees to the state for obtaining the development have not been recovered.

Section 10. Encumbrance on leased land. (1) An encumbrance may not be placed upon the state's interest in land leased for commercial purposes.

(2) A commercial lease of state trust land may contain provisions that will permit the encumbering of the lessee's interest in the lease by mortgage or deed of trust.

Section 11. Notice and payment of assessments. (1) The lessee of a commercial lease on state trust land shall furnish to the department:

(a) officially certified descriptions of all state trust land included within the boundaries of a city or county improvement district that is the subject of the commercial lease; and

(b) a description and listing of the amount of assessments and charges of every character made against the leasehold interest of the lessee and the leasehold interest of the state, as soon as the assessments or charges are levied.

(2) A promise by the lessee to make timely payment of all assessment charges and an acknowledgment of the assessment must be inserted in any lease for state trust land.

(3) If assessments have been levied against any state trust land prior to commercial lease, the board shall require that all unpaid installments on assessments be paid to the improvement district before executing a lease.

(4) If an installment on an assessment or charge against the leasehold interest of the lessee of land subject to a commercial lease is not paid when due, the nonpayment constitutes a breach of the lease.

Section 12. Rulemaking. The board may adopt rules to:

(1) establish procedures for the issuance of requests for proposals for commercial purposes and the commercial leasing of state trust land;

(2) prescribe the form and content of commercial leases; and

(3) develop any other procedures necessary to fulfill the purposes of [sections 1 through 12] or to implement the commercial leasing of state trust land.

Section 13. Section 77-1-204, MCA, is amended to read:

"77-1-204. Power to sell, lease, or exchange certain state *trust* lands. (1) The board is authorized to lease state *trust* lands for uses other than agriculture, grazing, timber harvest, or mineral production under ~~such~~ terms and conditions ~~which~~ *that* best ~~meet~~ *fulfill* the duties of the board as specified in 77-1-202 and 77-1-203. The lease period for ~~such~~ *these* leases, except for power and school site leases, may not be for longer than ~~40~~ *99* years.

(2) The board ~~shall have full power and authority to~~ *may* sell, exchange, or lease lands under its jurisdiction by virtue of 77-1-214 when, in ~~its~~ *the board's* judgment, it is advantageous to the state to do so in the highest orderly development and management of state ~~forests and state parks~~ *trust land*. ~~Said~~ *The* sale, lease, or exchange ~~shall~~ *may* not be contrary to the terms of any contract ~~which it~~ *that the board* has entered into."

Section 14. Section 77-2-106, MCA, is amended to read:

"77-2-106. Charge for granting of easement — *in-kind payments for easements.* *(1)* The board shall charge and collect the full market value of the estate or interest disposed of through the granting of any easement and also fix, charge, and collect the amount of the actual damages resulting to the remaining land ~~or lands~~ from the granting of an easement as nearly as the damages can be ascertained.

(2) The board may accept, as lawful consideration, in-kind payments of services and materials equal to the full market value of any easement upon state trust land."

Section 15. Section 77-6-109, MCA, is amended to read:

"77-6-109. Duration of *agricultural or grazing* lease. Except as provided in 77-6-116, a lease for agricultural or grazing lands may not be for a period other than 5 or 10 years. ~~Leases for city lots, town lots, and lands valuable for commercial development may not exceed 40 years.~~"

Section 16. Section 77-6-503, MCA, is amended to read:

"77-6-503. Leases of city lots, town lots, and commercial property. ~~As to~~ *The fair rental value of state-owned* town lots, city lots, and land valuable for commercial development ~~owned by the state, the fair rental value thereof shall~~ *must* be determined from time to time by the department with the approval of the board, and a record *must be* made *of the values*. ~~thereof, and such~~ *State-owned* town *lots, city lots,* ~~or city property~~ or land valuable for commercial development may be leased at ~~its~~ *the* current appraised rental value for terms not to exceed ~~40~~ *99* years."

Section 17. Codification instruction. [Sections 1 through 12] are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1 through 12].

Section 18. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective July 1, 2003.

Section 21. Applicability. [This act] applies to all leases for commercial purposes made or renewed on or after July 1, 2003.

Ap proved April 17, 2003

CHAPTER NO. 405

[SB 146]

AN ACT ELIMINATING UNUSED STATE GRANT AND LOAN PROGRAMS; ELIMINATING THE ENERGY CONSERVATION IN AGRICULTURE GRANT PROGRAM, THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION PROGRAM, THE SOLID WASTE MANAGEMENT GRANT AND LOAN PROGRAM, AND THE STATE-OWNED BUILDING ENERGY RETROFITTING GRANT AND LOAN PROGRAM; AMENDING SECTIONS 15-6-225, 15-24-1401, 15-31-124, 15-32-402, 17-6-403, 30-16-103, 75-10-103, 75-10-104, 75-10-105, 75-10-106, 80-12-201, 90-5-101, AND 90-8-104, MCA; AND REPEALING SECTIONS 75-10-121, 75-10-122, 75-10-123, 75-10-124, 75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104, 90-4-105, 90-4-106, 90-4-109, 90-4-111, AND 90-4-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-225, MCA, is amended to read:

"15-6-225. Energy equipment exemption. (1) (a) Except as provided in subsection (1)(b), the machinery and equipment used in qualifying generation facilities built and operated after July 1, 2001, are exempt from taxation.

(b) A generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.

(c) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source.

(2) ~~(a)~~ For the purposes of this section~~,~~*:*

(a) "alternative renewable energy source" means a form of energy or matter that is capable of being converted into forms of energy useful to mankind, including electricity, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or technology is not in general commercial use. The term includes but is not limited to:

(i) solar energy;

(ii) wind energy;

(iii) geothermal energy;

(iv) conversion of biomass;

(v) fuel cells that do not require hydrocarbon fuel;

(vi) small hydroelectric generators producing less than 1 megawatt; or

(vii) methane from solid waste.

(b) "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property.

~~(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102.~~"

Section 2. Section 15-24-1401, MCA, is amended to read:

"15-24-1401. Definitions. The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales; or

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in ~~90-4-102~~ *15-6-225*.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section."

Section 3. Section 15-31-124, MCA, is amended to read:

"15-31-124. New or expanded industry credit — definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means:

(a) the process of mechanical or chemical transformation of materials or substances into new products, as described in the North American Industry Classification System Manual prepared by the United States office of management and budget; or

(b) the production of energy by means of an alternative renewable energy source as defined in ~~90-4-102~~ *15-6-225*.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) A new corporation does not include:

(i) a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation."

Section 4. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit — alternative energy systems. (1) An individual, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of $5,000 or more in certain depreciable property qualifying under section ~~38~~ *48(a)* of the Internal Revenue Code of ~~1954~~ *1986*, as amended, *26 U.S.C. 48(a)*, for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative

renewable energy source, as defined in ~~90-4-102~~ *15-6-225*, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section ~~38~~ *48(a)* of the Internal Revenue Code of ~~1954~~ *1986*, as amended, *26 U.S.C. 48(a)*, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

Section 5. Section 17-6-403, MCA, is amended to read:

"17-6-403. Definitions. As used in this part, the following definitions apply:

(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.

(2) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

(3) "Council" means the microbusiness advisory council established in 17-6-411.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(6) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(8) "Program" means the microbusiness finance program established in 17-6-406.

(9) "Qualified microbusiness" means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross ~~revenues~~ *revenue* of less than $500,000; or

(b) produces energy using an alternative renewable energy source as defined in ~~90-4-102~~ *15-6-225*.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan."

Section 6. Section 30-16-103, MCA, is amended to read:

"30-16-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of review" means the body established to provide policy direction to the department of revenue in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity, including the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ *15-6-225*.

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, chapters 1 through 3, 5 through 7, 10, 15, 16, and 20, which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system and the procedures developed by the board of review that are under the administrative control of the department."

Section 7. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.~~

~~(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.~~

~~(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.~~

~~(7)~~*(4)* "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.

~~(8)~~*(5)* "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

~~(9)~~*(6)* "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(10)~~*(7)* (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

~~(11)~~*(8)* "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

~~(12)~~*(9)* "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 8. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

~~(b) governing procedures to be followed in applying for and making loans;~~

~~(c) governing agreements between a local government and the department for grants or loans under this part;~~

~~(d)~~*(b)* establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

~~(e)~~*(c)* establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

~~(f)~~*(d)* establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

~~(g)~~*(e)* establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c);

~~(h)~~*(f)* providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6); and

~~(i)~~*(g)* providing guidelines for integrated waste management;

~~(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system that is compatible with the state plan whenever financial assistance is available;~~

~~(4)~~*(3)* provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and ~~conditionally exempt~~ small quantities of hazardous waste ~~as defined in ARM 16.44.402~~ *that are exempt from regulation under Title 75, chapter 10, part 4*;

~~(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;~~

~~(6)~~*(4)* enforce and administer the provisions of this part;

~~(7) administer loans made by the state under the provisions of this part;~~

~~(8)~~*(5)* approve plans for a proposed solid waste management system submitted by a local government; and

~~(9)~~*(6)* serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 9. Section 75-10-105, MCA, is amended to read:

"75-10-105. Powers of department. The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part; *and*

~~(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;~~

~~(3) make grants for a local government for planning or implementation of a solid waste management system; and~~

~~(4)~~*(2)* collect the solid waste management fees provided for in 75-10-115."

Section 10. Section 75-10-106, MCA, is amended to read:

"75-10-106. Duties of board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a) submission of plans for a solid waste management system; *and*

~~(b) the procedures to be followed in applying for and making loans and grants;~~

~~(c) the requirements for eligibility for grants;~~

~~(d) the agreements between the local government and the department for grants and loans under this part; and~~

~~(e)~~*(b)* the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115."

Section 11. Section 80-12-201, MCA, is amended to read:

"80-12-201. Loan agreements — general provisions. (1) Each loan approved by the authority for issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30 years.

(2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate provided the method of determination is contained in the loan agreement.

(3) Loans approved by the authority for issuance of a bond may be secured by any liens or collateral the financial institution considers necessary.

(4) The money received under a loan agreement may be used for:

(a) acquisition of farm or ranch land;

(b) a down payment on the acquisition of farm or ranch land;

(c) acquisition or construction of depreciable property used in the operation of a farm or ranch; or

(d) production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ *15-6-225*."

Section 12. Section 90-5-101, MCA, is amended to read:

"90-5-101. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" includes but is not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Electric energy generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

(4) "Family services provider" means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health services, social services, habilitative services, rehabilitative services, preventive care, and supportive services, and training, educational, and referral activities in support of human services.

(5) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(6) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(7) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(8) "Mortgage" means a mortgage or deed of trust or other security device.

(9) "Municipality" means any incorporated city or town in the state.

(10) "Project" means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, that must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; electric energy generation facilities; family services provider facilities; the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ *15-6-225*; and any combination of these projects."

Section 13. Section 90-8-104, MCA, is amended to read:

"90-8-104. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under this chapter.

(2) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce.

(4) "Montana business" means a business that is located or principally based within Montana.

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, that does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of this chapter, and that is:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in subsections (5)(a)(i)(A) through (5)(a)(i)(E);

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana;

(I) tourism; and

(J) the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ *15-6-225*; and

(ii) the business is a small business as defined in rules adopted by the department and is a small business pursuant to the regulations promulgated by the United States small business administration at 13 CFR 121, et seq.;

(b) a debt or equity financing of a business outside Montana if the investment is likely to produce a qualified investment in Montana, as long as the investment does not exceed 25% of the capital base of the capital company; or

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated as a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 14. Repealer. Sections 75-10-121, 75-10-122, 75-10-123, 75-10-124, 75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104, 90-4-105, 90-4-106, 90-4-109, 90-4-111, and 90-4-112, MCA, are repealed.

Section 15. Coordination instruction. (1) If House Bill No. 76 and [this act] are both passed and approved and if [this act] repeals 90-4-102, then the reference to 90-4-102 in [section 3 of House Bill No. 76], amending 17-6-403, is changed to 15-6-225.

(2) If Senate Bill No. 338 and [this act] are both passed and approved and if Senate Bill No. 338 repeals 15-30-103, then the reference to 15-30-103 in [section 4 of this act] is changed to [sections 1 through 6 of Senate Bill No. 338].

Ap proved April 17, 2003

CHAPTER NO. 406

[SB 191]

AN ACT PROVIDING FOR THE DESTRUCTION OF UNSUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT; DEFINING "UNSUBSTANTIATED"; AND AMENDING SECTIONS 41-3-102 AND 41-3-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, ~~due to~~ *because of* religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare;

(ii) substantial risk of harm to a child's health or welfare; or

(iii) abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree, as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children, as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

~~(26)~~*(27)* (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(26)~~ *(27)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections

available under state laws regarding medical neglect of children 1 year of age or older.

~~(27)~~*(28)* "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 2. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If a child interview is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the

department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to [the effective date of this act] and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to ~~subsection~~ *subsections* (5)(b) *and (5)(c),* the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department through its local office."

Ap proved April 17, 2003

CHAPTER NO. 407

[SB 217]

AN ACT REQUIRING THE USE OF CHILD SAFETY RESTRAINTS IN MOTOR VEHICLES FOR CHILDREN UNDER 6 YEARS OF AGE WHO WEIGH LESS THAN 60 POUNDS; ASSIGNING THE RESPONSIBILITY FOR USE OF CHILD SAFETY RESTRAINTS TO THE DRIVER; REMOVING THE PROVISION REQUIRING NO MORE THAN THREE CHILD SAFETY RESTRAINT SYSTEMS IN A VEHICLE; AND AMENDING SECTIONS 61-9-420 AND 61-13-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-420, MCA, is amended to read:

"61-9-420. Child safety restraint systems — standards — exemptions. (1) If a child under ~~2~~ *6* years of age *and weighing less than 60 pounds* is a passenger in a motor vehicle, that motor vehicle must be equipped

with one child safety restraint for each child in the vehicle and each child must be properly restrained.

~~(2) A child between 2 and 4 years of age or weighing less than 40 pounds who is a passenger in a motor vehicle must be properly restrained or restrained in a safety belt that meets applicable federal motor vehicle safety standards.~~

~~(3)~~*(2)* The department shall by rule establish standards in compliance with 61-9-419 through 61-9-423 and applicable federal standards for approved types of child safety restraint systems ~~purchased after January 1, 1984~~.

~~(4) A person is not required to have more than three child safety restraint systems in a vehicle.~~

~~(5)~~*(3)* The department may by rule exempt from the requirements of ~~subsection (1)~~ *subsection (1)* a child who because of a physical or medical condition or body size cannot be placed in a child safety restraint ~~system or safety belt~~."

Section 2. Section 61-13-103, MCA, is amended to read:

"61-13-103. Seatbelt use required — exceptions. (1) ~~No~~ *A* driver may *not* operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt *or, if 61-9-420 applies, is properly restrained in a child safety restraint*.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician that ~~he~~ *the occupant* is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle as defined in 61-1-105 or a motor-driven cycle as defined in 61-1-106;

(d) an occupant of a vehicle licensed as special mobile equipment as defined in 61-1-104;

~~(e) children subject to the provisions of 61-9-420;~~ or

~~(f)~~*(e)* an occupant who makes frequent stops with a motor vehicle ~~in his~~ *during* official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection ~~(2)(f)~~ *(2)(e)*.

(4) The department or its agent may not require a driver who may be in violation of this section to stop except upon reasonable cause to believe that ~~he~~ *the driver* has violated another traffic regulation or that ~~his~~ *the driver's* vehicle is unsafe or not equipped as required by law."

Ap proved April 17, 2003

CHAPTER NO. 408

[SB 226]

AN ACT PROVIDING THAT AN ARREST FOR DRUG OR GANG-RELATED ACTIVITY CONSTITUTES NONCOMPLIANCE WITH A TENANT'S DUTY TO MAINTAIN A DWELLING UNIT AND A LANDLORD'S DUTY TO

MAINTAIN PREMISES; REVISING THE TIME PERIOD FOR NOTIFICATION OF INTENDED TERMINATION BASED ON THE NONCOMPLIANCE; REVISING HEARING TIME REQUIREMENTS FOR REPOSSESSION ACTIONS BASED ON THE NONCOMPLIANCE; AND AMENDING SECTIONS 70-24-303, 70-24-321, 70-24-422, AND 70-24-427, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-303, MCA, is amended to read:

"70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector. (1) A landlord ~~shall~~:

(a) *shall* comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

~~(b)~~*(c) shall* make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

~~(c)~~*(d) shall* keep all common areas of the premises in a clean and safe condition;

~~(d)~~*(e) shall* maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

~~(e)~~*(f) shall,* unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

~~(f)~~*(g) shall* supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

~~(g)~~*(h) shall* install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and

that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through ~~(1)(g)~~ *(1)(h)*, a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections ~~(1)(e)~~ *(1)(f)* and ~~(1)(f)~~ *(1)(g)* ~~of this section~~ and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection ~~(1)(g)~~ *(1)(h)*."

Section 2. Section 70-24-321, MCA, is amended to read:

"70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner, considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, ~~provided~~ *if* the landlord has consented in writing. The landlord may not unreasonably withhold consent~~,~~

~~provided that~~ *if* the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4."

Section 3. Section 70-24-422, MCA, is amended to read:

"70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in ~~subsection (1)(b) or (1)(c)~~ *subsection (1)(b) or (1)(c)*, the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental

agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

~~(4)~~*(5)* Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection ~~(5)~~ *(6)*, if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

~~(5)~~*(6)* Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(6)~~*(7)* Subsections (3) through ~~(5)~~ *(6)* apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.

~~(7)~~*(8)* The landlord is not bound by this section in the event that:

(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and

(b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

Section 4. Section 70-24-427, MCA, is amended to read:

"70-24-427. Landlord's remedies after termination — action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, *except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.* If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, *except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court*.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing."

Ap proved April 17, 2003

CHAPTER NO. 409

[SB 254]

AN ACT REGULATING RENTAL VEHICLE ENTITIES AND CUSTOMER SERVICE REPRESENTATIVES WITH REGARD TO THE SALE OF RENTAL

VEHICLE INSURANCE; REQUIRING TRAINING OF CUSTOMER SERVICE REPRESENTATIVES; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Customer service representative" means an employee of a rental vehicle entity.

(2) "Present rental vehicle insurance information" means to present the option to acquire rental vehicle insurance to a renter.

(3) "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a vehicle that is provided by a rental vehicle entity for the rental or lease of a rental vehicle for a period of not more than 90 days.

(4) "Rental vehicle" means a motor vehicle that is designated as:

(a) a private passenger motor vehicle, including an automobile, a passenger van, a minivan, or a sport utility vehicle; or

(b) a cargo vehicle, including a cargo van, a pickup truck, or a truck with a gross weight of less than 26,000 pounds that does not require the operator to possess a commercial driver's license.

(5) "Rental vehicle entity" means an entity in the business of providing rental vehicles to the public under a rental agreement.

(6) "Rental vehicle insurance" means insurance that a renter purchases from a rental vehicle entity as part of the rental agreement in conjunction with the use of a rental vehicle.

(7) "Renter" means a person who obtains the use of a rental vehicle from a rental vehicle entity under the terms of a rental agreement.

Section 2. Rental vehicle entity license — customer service representative requirements — recordkeeping. (1) A rental vehicle entity may obtain an insurance license as a business entity.

(2) A rental vehicle entity or customer service representative may not present rental vehicle insurance information to renters unless the rental vehicle entity is licensed and the customer service representative has been trained as required under [section 3].

(3) A customer service representative may present rental vehicle insurance information only on behalf of a rental vehicle entity.

(4) A rental vehicle entity shall supervise a customer service representative who provides rental vehicle insurance under the provisions of [sections 1 through 5].

Section 3. Training of customer service representative. (1) A rental vehicle entity shall provide a training program for each customer service representative prior to allowing that customer service representative to present rental vehicle insurance information to renters.

(2) The rental vehicle entity shall present the training program to the commissioner for approval.

(3) The training may be in an electronic or video format and must cover the following areas:

(a) rental vehicle insurance;

(b) specific instruction that information may not be presented either by statement or conduct, express or implied, that would lead the renter to believe:

(i) that the purchase of rental vehicle insurance is required to rent a vehicle;

(ii) that the renter does not have a personal automobile insurance policy in place that provides coverage; or

(iii) that the customer service representative is qualified to evaluate the adequacy of the renter's existing insurance coverage.

(4) The training and education program must be submitted for review and approval pursuant to 33-17-1204 and 33-17-1205.

Section 4. Rental vehicle entity requirements. A rental vehicle entity may not solicit, negotiate, or sell rental vehicle insurance unless:

(1) at every location where rental vehicle agreements are executed, the rental vehicle entity prominently displays and makes readily available written material to each renter who may purchase rental vehicle insurance that:

(a) summarizes the material terms, exclusions, limitations, and conditions of coverage offered to renters, including the identity of the insurer;

(b) describes the process for filing claims in the event that the renter elects to purchase the coverage, including a toll-free telephone number to report a claim;

(c) provides the rental vehicle entity's name, address, telephone number, and business entity license number, as well as the commissioner's consumer hotline telephone number;

(d) informs the renter that the rental vehicle entity may provide a duplication of coverage already provided by a renter's automobile insurance policy;

(e) informs the renter that the purchase by the renter of the rental vehicle insurance is not required in order to rent a vehicle; and

(f) informs the renter that neither the rental vehicle entity nor the customer service representative is qualified to evaluate the adequacy of the renter's existing insurance coverage.

(2) Evidence of the rental vehicle insurance coverage must be stated in the rental agreement.

(3) The cost of the rental vehicle insurance must be separately itemized in the rental agreement, unless preselection of coverage is made in a master, corporate, or group agreement.

Section 5. Recordkeeping and trust fund requirements. (1) A rental vehicle entity shall keep records of insurance transactions pursuant to 33-17-1101.

(2) The commissioner may not require a rental vehicle entity to hold rental vehicle insurance premium in a separate trust account pursuant to 33-17-1102 if the premium for rental vehicle insurance is itemized as part of the rental agreement.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 through 5].

Section 7. Applicability. [This act] applies to contracts for rental vehicle insurance issued on or after October 1, 2003.

Ap proved April 17, 2003

CHAPTER NO. 410

[SB 306]

AN ACT CREATING THE UNIFORM ATHLETE AGENTS ACT; PROVIDING FOR DEFINITIONS, SERVICE OF PROCESS, REGISTRATION OF ATHLETE AGENTS, AND CIVIL AND CRIMINAL PENALTIES; REQUIRING PAYMENT OF A $200 BIENNIAL REGISTRATION OR RENEWAL FEE; ESTABLISHING CONTRACT CRITERIA FOR ATHLETE AGENTS AND STUDENT-ATHLETES; PROVIDING FOR NOTICE TO THE STUDENT-ATHLETE'S EDUCATIONAL INSTITUTION OF A CONTRACT BETWEEN A STUDENT-ATHLETE AND AN ATHLETE AGENT; GIVING STUDENT-ATHLETES THE RIGHT TO CANCEL THE CONTRACT WITH AN ATHLETE AGENT; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; AND AMENDING SECTION 37-1-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 20] may be cited as the "Uniform Athlete Agents Act".

Section 2. Definitions. For the purposes of [sections 1 through 20], the following definitions apply:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit a professional sports services contract or an endorsement contract on behalf of the student-athlete.

(2) (a) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent.

(b) The term does not include a spouse, parent, sibling, grandparent, or legal guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration from another party based on the value to the other party that the student-athlete may have because of publicity, reputation, following, or fame obtained because of the student-athlete's athletic ability or performance.

(7) "Intercollegiate sport" means a sport played at the collegiate level with eligibility requirements for participation by a student-athlete established by a national association for the promotion or regulation of collegiate athletics.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental entity, or any other legal or commercial entity.

(9) "Professional sports services contract" means an agreement under which an individual is employed as or agrees to render services as a player on a professional sports team, as a member of a professional sports organization, or as a professional athlete.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Registration" means registration as an athlete agent pursuant to [sections 1 through 20].

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(13) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

Section 3. Service of process — subpoenas. (1) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's actions as an athlete agent in this state.

(2) The department may issue subpoenas for any material that is relevant to the administration of [sections 1 through 20].

Section 4. Athlete agents — registration required — void contracts. (1) Except as provided in subsection (2), an individual may not act as an athlete agent in this state without holding a certificate of registration issued under [section 6 or 8].

(2) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract if:

(a) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(b) within 7 days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

Section 5. Registration as athlete agent — form — requirements. (1) An applicant shall submit an application for registration to the department in a form prescribed by the department. The application must be in the name of an individual and, except as provided in subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury. The application must contain:

(a) the name of the applicant and the address of the applicant's principal place of business;

(b) the name of the applicant's business or employer, if applicable;

(c) any business or occupation engaged in by the applicant for the 5 years preceding the date of submission of the application;

(d) a description of the applicant's:

(i) formal training as an athlete agent;

(ii) practical experience as an athlete agent; and

(iii) educational background relating to the applicant's activities as an athlete agent;

(e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(f) the name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the 5 years preceding the date of submission of the application;

(g) if the applicant's business is other than a corporation, the names and addresses of all persons who are partners, members, officers, managers, or associates or who share profits of the business;

(h) if the applicant's business is a corporation, the names of any officers, directors, and any shareholder of the corporation having an interest of 5% or greater;

(i) whether the applicant or any person named pursuant to subsections (1)(g) and (1)(h) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony and must identify the crime;

(j) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to subsections (1)(g) and (1)(h) has made a false, misleading, deceptive, or fraudulent representation;

(k) any instance in which the conduct of the applicant or any person named pursuant to subsections (1)(g) and (1)(h) resulted in the imposition of a sanction, suspension, or declaration of ineligibility for a student-athlete or educational institution to participate in an interscholastic or intercollegiate athletic event;

(l) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to subsections (1)(g) and (1)(h) arising out of occupational or professional conduct; and

(m) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to subsections (1)(g) and (1)(h) as an athlete agent in any state.

(2) An individual who has submitted an application for and holds a certificate of registration or licensure as an athlete agent in another state may

submit a copy of the application and certificate in lieu of submitting an application in the form prescribed by subsection (1). The department shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) was submitted in the other state within 6 months preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

Section 6. Certificate of registration — issuance or denial — renewal. (1) Except as provided in subsection (2), the department shall issue a certificate of registration to an individual who complies with [section 5(1)] or whose application has been accepted under [section 5(2)].

(2) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:

(a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(b) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) engaged in conduct prohibited by [section 14];

(e) had a registration or license as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(f) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(g) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under subsection (2), the department shall consider:

(a) how recently the conduct occurred;

(b) the nature of the conduct and the context in which it occurred; and

(c) any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4), may file a copy of the

application for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(a) was submitted in the other state within 6 months preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(c) was signed by the applicant under penalty of perjury.

(6) A certificate of registration or a renewal of a registration is valid for 2 years.

Section 7. Suspension, revocation, or refusal to renew registration. (1) The department may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under [section 6(2)].

(2) The department may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

Section 8. Temporary registration. The department may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Section 9. Registration and renewal fees. (1) An application for registration or renewal of registration must be accompanied by a fee of $200.

(2) All fees and money received by the department must be deposited in a state special revenue account for use by the department in performing the duties required by [sections 1 through 20].

Section 10. Required form of contract. (1) An agency contract must be in a record and signed or otherwise authenticated by the parties.

(2) An agency contract must contain:

(a) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) the name of any person not listed in the athlete agent's application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) a description of any expenses that the student-athlete agrees to reimburse;

(d) a description of the services to be provided to the student-athlete;

(e) the duration of the contract; and

(f) the date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

Section 11. Notice to educational institution. (1) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or at which the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(2) Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that the student-athlete has entered into an agency contract.

Section 12. Student-athlete's right to cancel. (1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(2) A student-athlete may not waive the right to cancel an agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

Section 13. Required records. (1) An athlete agent shall retain the following records for a period of 5 years:

(a) the name and address of each individual represented by the athlete agent;

(b) any agency contract entered into by the athlete agent; and

(c) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(2) Records required to be retained by subsection (1) must be open to inspection by the department during normal business hours.

Section 14. Prohibited conduct. (1) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(a) give any materially false or misleading information or make a materially false promise or representation;

(b) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) initiate contact with a student-athlete unless registered under [sections 1 through 20];

(b) refuse or fail to retain or permit inspection of the records required to be retained by [section 13];

(c) fail to register when required by [section 4];

(d) provide materially false or misleading information in an application for registration or renewal of registration;

(e) predate or postdate an agency contract; or

(f) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Section 15. Criminal penalties. An athlete agent who violates the provisions of [section 14] is guilty of a misdemeanor and may be imprisoned for a period not to exceed 1 year and may be fined up to $5,000, or both.

Section 16. Civil remedies. (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of [sections 1 through 20]. In an action under this section, the court may award to the prevailing party costs and reasonable attorney fees.

(2) Damages of an educational institution under subsection (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of [sections 1 through 20] or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by a national organization or athletic conference.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence should have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) [Sections 1 through 20] are not intended to restrict any other rights, remedies, or defenses that a person may otherwise have under law or equity.

Section 17. Administrative penalty. The department may assess a civil penalty against an athlete agent not to exceed $25,000 for a violation of [sections 1 through 20].

Section 18. Uniformity of application and construction. In applying and construing [sections 1 through 20], consideration must be given to the need to promote uniformity of the law with respect to the subject matter of [sections 1 through 20] among the states adopting provisions similar to Montana's Uniform Athlete Agents Act.

Section 19. Electronic signatures. The provisions of [sections 1 through 20] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of electronic records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229, 114 Stat. 464.

Section 20. Rulemaking authority. The department may establish rules to administer and enforce [sections 1 through 20].

Section 21. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards — definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by*:*

(a) Title 37, chapter 35 or 72, or [sections 1 through 20]; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of*:*

(a) Title 37, chapter 35 or 72, or [sections 1 through 20]; or

(b) Title 50, chapter 39, 74, or 76."

Section 22. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 20].

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Ap proved April 17, 2003

CHAPTER NO. 411

[SB 307]

AN ACT REVISING SCHOOL DISTRICT INVESTMENT LAWS; ELIMINATING THE REQUIREMENT FOR A SCHOOL DISTRICT TO ESTABLISH A SEPARATE INVESTMENT ACCOUNT FOR EACH FUND; REQUIRING THAT ONLY DEBT SERVICE FUNDS MUST BE COLLECTED BY A COUNTY TREASURER AND REPORTED TO A SCHOOL DISTRICT; AND AMENDING SECTION 20-9-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-235, MCA, is amended to read:

"20-9-235. Authorization for school district investment account. (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds. ~~The trustees shall establish a separate account for each fund from which transfers are made.~~

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

~~(ii) be binding upon the district and the county treasurer for a period of not less than 5 years;~~

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

~~(iii)~~*(iii)* be signed by the presiding officer of the board of trustees and the county treasurer; and

~~(iv)~~*(iv)* except as provided in subsection (4)(b), coincide with fiscal years beginning on July 1 and ending on June 30.

(b) An agreement that establishes a school district investment account for fiscal year 2002 must be entered into no later than October 1, 2001.

(c) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Except for ~~electronic transfers of BASE aid and state advances for county equalization~~ *debt service money that the county treasurer is required by law to collect and report to the districts, all other revenue may be* sent directly to a participating district's investment account ~~under 20-9-346(3), the county treasurer shall, as required by law, continue to collect money and report to the districts that elect to establish a school district investment account~~.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts."

Ap proved April 18, 2003

CHAPTER NO. 412

[SB 389]

AN ACT PROVIDING AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE FOR RESIDENTIAL CONSTRUCTION DISPUTES; REQUIRING A CLAIMANT WITH AN ALLEGED CONSTRUCTION DEFECT TO FILE A NOTICE OF CLAIM WITH THE CONSTRUCTION

PROFESSIONAL THAT THE CLAIMANT ASSERTS IS RESPONSIBLE FOR THE DEFECT AND PROVIDING THE CONSTRUCTION PROFESSIONAL WITH THE OPPORTUNITY TO RESOLVE THE CLAIM WITHOUT LITIGATION; LIMITING DAMAGES THAT CAN BE RECOVERED IN RESIDENTIAL CONSTRUCTION DISPUTES; AND AMENDING SECTION 27-2-208, MCA.

WHEREAS, the Legislature finds that Montana needs an alternative method to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners; and

WHEREAS, the Legislature determines that an effective alternative dispute resolution mechanism in certain construction defect matters should require the claimant to file a notice of claim with the construction professional that the claimant asserts is responsible for the defect and providing the construction professional with the opportunity to resolve the claim without litigation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Residential construction disputes — definitions. As used in [sections 1 through 3], the following definitions apply:

(1) (a) "Action" means any civil lawsuit or action in contract or tort for damage or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction or remodeling of a residence.

(b) The term does not include a civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means a unit owners' organization or a nonprofit corporation created to own and operate portions of a planned community that has the power to require unit owners to pay the costs and expenses incurred in the performance of the association's obligations.

(3) "Claimant" means a homeowner or association that asserts a claim against a construction professional concerning a defect in the construction or remodeling of a residence.

(4) "Construction defect" means a deficiency in or arising out of the supervision, construction, or remodeling of a residence that results from any of the following:

(a) defective materials, products, or components used in the construction or remodeling of a residence;

(b) violation of the applicable building, plumbing, or electrical codes in effect at the time of the construction or remodeling of a residence;

(c) failure to construct or remodel a residence in accordance with contract specifications or accepted trade standards.

(5) "Construction professional" means a builder, builder vendor, contractor, or subcontractor performing or furnishing the supervision of the construction or remodeling of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(6) (a) "Homeowner" means:

(i) any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the remodeling, construction, or construction and sale of a residence; or

(ii) an association as defined in this section.

(b) The term homeowner includes but is not limited to a subsequent purchaser of a residence from any homeowner.

(7) "Residence" means a single-family house or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system.

(8) "Serve" or "service" means personal service or delivery by certified mail to the last-known address of the addressee.

Section 2. Residential construction disputes — notice and opportunity to repair — tolling of statute of limitations — presumption of compliance with construction standards. (1) Prior to commencing an action against a construction professional for a construction defect, the claimant shall serve written notice of claim on the construction professional. The notice of claim must state that the claimant asserts a construction defect claim against the construction professional and must describe the claim in reasonable detail sufficient to determine the general nature of the defect. If a written notice of claim is served under this section within the time prescribed for the filing of an action under 27-2-208, the statute of limitations for construction defect claims is tolled.

(2) Within 21 days after service of the notice of claim, the construction professional shall serve a written response on the claimant. The written response must:

(a) propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified timeframe. The proposal must include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) offer to compromise and settle the claim by monetary payment without inspection; or

(c) state that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3) (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2), the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the notice of rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at any time after that date the construction professional may terminate the proposal or offer by serving written notice on the claimant. The claimant may, after service, bring an action against the

construction professional for the construction defect claim described in the notice of claim.

(4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a), the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence, as agreed by the parties, to inspect the premises and the claimed defect.

(b) Within 14 days following completion of the inspection, the construction professional shall serve on the claimant:

(i) a written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of the construction;

(ii) a written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b);

(iii) a written offer to remedy the claim through a combination of repair and monetary payment pursuant to subsection (2)(b); or

(iv) a written statement setting forth the reasons why the construction professional will not proceed further to remedy the alleged defect.

(c) If the construction professional does not proceed further to remedy the alleged construction defect within the agreed-upon time or if the construction professional fails to comply with the provisions of subsection (4)(b), the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to subsection (4)(b)(i) or (4)(b)(ii) to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to subsection (4)(b)(i) or (4)(b)(ii), then at any time after that date the construction professional may terminate the offer by serving written notice on the claimant.

(5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) or (4)(b)(iii) shall do so by serving the construction professional with a written notice of acceptance within 30 days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction according to the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including but not limited to repair of additional defects.

(6) Subsequently discovered claims of construction defects must be administered separately under this section and [section 3], unless otherwise agreed to by the parties.

(7) This section may not be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform within the time agreed upon pursuant to subsection (4)(b) or (5)(b).

(8) This section may not be enforced unless the homeowner has been given written notice of the requirements of [sections 1 through 3].

Section 3. Construction defect disputes — damages. (1) In a suit subject to [section 2] and this section, the claimant may recover only the following damages proximately caused by a construction defect:

(a) the reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under [section 2];

(b) the reasonably necessary expenses of temporary housing during the repair period;

(c) the reduction in market value, if any, to the extent the reduction is due to a construction defect; and

(d) reasonable costs and attorney fees.

(2) [Sections 1 through 3] do not supersede contractual alternative dispute resolution procedures contained in a contract between a claimant and a construction professional.

Section 4. Section 27-2-208, MCA, is amended to read:

"27-2-208. Actions for damages arising out of work on improvements to real property or land surveying. (1) Except as provided in *[section 2(1)] and* subsections (2) and (3) *of this section*, an action to recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property or resulting from or arising out of land surveying of real property may not be commenced more than 10 years after completion of the improvement or land surveying.

(2) Notwithstanding the provisions of subsection (1), an action for damages for an injury that occurred during the 10th year after the completion of the improvement or land surveying may be commenced within 1 year after the occurrence of the injury.

(3) The limitation prescribed by this section may not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement or real property that is surveyed at the time a right of action arises.

(4) As used in this section:

(a) "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

(b) "land surveying" means the practice of land surveying, as defined in 37-67-101.

(5) This section may not be construed as extending the period prescribed by the laws of this state for the bringing of any action."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 70, chapter 19, part 4, and the provisions of Title 70, chapter 19, part 4, apply to [sections 1 through 3].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Ap proved April 17, 2003

CHAPTER NO. 413

[SB 449]

AN ACT REVISING THE FETAL, INFANT, AND CHILD MORTALITY PREVENTION ACT; ALLOWING COUNTIES AND TRIBAL GOVERNMENTS TO COOPERATE TO ALLOW TEAMS TO REVIEW ALL FETAL, INFANT, AND CHILD DEATHS; REVISING CONFIDENTIALITY AND DISCLOSURE PROVISIONS RELATED TO FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; AND AMENDING SECTIONS 50-19-402, 50-19-403, 50-19-404, 50-19-405, AND 50-19-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-19-402, MCA, is amended to read:

"50-19-402. Statement of policy — access to information. (1) The prevention of fetal, infant, and child deaths is both the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can be used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths *and make recommendations for community or statewide change, if appropriate, that may help prevent future deaths.*

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in 44-5-303(4), *from a tribal attorney,* and from a health care provider as provided in 50-16-525 after the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6). The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may ~~only~~:

(a) perform an in-depth analysis of fetal, infant, and child deaths, including a review of records available by law;

~~(a)~~*(b)* compile statistics of fetal, infant, and child mortality *and communicate the statistics to the department of public health and human services for inclusion in statistical reports*;

~~(b)~~*(c)* analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and

~~(c)~~*(d)* recommend measures to prevent future fetal, infant, and child deaths.

(4) A local fetal, infant, and child mortality review team may not review deaths of fetuses, infants, or children who are Indians and which deaths occur within the boundaries of an Indian reservation with a tribal government that opposes the review."

Section 2. Section 50-19-403, MCA, is amended to read:

"50-19-403. Local fetal, infant, and child mortality review team. (1) A local fetal, infant, and child mortality review team must be approved by the ~~county health~~ department *of public health and human services*. Approval ~~must~~ *may* be given if:

(a) the county health department*, a tribal health department, if the tribal government agrees, or both are represented on the team and the plan provided for in subsection (1)(d) includes the roles of the county health department, tribal health department, or both;*

(b) ~~has designated~~ a lead person *has been designated* for the purposes of management of the review team;

~~(b)~~*(c)* at least five of the individuals listed in subsection (2) have agreed to serve on the review team; and

~~(c)~~*(d)* ~~the five individuals have developed~~ a plan *has been developed by the team* that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or 50-19-402(2).

(2) If a local fetal, infant, and child mortality review team is established, the team must be multidisciplinary and may include only:

(a) the county attorney or a designee;

(b) a law enforcement officer;

(c) the medical examiner or coroner for the jurisdiction;

(d) a physician;

(e) a school district representative;

(f) a representative of the local health department;

(g) a representative from a tribal health department, appointed by the tribal government;

(h) a representative from a neighboring county or tribal government, if there is an agreement to review deaths for that county or tribe;

~~(g)~~*(i)* a representative of the department of public health and human services;

~~(h)~~*(j)* a forensic pathologist;

~~(i)~~*(k)* a pediatrician;

~~(j)~~*(l)* a family practice physician;

~~(k)~~*(m)* an obstetrician;

~~(l)~~*(n)* a nurse practitioner;

~~(m)~~*(o)* a public health nurse;

~~(n)~~*(p)* a mental health professional;

~~(o)~~*(q)* a local trauma coordinator;

~~(p) a representative, appointed by the tribal government, of an Indian reservation that is located in whole or in part within the boundaries of the county;~~

~~(q)~~*(r)* a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and

~~(r)~~*(s)* representatives of the following:

(i) local emergency medical services;

(ii) a local hospital;

(iii) a local hospital medical records department;

(iv) a local fire department; and

(v) the local registrar.

(3) The designated lead person for the team shall submit membership lists to the department of public health and human services annually."

Section 3. Section 50-19-404, MCA, is amended to read:

"50-19-404. Records — confidentiality. Material and information obtained by a local fetal, infant, and child mortality review team are not subject to disclosure under the public records law. Material and information obtained by a local fetal, infant, and child mortality review team are not subject to subpoena ~~unless the material and information are reviewed by a district court judge and ordered to be provided to the person seeking access~~."

Section 4. Section 50-19-405, MCA, is amended to read:

"50-19-405. Unauthorized disclosure ~~by review team member~~ — civil penalty. A person aggrieved by the use of information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or by a disclosure of that information in violation of 50-19-402(2) ~~by a member of a local fetal, infant, and child mortality review team~~ may bring a civil action in the district court of the county of the person's residence for damages, costs, and fees as provided in 50-16-553(6) through (8)."

Section 5. Section 50-19-406, MCA, is amended to read:

"50-19-406. Unauthorized disclosure ~~by review team member~~ — misdemeanor. ~~A member of a local fetal, infant, and child mortality review team~~ *A person* who knowingly uses information obtained pursuant to 50-19-402(2) for a purpose not authorized by 50-19-402(3) or who discloses that information in violation of 50-19-402(2) is guilty of a misdemeanor and upon conviction is punishable as provided in 50-16-551."

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Ap proved April 17, 2003

CHAPTER NO. 414

[HB 155]

AN ACT GENERALLY UPDATING AND REVISING PROVISIONS ON VOTING SYSTEM TECHNOLOGIES, BALLOT FORMATS, AND VOTE COUNTING; SPECIFYING UNIFORM STANDARDS FOR THE SECRETARY OF STATE'S APPROVAL OF A VOTING SYSTEM FOR USE IN THE STATE; REQUIRING THE SECRETARY OF STATE TO ADOPT UNIFORM STATEWIDE RULES; REQUIRING ELECTION ADMINISTRATORS TO COLLECT AND REPORT CERTAIN DATA; PROVIDING UNIFORM PROCEDURES ON HOW VOTES ARE COUNTED; CLARIFYING TRAINING REQUIREMENTS FOR ELECTION ADMINISTRATORS AND ELECTION JUDGES; CLARIFYING THE APPLICATION OF CERTAIN ELECTION LAWS TO SCHOOL ELECTION AND SCHOOL ELECTION ADMINISTRATORS; AMENDING SECTIONS 13-1-101, 13-1-103, 13-1-202, 13-1-203, 13-3-105, 13-4-101, 13-4-102, 13-4-203, 13-10-204, 13-10-208, 13-10-209, 13-10-211, 13-10-301, 13-10-302, 13-10-303, 13-10-311, 13-12-201, 13-12-202, 13-12-203, 13-12-204, 13-12-205, 13-12-212, 13-13-111, 13-13-112, 13-13-115, 13-13-116, 13-13-117, 13-13-201, 13-13-203, 13-13-205, 13-13-211, 13-13-212, 13-13-214, 13-13-222, 13-13-229, 13-13-231, 13-13-232, 13-13-233, 13-13-234, 13-13-241, 13-13-244, 13-14-115, 13-14-116, 13-14-117, 13-14-118, 13-14-212, 13-15-101, 13-15-103, 13-15-104, 13-15-105, 13-15-201, 13-16-201, 13-16-303, 13-16-411, 13-16-412, 13-16-414, 13-16-417, 13-16-420, 13-17-101, 13-17-102, 13-17-103, 13-17-104, 13-17-105, 13-17-106, 13-17-107, 13-17-201, 13-17-203, 13-17-204, 13-17-206, 13-17-305, 13-17-306, 13-19-106, 13-19-309, 13-19-312, 13-19-314, 13-25-101, 13-27-501, 13-27-502, 13-35-202, 13-35-205, 13-35-206, 13-37-126, 13-37-250, 13-38-201, 20-20-421, AND 76-15-303, MCA; AND REPEALING SECTIONS 13-12-208, 13-12-209, 13-13-221, 13-15-202, 13-16-413, AND 13-17-301, MCA.

WHEREAS, the U.S. Supreme Court in Bush v. Gore, 531 U.S. 98 (2000), found that the lack of uniform procedures for determining voter intent in Florida during the 2000 presidential election led to a violation of the U.S. Constitution's Equal Protection Clause of the 14th Amendment; and

WHEREAS, at the request of the 57th Legislature, the State Administration and Veterans' Affairs Interim Committee devoted much of the 2001-2002 interim to a review of Montana election laws with respect to voting systems and counting processes in light of Bush v. Gore; and

WHEREAS, the interim study found that Montana's statutory provisions relating to ballots, voting systems, and vote counting processes needed to be updated, clarified, and in some instances revised to better define uniform standards and procedures to provide equal protection for votes cast by Montana voters; and

WHEREAS, the Subcommittee on Voting Systems of the State Administration and Veterans' Affairs Interim Committee agreed that statutory

changes should be made with an eye on future technology but should also standardize current practices to the greatest extent possible.

THEREFORE, this legislation will enable the Secretary of State to adopt a statewide benchmark performance measure that voting systems must meet before they can be approved for use in the state; allow local election administrators to continue to choose which of the approved voting systems should be used locally; require the Secretary of State to adopt uniform statewide rules regarding ballot form, votes and vote counts, and other operational procedures specific to each voting system and to provide training to local election administrators; and require all counting boards to use the uniform counting procedures specified.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appointment of counting boards. To count votes in any election under this title, when election judges are appointed under 13-4-101, each county's governing body shall designate three of the election judges to act as a counting board. The governing body may also designate three of the election judges to act as an absentee ballot counting board under 13-15-104.

Section 2. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count of votes cast on a paper ballot must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the entire ballot must be set aside and counted as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) Except as provided in subsection (3)(b):

(i) if a vote on a paper ballot or nonpaper ballot is recognized and counted by the system, it is a valid vote;

(ii) if a vote on a paper ballot or nonpaper ballot is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) (i) If a paper ballot being counted by a voting system is rejected by the system or if the system records an overvote or undervote on a ballot, the ballot must be set aside and counted as provided in subsection (4).

(ii) If an election administrator determines that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-16-414.

(c) After all valid votes have been counted and totaled pursuant to subsection (4) and this subsection (3), the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) Each questionable vote on a paper ballot set aside under subsection (2)(a) or (3)(b) must be counted if the voter's intent can be clearly determined and agreed upon by a majority of the election judges on the counting board in accordance with rules adopted pursuant to subsection (7).

(b) After each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) has been determined to be a valid vote, an invalid vote, or an intentional nonvote, the valid votes must be counted manually or automatically tabulated by the voting system. If the votes are to be counted manually, the votes must be tallied as provided in subsection (2). If the votes are to be counted using a voting system, all valid votes must be transferred to a ballot that will be accepted by the voting system and tabulated as provided in subsection (3).

(c) Votes counted pursuant to this subsection (4) and the votes initially counted under subsections (2) and (3) must be totaled.

(5) A write-in vote may be counted only if the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a).

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section:

(a) "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue; and

(b) "undervote" means an elector's vote that has been interpreted by the voting system as a nonvote.

Section 3. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance certification under [section 4];

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

(c) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast;

(d) the procedures to be followed if the comparison under [section 2(2)(b)] reveals discrepancies;

(e) recount procedures under 13-16-412(2);

(f) voting system tests to correct discrepancies under 13-16-414(1)(a);

(g) what contingencies must be made for recounts pursuant to 13-16-414(3)(b);

(h) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417; and

(i) testing and certification of voting systems pursuant to [section 4].

Section 4. Performance certification of voting systems prior to election. No more than 30 days prior to an election in which a voting system is used, the election administrator shall test and certify that the system is performing properly. The test and certification must be conducted according to rules adopted by the secretary of state pursuant to [section 3].

Section 5. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means a qualified elector whose name is on the active list.

(2) "Active list" means a list of active electors maintained by an election administrator pursuant to 13-2-219.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a completed voter registration card submitted to the election administrator and subject to confirmation, as provided in 13-2-207.

(5) "Ballot" means:

(a) a paper ballot used with a paper-based system, such as an optical scan system[, a punchcard voting system,] or other technology that automatically tabulates votes cast by processing the paper ballots; or

(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology.

~~(5)~~*(6)* "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

~~(6)~~*(7)* (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

~~(7)~~*(8)* "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

~~(8)~~*(9)* "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

~~(9)~~*(10)* "Elector" means an individual qualified and registered to vote under state law.

~~(10)~~*(11)* (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection ~~(6)~~ *(7)*;

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

~~(11)~~*(12)* "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

~~(12)~~*(13)* "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

~~(13)~~*(14)* "Inactive elector" means an individual whose name is placed on an inactive list.

~~(14)~~*(15)* "Inactive list" means a list of inactive electors maintained by an election administrator pursuant to 13-2-219.

~~(15)~~*(16)* "Individual" means a human being.

~~(16)~~*(17)* "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

~~(17)~~*(18)* "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection ~~(5)~~ *(6)*.

~~(18)~~*(19)* "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

~~(19)~~*(20)* "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(20)~~*(21)* "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

~~(21)~~*(22)* "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(22)~~*(23)* "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(23)~~*(24)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(25) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in [section 2].

~~(24)~~*(26)* "Voting ~~machine or device~~ *system" or "system"* means any *machine, device, technology, or* equipment used to *automatically* record, tabulate, or ~~in any manner~~ process the vote of an elector *cast on a paper or nonpaper ballot*."

Section 6. Section 13-1-103, MCA, is amended to read:

"13-1-103. Determination of winner. The individual receiving the highest number of *valid* votes for any office at an election is elected or nominated to that office."

Section 7. Section 13-1-202, MCA, is amended to read:

"13-1-202. Forms and rules prescribed by ~~chief election officer~~ *secretary of state — consultation*. (1) In carrying out ~~his~~ *the* responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

(a) written directives and instructions relating to and based on the election laws;

(b) sample copies of prescribed and suggested forms; and

(c) advisory opinions on the effect of election laws other than those laws in ~~chapters~~ *chapter* 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. ~~He~~ *The secretary of state shall* ~~must~~ seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

(a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103(2);

(b) evaluate the security, accuracy, and accessibility of elections; and

(c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section."

Section 8. Section 13-1-203, MCA, is amended to read:

"13-1-203. ~~Chief election officer~~ *Secretary of state* to advise, assist, and train. *(1)* The secretary of state shall advise and assist election administrators*, including administrators of school elections under Title 20, chapter 20,* with regard to*:*

(a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37~~, and~~*;*

(b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31*; and*

(c) the procedures adopted pursuant to [section 3]. ~~The secretary of state shall hold at least one workshop every 2 years to provide training and assistance to election administrators. Election administrators must be reimbursed, from funds appropriated to the secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, the workshops may be held in several sessions at separate locations in the state.~~

(2) The secretary of state shall prepare and distribute training materials for election judges to be trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to provide a small extra supply must be sent to each election administrator.

(3) The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops must be paid by the secretary of state. Attendees of the training must receive a certificate of instruction, which is valid for 2 years."

Section 9. Section 13-3-105, MCA, is amended to read:

"13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place ~~shall~~ *must* be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 *days* or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county~~,~~ a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice ~~shall~~ *must* be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. ~~Such~~ *The* building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges."

Section 10. Section 13-4-101, MCA, is amended to read:

"13-4-101. Appointment of election judges ~~— other boards of election judges~~. ~~(1)~~ At least 30 days before the primary election in even-numbered years, the county governing body shall appoint ~~3~~ *three* or more election judges for each precinct, one of whom ~~shall~~ *must* be designated chief judge.

~~(2) A board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator.~~

~~(3) A board of election judges, designated as a counting board for absentee ballots, may be appointed to count all absentee ballots for all precincts if recommended by the election administrator.~~"

Section 11. Section 13-4-102, MCA, is amended to read:

"13-4-102. Manner of choosing election judges. (1) ~~Election~~ *Subject to 13-4-107, election* judges ~~shall~~ *must* be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges ~~shall~~ *must* be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges ~~shall contain~~ *must include* judges representing all parties that have submitted lists as provided in subsection (1). No more than ~~a~~ *the number of election judges needed to obtain a simple* majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list, the election administrator may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as ~~assigned by the election administrator for 2 years~~ *provided in 13-4-103*."

Section 12. Section 13-4-203, MCA, is amended to read:

"13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction ~~shall~~ *obtained pursuant to 13-1-203(3) must* be instructed by the election administrator. In precincts where voting ~~machines or devices~~ *systems* are used, instructions ~~shall~~ *must* cover both ~~machines or devices~~ *how to operate the voting system* and *how to manually process any* paper ballots.

(2) Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only, *even if they possess a current certificate of instruction*.

(3) Any individual willing to be appointed *as* an election judge may attend an instruction session by registering with the election administrator. ~~Such individuals~~ *However, the individual* may not be paid for attendance unless ~~they are~~ *the individual is* appointed *as an* election ~~judges~~ *judge*.

~~(4) The secretary of state shall prepare and distribute training materials for election judges. The materials shall include instructions on the use of all machines or devices approved for use in this state, as well as paper ballots. Enough copies of the materials to supply all election judges in the county and provide a small extra supply shall be sent to each election administrator. The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops shall be paid by the secretary of state.~~

~~(5)~~*(4)* Each election judge completing a training session *under this section* ~~shall~~ *must* be given a certificate of completion. ~~No~~ *An* individual may *not* serve as an election judge without a valid certificate *obtained under 13-1-203(3) or this section*. However, this does not apply to individuals filling vacancies in emergencies.

~~(6)~~*(5)* All certificates of completion expire 30 days before the primary election in even-numbered years.

~~(7)~~*(6)* Notice of place and time of instruction must be given by the election administrator to the *presiding officers of the political parties in the* county ~~chairmen of the political parties~~."

Section 13. Section 13-10-204, MCA, is amended to read:

"13-10-204. Write-in nominations. An individual nominated by having ~~his~~ *the individual's* name written in *or otherwise placed* on the primary ballot and desiring to accept the nomination may not have ~~his~~ *the individual's* name ~~printed~~ *appear* on the general election ballot unless ~~he~~ *the individual*:

(1) files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating ~~his~~ acceptance of the nomination;

(2) pays the required filing fee or, if indigent, complies with 13-10-203;

(3) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election; and

(4) complies with the provisions of 13-37-126."

Section 14. Section 13-10-208, MCA, is amended to read:

"13-10-208. Certificate of primary ballot — ~~printing~~ *preparing* ballot. (1) Not more than 75 days and not less than 67 days before the date of the primary election, the secretary of state shall certify to the election

administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of the secretary of state's office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of the election administrator's office and *must* have the official ballots ~~printed~~ *prepared* in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 15. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and ~~printing~~ *preparing* of primary ballots. (1) (a) Ballots for a primary election must be arranged and ~~printed~~ *prepared* in the same manner and number as provided in chapter 12 for general election ballots, except there must be separate ballots for each political party entitled to participate. The name of the political party must ~~be printed~~ *appear* at the top of the separate ballot for that party and need not ~~be printed~~ *appear* opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be ~~printed~~ *prepared* on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate; ~~and~~

(ii) the nonpartisan offices and ballot issues appear on each party's ballot*; and*

(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to ~~print~~ *prepare* a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to ~~be printed~~ *appear* on the ballot; and

(b) no more than one candidate files for nomination by that party for any of the offices to ~~be printed~~ *appear* on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not ~~printed~~ *prepared*, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must ~~be~~ *have* the same ~~size and color~~ *appearance*. ~~The stubs of each~~ *Each* set of party ballots must bear the same number. If ~~printed~~ *prepared* as a separate ballot, the nonpartisan ballot must ~~be~~ *have* a different ~~size or color~~ *appearance* than the party ballots~~,~~ but ~~the stubs~~ must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may ~~be~~ *have* a

different ~~size and color~~ *appearance* than the other ballots in the election~~,~~ but ~~the stubs~~ must be numbered in the same order.

(6) Each elector ~~shall~~ *must* receive a set of ~~party~~ ballots *that includes the party*, ~~and a~~ nonpartisan, and ~~a~~ ballot issue ~~ballot if those ballots are printed~~ *choices*."

Section 16. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) ~~Except as provided in subsection (5), a~~ *A* person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

~~(5) The requirements in subsection (1) do not apply to a write-in candidate seeking election to an office for which a candidate has not filed a declaration or petition for nomination or a declaration of intent.~~

~~(6)~~*(5)* A declaration of intent may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 17. Section 13-10-301, MCA, is amended to read:

"13-10-301. Casting of ballot. (1) Unless otherwise provided by law, the conduct of the primary election, the voting procedure, the counting, tallying, and return of ballots and all election records and supplies, the canvass of votes, the certification and notification of nominees, recounts, procedures upon tie votes, and any other necessary election procedures ~~shall~~ *must* be at the same times and in the same manner as provided for in the laws for the general election.

(2) At a primary election, the elector shall ~~mark~~ *cast votes on* only one of the ~~set of~~ party ballots, *preparing the ballot as provided in 13-13-117*. After ~~marking~~ *casting votes on* any other ballots received other than the party ballots, the elector shall ~~fold the marked and unmarked ballots separately in a manner so that the marks cannot be seen, the official stamp is visible on each ballot, and all stubs can be detached by an election judge~~ *ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112*.

~~(3) The elector shall hand the marked and unmarked ballots separately to the election judge, identifying them as marked and unmarked. If the judge determines the ballots may be voted, he shall, in the presence of the elector:~~

~~(a) remove the stubs from all the ballots;~~

~~(b) deposit the unmarked ballot or ballots and all the stubs in the stub and unmarked ballot box;~~

~~(c) and deposit the marked ballots in the voted ballot box.~~

(3) The election judge shall handle the elector's ballot as prescribed in 13-13-117."

Section 18. Section 13-10-302, MCA, is amended to read:

"13-10-302. Write-in votes for previously nominated candidates. ~~If~~ *(1) Subject to subsection (2), if* an elector ~~writes the name of an individual upon~~ *casts a write-in vote for a candidate on* a primary party ballot when the ~~individual's~~ *candidate's* name *also* appears ~~as a candidate~~ for the same office on another ~~party~~ *party's* ballot, the *write-in* vote ~~shall count for the individual only as a candidate of the party upon whose ballot the individual's name is written~~ *counts only with respect to the party on whose ballot the write-in vote was cast* and the *write-in votes and the* votes cast *for the candidate* on the ~~separate party~~ *other party's* ballots may not be added together. ~~Except as provided in 13-10-211(5), a~~

(2) A write-in vote may be counted only if the vote identifies the individual by any of the designations filed pursuant to 13-10-211(1)(a)(i) through (1)(a)(iv)."

Section 19. Section 13-10-303, MCA, is amended to read:

"13-10-303. Nominations by more than one party. If an individual is nominated by more than one party, ~~he~~ *the individual* shall, not later than 10 days after the election, file written notification with the secretary of state or election administrator indicating the party under which ~~his~~ *the individual's* name is to appear upon the ballot for the general election. If ~~he~~ *the individual* fails to notify the proper officers, ~~his~~ *the individual's* name ~~shall~~ *must* appear

under the party with whom ~~his~~ *the* declaration for nomination was filed if a declaration was filed. If an individual did not file a declaration or acceptance of nomination and fails to notify the proper officers, ~~his~~ *the individual's* name ~~shall be printed~~ *must appear* on the ballot without a party designation."

Section 20. Section 13-10-311, MCA, is amended to read:

"13-10-311. Election judges' duties ~~upon closing of polls~~ *when preparing for count.* (1) ~~The~~ *Except as otherwise provided in this section,* election judges at the primary election *shall prepare for a count of votes cast on paper ballots in the manner prescribed in 13-15-201.*

(2) In preparing for a count of paper ballots, the election judges shall*:*

(a) separate the ballots for each political party and count each party's ballots separately~~.~~*;*

~~(2)~~*(b)* ~~They shall~~ reconcile the total number of party ballots and the separate total number of other ballots used at the election with the number of electors voting. Any discrepancies in the reconciliations ~~shall~~ *must* be handled as provided in 13-15-201~~(3)~~.

~~(3) Each party's candidates shall be listed~~

(c) list each party's candidates separately in the tally books~~.~~*; and*

~~(4) The voted ballots of each party shall be bundled~~

(d) bundle the voted ballots for each party separately for return to the election administrator. The unvoted ballots ~~deposited in the stub box shall~~ *must* be bundled ~~with the stubs~~ *in accordance with rules established pursuant to 13-12-202.*

(3) At a primary election, the election judges shall prepare for the counting of nonpaper ballots in the manner prescribed under rules adopted pursuant to [section 3]."

Section 21. Section 13-12-201, MCA, is amended to read:

"13-12-201. Secretary of state to certify ballot. (1) Seventy-five days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots ~~printed~~ *prepared*.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 22. Section 13-12-202, MCA, is amended to read:

"13-12-202. Ballot form and uniformity. (1) The secretary of state shall *adopt statewide uniform rules that* prescribe the ballot form for ~~all types of ballots~~ *each type of ballot* used in this state. *The rules must conform to the*

provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

(a) the manner in which each type of ballot may be corrected under 13-12-204;

(b) what provisions must be made on the ballot for write-in candidates;

(c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);

(d) how unvoted ballots must be handled;

(e) how the number of individuals voting and the number of ballots cast must be recorded; and

(f) the order and arrangement of voting system ballots.

(2) The names of all candidates ~~printed upon~~ *to appear on* the ballots ~~shall~~ *must* be in ~~type of~~ the same *font* size and ~~character~~ *style*.

(3) ~~When~~ *Notwithstanding 13-19-106(1), when* the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of ~~every~~ *each* candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States ~~shall~~ *must* appear on the ballot as provided in 13-25-101(2)."

Section 23. Section 13-12-203, MCA, is amended to read:

"13-12-203. ~~Printing~~ *Appearance* of candidate's name and party designation on ballot. (1) ~~Except~~ *Subject to 13-12-202 and except* as provided in 13-10-209 *for nonpartisan offices* and 13-10-303 *for certain other candidates*, in partisan elections, candidates' names ~~shall be printed~~ *must appear* under the title of the office sought, with the name of the party~~,~~ in not more than three words~~, or "Independent" printed~~ *appearing* opposite the name.

(2) ~~In~~ *Subject to 13-12-202, in* nonpartisan elections, the candidates' names ~~shall be printed~~ *must appear* under the title of the office sought, with no description or designation ~~printed~~ *appearing* with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates ~~shall have printed~~ *must appear* with ~~them~~ the words "Nominated without party designation"."

Section 24. Section 13-12-204, MCA, is amended to read:

"13-12-204. Method of correction of ballot. If an appointment has been made to replace a candidate, as provided in 13-10-326, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy for governor, as provided in 13-10-328, after the ballots have been ~~printed~~ *prepared* but before the election, the election administrator may:

(1) ~~order labels printed containing the name of the new candidate and any other information required to go on the ballot. If labels are printed, the election administrator shall affix the labels in the proper place on each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot before it is given to the elector.~~ *correct the ballot in a manner consistent with rules adopted under 13-12-202;*

(2) have the entire ballot ~~reprinted~~ *redone*; or

(3) have a separate ballot prepared only for the office for which the new candidate is a candidate."

Section 25. Section 13-12-205, MCA, is amended to read:

"13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names ~~shall~~ *must* be arranged alphabetically on the ballot according to surnames under the title of the respective offices *and rotated as provided in this section*.

(2) (a) Except as provided in subsection (3), if two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party ~~shall~~ *must* be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names ~~shall~~ *must* be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor ~~shall~~ *must* be considered as a group.

(e) No more than one of the sets may be used in ~~printing~~ *preparing* the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

(3) In a precinct where ~~voting devices are~~ *a nonpaper-based voting system is* used, the election administrator need not rotate candidates' names as provided in subsection (2) on *the* paper ballots required under 13-17-305~~; however, if~~ *unless* more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots~~, the election administrator shall rotate candidates' names on the paper ballots~~. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot *required under 13-17-305*."

Section 26. Section 13-12-212, MCA, is amended to read:

"13-12-212. Election administrator to provide ~~printed~~ *official* ballots — other ballots prohibited. ~~Except as otherwise provided in the election laws of this state:~~

~~(1) the~~ *Each* election administrator shall provide ~~printed~~ *the official* ballots for every election *conducted by the election administrator*. ~~He shall have printed on the ballot the names of all candidates for all offices to be filled at the election and the title and other wording required by law for all ballot issues.~~

~~(2) ballots~~ *A ballot* other than ~~those printed by the election administrator~~ *an official ballot* may not be cast or counted in any election."

Section 27. Section 13-13-111, MCA, is amended to read:

"13-13-111. Provision and use of ~~election booths, voting machines, or~~ voting ~~devices~~ *stations*. (1) The election administrator shall provide a sufficient number of ~~booths, voting machines, or~~ voting ~~devices~~ *stations* to allow voting to proceed with as little delay as possible.

(2) ~~Booths, voting machines, or voting devices~~ *Voting stations* must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted~~, and the election judges may not permit any individual to remain in any position that would allow him to see how the elector votes or has voted~~.

~~(2)~~*(3)* No more than one individual may occupy a ~~booth~~ *voting station* at one time, except when assistance is furnished *to* an elector as provided by law. ~~No~~

(4) An individual may *not* occupy a ~~booth or use a~~ voting ~~machine or device~~ *station* longer than is reasonably necessary to prepare ~~his~~ *the elector's* ballot, after which the election judges may eject ~~him~~ *the elector from the station*."

Section 28. Section 13-13-112, MCA, is amended to read:

"13-13-112. Display of instructions for electors. (1) ~~Instructions~~ *Except as provided in subsection (3), instructions* for electors on how to prepare their ballots or use ~~machines or devices~~ *a voting system* must be posted in each ~~compartment~~ *voting station* provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain how to:

(a) obtain ballots for voting;

(b) prepare ballots ~~for deposit in the ballot box~~, *including how to:*

(i) cast a valid vote, including a valid vote for a write-in candidate;

(ii) correct a mistake; and

(iii) ensure the proper disposition of the ballot after the elector is finished voting; and

(c) obtain a new ballot in place of one spoiled by accident.

(3) If the instructions for use of ~~the machine or device~~ *a voting system* are printed on the ~~machine or device~~ *system* or are part of a ballot package given *to* each elector, separate instructions need not be posted in the ~~compartment~~ *voting station*.

(4) Official ballots ~~for the precinct~~, clearly marked "sample" across the face, ~~shall~~ *must* be posted ~~in~~ *at* each ~~booth or compartment~~ *voting station* and in conspicuous places ~~about~~ *around* the polling place ~~in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct shall be posted in conspicuous places about the polling place in all precincts using machines or devices~~."

Section 29. Section 13-13-115, MCA, is amended to read:

"13-13-115. ~~Pollbooks~~ *Recording number of voters and ballots.* ~~(1) In precincts using paper ballots, the name of each elector who votes shall be entered in a pollbook and numbered in the order voting so that the number corresponds with the number on the stubs of the ballots given the elector or an election judge may use a numbering device to stamp the number of the ballot stub next to the name of the elector in a precinct register/pollbook.~~

~~(2) In precincts where machines or devices are used, a pollbook need be used only for paper ballots. The election administrator shall provide such precincts with some method of recording the number of individuals voting.~~ *The election administrator in each precinct shall use a precinct register, pollbook, or some other method to record the number of individuals voting and the number of ballots cast that conforms to the method prescribed by the secretary of state in accordance with rules adopted pursuant to 13-12-202.*"

Section 30. Section 13-13-116, MCA, is amended to read:

"13-13-116. ~~Ballots~~ *Paper ballots* to be~~stamped~~ *marked*— one ballot to elector. (1) Before delivering ~~ballots~~ *a paper ballot* to an elector, the election judges shall ~~stamp~~ *ensure that the ballot is marked with* the words "official ballot" ~~on the ballot. A~~ *without* part of the ~~stamp~~ *mark* ~~may not appear~~ *appearing* on the stub*, if any.* ~~They~~ *The election judges* shall also ~~stamp~~ *ensure that the ballot is marked with* the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector ~~shall~~ *must* receive from the election judges one of each type of ballot being used at the election."

Section 31. Section 13-13-117, MCA, is amended to read:

"13-13-117. Method of voting. (1)*(a)* Upon receipt of a *paper* ballot *or, if a nonpaper ballot is used, after marking the precinct register pursuant to 13-13-115*, an elector shall immediately retire to ~~one of the booths~~ *a voting station* and prepare the elector's ballot~~.~~

~~(2) The elector shall prepare the ballot~~ in the manner prescribed in the instructions ~~for electors~~ provided pursuant to 13-13-112.

~~(3) The elector may vote for a write-in candidate by marking the ballot in a manner consistent with the instructions provided by the election administrator pursuant to 13-13-112. Except as provided in 13-15-202, a ballot marked for a write-in candidate in accordance with the appropriate instructions must be counted as if the name of the write-in candidate had been printed on the ballot.~~

(b) An elector who spoils the elector's ballot must be provided with another ballot in place of the spoiled ballot.

~~(4) The~~ *(2) (a) After the elector has completed voting,* ~~judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The~~ *the elector shall ensure the proper disposition of the elector's ballot in accordance with instructions provided pursuant to 13-13-112.*

(b) If a paper ballot was cast, an election judge shall place the ~~ballots~~ *ballot* in the ballot box immediately without opening or examining ~~them~~ *the ballot*.

~~(5) No individual except~~ *Only* an election judge may put a ballot~~, any paper resembling a ballot, or anything other than a ballot~~ in a ballot box*, and nothing other than a ballot may be put in a ballot box.*

~~(6) An elector who spoils the elector's ballot must, on returning the spoiled ballot, receive another in place of it.~~"

Section 32. Section 13-13-201, MCA, is amended to read:

"13-13-201. Voting by absentee ballot — procedures. (1) A qualified registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote ~~the~~ absentee *only by paper* ballot *and* by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return ~~and verification~~ envelope;

(d) executing the affidavit printed on the return ~~and verification~~ envelope; and

(e) returning the return ~~and verification~~ envelope with ~~the secrecy envelope containing the ballot or ballots enclosed, as provided in 13-13-221~~ *all appropriate enclosures by regular mail, postage prepaid, or by delivering it to the election administrator of the special absentee election board*."

Section 33. Section 13-13-203, MCA, is amended to read:

"13-13-203. Absentee ballots where ~~voting machines or devices~~ *nonpaper-based voting systems are* used. (1) In precincts where *nonpaper-based* voting ~~machines or devices~~ *systems* are used, the election administrator shall ~~if necessary print and~~ provide:

(a) *paper* ballots in *the* official form *specified according to rules adopted pursuant to 13-12-202* for qualified electors who may vote absentee as provided in 13-13-201; and

(b) ballot boxes required for ~~precincts in which printed ballots are used~~ *each precinct*.

(2) Absentee ballots received in those precincts ~~shall~~ *must* be handled as provided ~~in this chapter~~ *by law*."

Section 34. Section 13-13-205, MCA, is amended to read:

"13-13-205. When *paper* ballots to be available. (1) The election administrator shall ensure that *paper* ballots are printed and available for absentee voting at least 45 days prior to an election for those elections held in compliance with 13-1-104(1) and 13-1-107(1).

(2) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that *paper* ballots are printed and available for absentee voting at least 20 days prior to an election."

Section 35. Section 13-13-211, MCA, is amended to read:

"13-13-211. Time period for application. ~~An~~ *(1) Except as provided in 13-13-222 and subsection (2) of this section, an* application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) ~~However, a~~ *A* qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot *as provided in 13-13-212(3)*."

Section 36. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) An elector may apply for an absentee ballot by making a written request, signed by the applicant, to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:

(a) as provided in subsection (1);

(b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or

(c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).

(3) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (3) must be received by the election administrator ~~by noon on election day~~ *within the time period specified in 13-13-211(2).*

(4) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

Section 37. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing *absentee* ballot to elector — *delivery to person other than elector*. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official *paper absentee* ballots are printed, the election administrator shall *immediately* send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application *under 13-13-211 and 13-13-212* whatever official ballots are necessary. ~~Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.~~

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) ~~a self-addressed~~ *an* envelope for the return of the ballots. ~~An~~ *The envelope must be self-addressed by the election administrator and an* affirmation in the

form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ~~stamp~~ *ensure that* the ballots provided to an absentee elector *are marked* as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) ~~Both~~ *If the ballot is being sent to an elector in the United States service, both* the envelope in which the ballot is mailed ~~to an elector in the United States service~~ and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return ~~and verification~~ envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector;

(b) the elector is out of the state or will be out of the state at the time of the election; and

(c) the elector requests a voter information pamphlet.

~~(7) The return envelope must be self-addressed to the election administrator.~~"

Section 38. Section 13-13-222, MCA, is amended to read:

"13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available *pursuant to 13-13-205*, the election administrator shall permit an elector to *apply for, receive, and* mark ~~the~~ *an absentee* ballot before election day ~~before~~ *by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by* the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) If the ballot is marked before the election administrator, the election administrator shall deal with it ~~in the same manner as if it had come by mail~~ *as provided in 13-13-231*."

Section 39. Section 13-13-229, MCA, is amended to read:

"13-13-229. Voting performed before special absentee election board. (1) Pursuant to 13-13-212(3), the elector may request that a special absentee election board personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in ~~13-13-221~~ *13-13-201*, except that the elector shall hand the marked ballot in the sealed return envelope to the special absentee election board, and the board shall deliver the sealed return

envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

Section 40. Section 13-13-231, MCA, is amended to read:

"13-13-231. Disposition of marked ballot upon receipt by election administrator. (1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the unopened return envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by 13-13-211 through 13-13-214, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled as provided in 13-13-243."

Section 41. Section 13-13-232, MCA, is amended to read:

"13-13-232. Delivery of *voted absentee* ballots~~, secrecy envelopes, and return envelopes~~ to election judges ~~— ballots to be rejected~~. (1) ~~If the~~ *All voted* absentee ~~ballot is received prior to delivery of~~ *ballots received and processed pursuant to 13-13-231 prior to the delivery of* the official ballots to the election judges~~, the election administrator shall deliver the unopened return envelope to the judges at the same time that the ballots are delivered. The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241~~ *must be delivered in their unopened return envelopes to the election judges at the same time that the official ballots are delivered.*

(2) ~~If~~ *A voted* absentee ~~ballots are~~ *ballot* received *and processed pursuant to 13-13-231* after the ballots ~~are~~ *have been* delivered to the election judges but prior to the close of the polls~~, the election administrator shall immediately deliver the unopened return envelopes~~ *must be immediately delivered in the ballot's unopened return envelope* to the judges. ~~The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.~~

~~(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be retained by the election administrator and placed with the proper records when they are returned to the election administrator.~~

(3) Election judges shall process the absentee ballots as provided in 13-13-241."

Section 42. Section 13-13-233, MCA, is amended to read:

"13-13-233. Issue and record of absentee ballots — certificate *to election judges*. (1) ~~The absentee~~ *Absentee* ballots ~~delivered shall~~ *must* be ~~regular~~ official *numbered paper* ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots ~~delivered, as well as of ballots marked before him~~ *issued*.

(3) ~~The~~ *When the* election administrator ~~shall deliver to the chief election judges to whom the ballots are delivered~~ *delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide* a certificate stating:

(a) the ~~number~~ *ballot numbers* of *the* absentee ballots *mailed pursuant to 13-13-214*, delivered *pursuant to 13-13-229*, ~~as well as those~~, *and* marked ~~before him~~ *in person pursuant to 13-13-222*;

(b) the number of ballots ~~retained~~ *to be reserved* for late absentee voting *pursuant to 13-13-211(2)*; and

(c) the names of the electors *within the precinct* to whom ~~such~~ *the* ballots were ~~delivered or by whom they have been marked if marked before him~~ *provided*.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3)."

Section 43. Section 13-13-234, MCA, is amended to read:

"13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall:

(a) note on the pollbook opposite the *appropriate ballot* numbers ~~corresponding to the number of absentee ballots issued~~ the fact that the ballots were issued *as absentee ballots;* and

(b) reserve the numbers for ~~the absent, chronically ill, or physically incapacitated electors, as well as those electors prevented from voting at the polls because of a sudden illness or health emergency~~ *electors who may vote late under 13-13-211(2)*.

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate ~~of~~ *provided by* the election administrator *pursuant to 13-13-233(3)* and the number of ~~his~~ *the elector's* ballot."

Section 44. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes and affirmations ~~while polls open~~ — deposit of absentee and unvoted *paper* ballots. (1) *(a)* While the polls are open *or after the polls have closed,* ~~the~~ *an* election ~~judges may~~ *judge shall* compare the signature of the elector on the absentee ballot ~~request~~ *application* and *the signature on the return envelope's* affirmation.

(b) If ~~they find~~ *the election judge finds* that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, ~~they may open the absentee ballot return envelope~~ *the judge shall process the ballot as provided in subsection (2).*

~~(2)~~*(c)* If the *election judge finds that an* absentee ballot does not meet the requirements specified in subsection (1)*(b)*, ~~it~~ *the ballot* must be rejected. The election ~~judges~~ *judge*, without opening the absentee ballot return envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials *on the return envelope*. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

~~(3)~~*(2)* ~~After opening the~~ *If an* absentee ballot return envelope *is found to be sufficient under subsection (1)(b), an election judge shall open the return envelope* and, without opening the secrecy envelope, ~~they shall~~ place the secrecy envelope in the proper ballot box. ~~In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelopes.~~

~~(4) After opening the absentee ballot return envelope and if the~~ *If the absentee* ballot has not been placed in the secrecy envelope, without unfolding the ballot or *otherwise* permitting it to be examined, the election ~~judges~~ *judge* shall place the ballot in ~~the~~ *a* secrecy envelope and place the secrecy envelope in the proper ballot box.

(3) In a primary election in which paper ballots are used, an unvoted party ballot must be deposited in a ballot box for unvoted paper ballots without being removed from its enclosure envelope. If a party ballot has not been properly placed into an enclosure envelope, an election judge shall enclose the ballot in a proper envelope and deposit the ballot in the ballot box for unvoted party ballots."

Section 45. Section 13-13-244, MCA, is amended to read:

"13-13-244. Opening of *return* envelopes after deposit. If ~~an~~ *a return* envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the *return* envelope ~~shall~~ *must* be opened ~~without a court order and the ballot cast~~ *and processed as provided in 13-15-201*."

Section 46. Section 13-14-115, MCA, is amended to read:

"13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting ~~a~~ primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged ~~as other primary ballots~~ *and prepared as provided in 13-10-209* and be without political designation.

~~(2) The number of nonpartisan primary ballots and sample ballots furnished must be the same as other primary ballots.~~

~~(3)~~*(2)* (a) The election administrator of a political subdivision may determine that a primary *election* need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary election need not be held pursuant to subsection ~~(3)(a)~~ *(2)(a)*, the administrator shall give notice to the governing body that ~~no~~ *a* primary election will *not* be held.

~~(4)~~*(3)* The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election~~,~~ stating that a primary election must be held."

Section 47. Section 13-14-116, MCA, is amended to read:

"13-14-116. Counting and canvassing of nonpartisan ballots. ~~(1) After closing the polls, the election officers shall separately count, canvass, record, and certify nonpartisan ballots, showing the number of votes cast for each person, except as provided in 13-15-202.~~

~~(2) Nonpartisan ballots, stubs, and unused ballots must be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns must be made as provided by law.~~ *Nonpartisan ballots must be counted and canvassed as provided for in chapter 15.*"

Section 48. Section 13-14-117, MCA, is amended to read:

"13-14-117. Placing names on ballots for general election. (1) Except as provided in subsection (2), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115~~(3)~~*(2)*, a primary election is not held, then all candidates who filed for an office are nominees for the office."

Section 49. Section 13-14-118, MCA, is amended to read:

"13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary*election* a candidate is not able to run for the office for any reason, the vacancy ~~shall~~ *must* be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office ~~shall~~ *must* be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) ~~shall~~ *must* be certified and ~~printed~~ *must appear* on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and ~~no~~ *a* qualified individual is *not* elected to the office at the general election, the office ~~shall be~~ *is* vacant and ~~shall~~ *must* be filled as provided by law."

Section 50. Section 13-14-212, MCA, is amended to read:

"13-14-212. Form of ballot on retention of certain incumbent judicial officers. ~~In the event~~ *If* there is no candidate other than the

incumbent for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the name of the incumbent ~~shall~~ *must* be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

~~[ ] YES~~

~~[ ] NO~~

~~(Mark an "x" before the word "YES" if you wish the official to remain in office. Mark an "x" before the word "NO" if you do not wish the official to remain in office.)~~ *Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a voter to indicate a "yes" or "no" vote."*

Section 51. Section 13-15-101, MCA, is amended to read:

"13-15-101. Votes to be publicly counted ~~upon closing of polls~~ — *return forms.* (1) ~~When the polls are closed, the election judges shall immediately count the votes. The~~ *Any official vote* count ~~shall~~ *must* be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms ~~shall~~ *must* be signed by all the election judges completing the count."

Section 52. Section 13-15-103, MCA, is amended to read:

"13-15-103. Counting board *procedures.* (1) ~~In any precinct where a counting board has been appointed in addition to the regular board of election judges,~~ *After ballots have been prepared pursuant to 13-15-201, the election administrator may arrange for the vote count to begin prior to the close of the polls, or immediately upon the closure of the polls, in the manner prescribed in this section.*

(2) (a) When a count is conducted after the polls have closed, the counting board shall meet at a place designated by the election administrator.

~~(2) The election administrator may provide duplicate boxes for voted ballots and duplicate pollbooks at any precinct for which a counting board has been appointed and may arrange for the counting board to begin the count of the votes cast before the polls close. The counting board shall~~

(b) The board must be sequestered ~~in a separate room from where the ballots are being cast until after the polls close. Any individual observing the counting board procedures must be sequestered with the board until after the polls close. The counting board shall proceed by counting all ballots in the first box and then that box and pollbook shall be exchanged for the second box and duplicate pollbook. The~~ *until the count is complete.*

(c) The board shall continue counting until the votes cast for all candidates and issues are counted. ~~The election administrator may appoint an extra election judge to act as a marshal to be responsible for exchanging ballot boxes and pollbooks and enforcing sequestering of the board and observers~~

(d) Votes must be counted as prescribed in [section 2].

(3) ~~The election administrator may have the counting board for a precinct begin work as soon as the polls close instead of using the procedure outlined in subsection (2).~~

~~(4) In a county where voting devices are used,~~ *When votes are counted prior to the close of the polls:*

(a) the election administrator ~~may~~ *shall* make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls~~. The~~*;*

(b) the board must be sequestered in a room separate from the room where ballots are being cast;

(c) anyone observing the count must be sequestered with the board until the polls close;

(d) the ballots may be processed and counted as they are received~~, but the results of this early count may not be released to the public until after all the polls are closed.~~*;*

~~(5) No~~ *(e) an* election judge or other individual having access to ~~the information~~ *early count results* may *not* disclose ~~any results of early counting~~ *that information to the public* while the polls are open*; and*

(f) votes must be counted as prescribed in [section 2].

(4) (a) When votes are being counted prior to the close of the polls, in addition to the official oath taken and subscribed to by the election judges, the members of the counting board shall complete and sign the following affirmation: "I, ..., will not discuss the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation in subsection (4)(a)."

Section 53. Section 13-15-104, MCA, is amended to read:

"13-15-104. ~~Counting~~ *Absentee ballot counting* board ~~for absentee ballots.~~ (1) The election administrator shall:

(a) give special instructions to any~~counting board for~~ absentee ~~ballots~~ *ballot counting board* appointed under ~~13-4-101~~ *[section 1]* on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The ~~counting board for~~ absentee ~~ballots~~ *ballot counting board* shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-103 for the counting of the votes cast.

(3) ~~No~~ *An* election judge or other individual having access to any results of early counting may *not* disclose the information while the polls are open~~,~~ and ~~he~~ must remain sequestered until the closing of the polls.

(4) ~~(a) In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots shall complete and sign the following affirmation: "I, ..., will not discuss or disclose or allow~~

~~anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open."~~

~~(b) The chief election judge shall witness and sign the affirmation~~ *The absentee ballot counting board shall take the oath and sign the affirmation specified in 13-15-103(4).*"

Section 54. Section 13-15-105, MCA, is amended to read:

"13-15-105. Notices relating to *absentee ballot* counting board ~~for absentee ballots~~. *(1)* Whenever ~~a~~ *an absentee ballot* counting board ~~for absentee ballots~~ is appointed under ~~13-4-101~~ *[section 1]*, the election administrator shall:

~~(1)~~*(a)* publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating~~that such a~~ *the* method *that* will be used for counting absentee ballots; *and*

~~(2)~~*(b)* post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time *that* the counting board for absentee ballots will meet on election day.

(2) ~~The~~ *If the count will begin while the polls are open, the* notice *required under subsection (1)* must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and ~~the counting board is released and must~~ *is required to* take the oath provided in ~~13-15-104~~ *13-15-103(4)*."

Section 55. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count. (1) *(a)* ~~To begin the~~ *Subject to 13-10-311, to prepare for a manual or automatic* count *of paper ballots before or* after the close of the polls, the *counting board of* election judges *designated under [section 1]* shall take ballots out of the box unopened to determine whether each ballot is single. ~~The election judges~~

(b) If an absentee ballot counting board has been appointed pursuant to [section 1], the absentee ballots must be delivered to the absentee ballot counting board and counted as provided in 13-15-104. If an absentee ballot counting board has not been appointed, the regular counting board shall*, subject to 13-13-244,* remove each absentee ballot secrecy envelope and open it to determine whether the ballot for each election is single. ~~A ballot~~ *An absentee ballot* must be rejected if in the envelope there is more than one *voted* ballot for each election.

~~(2) They~~ *(c) The counting board* shall count ~~the~~ *all* ballots to ensure that the *total* number of ballots corresponds with the *total* number of names ~~on~~ *in* the pollbook.

~~(3)~~*(d)* If ~~they~~ *the counting board* cannot reconcile the total number of ballots with the pollbook, ~~they~~ *the board* shall submit *to the election administrator* a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. ~~All judges~~ *Each judge on the board* shall sign the report.

~~(4)~~*(e)* A ballot that is not ~~endorsed by the~~ *marked as* official ~~stamp~~ is void and may not be counted unless ~~the~~ *all* judges *on the counting board* agree that the ~~stamp~~ *marking* is missing because of ~~their~~ *an* error~~. The~~ *by election officials, in which case the* ballot must be marked ~~"unstamped~~ "*unmarked* by error" on the back and must be initialed by all judges.

~~(5)~~*(f)* If two or more ballots are folded *or stuck* together to look like a single ballot, they must be laid aside until the count is complete. The ~~election judges~~ *counting board* shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, ~~they~~ *the ballots* must be rejected; otherwise they must be counted.

(2) For nonpaper ballots, the counting board shall prepare for the official count in a manner prescribed by the secretary of state pursuant to [section 3]."

Section 56. Section 13-16-201, MCA, is amended to read:

"13-16-201. Conditions under which recount to be ~~made~~ *conducted*. *(1)* A recount ~~shall be made under any of the following conditions~~ *must be conducted if*:

~~(1)~~*(a)* ~~If~~ a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, ~~he may~~ *and the defeated candidate*, within 5 days after the official canvass, ~~file~~ *files* with the election administrator a verified petition stating ~~he~~ *that the candidate* believes *that* a recount will change the result and *that* a recount of the votes for the office or nomination should be ~~had.~~ *conducted;*

~~(2)~~*(b)* ~~If~~ a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position, ~~he may~~ *and the defeated candidate*, within 5 days after the official canvass, ~~file~~ *files* a petition with the secretary of state as set forth in subsection ~~(1)~~*(1)(a)*. The secretary of state shall immediately notify *by certified mail* each election administrator whose county includes any precincts ~~which~~ *that* voted for the ~~same~~ office ~~by certified or registered mail~~, and a recount ~~shall~~ *must* be conducted in those precincts.

~~(3)~~*(c)* ~~If~~ a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question~~,~~ *and* a petition as set forth in subsection ~~(1) may be~~ *(1)(a) is* filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

~~(4)~~*(d)* ~~If~~ a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question~~,~~ *and* a petition as set forth in subsection ~~(1) may be~~ *(1)(a) is* filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

~~(5)~~*(e)* ~~If~~ a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question~~,~~ *and* a petition as set forth in subsection ~~(1) may be~~ *(1)(a) is* filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) if a canvassing board petitions for a recount as provided in 13-15-403.

~~(6) The~~ *(2) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the* secretary of state shall immediately notify each election administrator

by certified mail of the filing of the petition, and a recount ~~shall~~ *must* be conducted in all precincts in each *affected* county.

~~(7) If during a canvass of election returns a board of county canvassers finds an error, as provided in 13-15-403, the board immediately may file a petition with the election administrator.~~"

Section 57. Section 13-16-303, MCA, is amended to read:

"13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes. If it appears from a verified application that the election judges failed to comply with the provisions of ~~13-15-202~~ *[section 2]*, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue."

Section 58. Section 13-16-411, MCA, is amended to read:

"13-16-411. Individuals entitled to appear at recount — ~~opening and recount of ballots~~. (1) Representatives of the news media may be present at the recount. The recount ~~shall~~ *must* be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and ~~shall~~ *must* have full opportunity to witness the ~~opening of all ballot boxes and the count of all ballots~~ *entire recount process*.

(3) If the recount is ~~upon~~ *on* a ballot issue, one qualified elector favoring each side of the question may be present ~~and represent his side~~.

~~(4) The recount shall proceed as provided in 13-16-412 and as expeditiously as possible until completed.~~"

Section 59. Section 13-16-412, MCA, is amended to read:

"13-16-412. Procedure for recounting ~~paper~~ ballots. ~~The county recount board in recounting the ballots shall count, at the same time, the votes cast in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:~~

(1) ~~The~~ *To conduct a recount of paper ballots:*

(a) the election administrator shall ~~produce~~ *provide to the recount board,* unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all *the paper* ballots voted in the precinct or precincts~~.~~*;*

~~(2) A~~ *(b) a* member of the ~~county~~ recount board shall open each sealed package or envelope and remove the ballots*, and the board shall count the votes on each ballot in the manner provided in [section 2(2)]; and*~~.~~

~~(3) One of the members of the board shall read each ballot aloud. As the ballots are read, two clerks shall write the votes cast for each individual in each precinct, at full length,~~

(c) the recount must be tallied on previously prepared tally sheets. The tally sheets ~~shall~~ *must* show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

(2) To prepare for a recount of ballots cast using a nonpaper-based voting system, the election administrator and election judges shall proceed as provided in rules adopted pursuant to [section 3] and the recount board shall conduct the recount as provided in 13-16-414."

Section 60. Section 13-16-414, MCA, is amended to read:

"13-16-414. Recount of votes ~~cast by voting devices~~ *using voting system*. (1) ~~The~~ *(a) Before a voting system may be used to automatically recount votes, the* recount board shall test the automatic tabulating equipment ~~used for votes cast by voting devices~~ *in accordance with rules adopted pursuant to [section 3]*.

(b) If the test does not show any errors, the votes cast for the candidates or on the issues for which a recount is ordered ~~shall~~ *must* be recounted by the tabulating equipment *as provided in [section 2(3)]*.

~~(2)~~*(c) (i)* If any errors are found in the test or if any questions remain as to the accuracy of the ~~count~~ *voting system*, the board ~~may~~ *shall* have the ~~program and equipment~~ *system* checked by a qualified individual who did not participate in the original preparation of the ~~program and equipment~~ *system*.

(ii) If the errors are corrected, the recount must proceed as provided in [section 2(3)].

(iii) If the errors are not corrected, the recount must be conducted as provided in subsection (3).

~~(3)~~*(2)* The board may ~~also~~ order ~~manual counting of the votes cast~~ *a recount, which must be conducted as provided in subsection (3),* if ~~they believe it~~ *the board unanimously agrees that a recount* is necessary to resolve all questions relating to the election.

~~(4) The board may remove the seals from any voting device and check the ballot on the device with the official certification of the ballot arrangement for each precinct.~~

~~(5) Any paper ballots voted in a precinct shall be recounted as prescribed in 13-16-412.~~

~~(6) Write-in votes shall be recounted in the same manner as the count is made after the closing of the polls.~~

(3) (a) A recount of paper ballots under this subsection (3) must be conducted manually as provided in [section 2(2)].

(b) A recount of ballots cast using a nonpaper-based system must be conducted as provided in rules adopted under [section 3]."

Section 61. Section 13-16-417, MCA, is amended to read:

"13-16-417. Sealing ballots~~, machines, or devices~~ *and voting systems*. (1) When ~~the~~ *a* recount ~~in a precinct~~ *of paper ballots that was conducted using a voting system* has been finished, each ballot ~~shall~~ *must* again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and ~~shall~~ *must* be delivered to the election administrator for custody.

(2) All voting ~~machines or devices from which seals have been removed shall be resealed in the presence of the election administrator and the recount board and shall be delivered to the election administrator for custody~~ *systems must be secured as provided in rules adopted under [section 3]*.

(3) All other materials used in the recount that are required to be sealed ~~shall~~ *must* be resealed in the same manner and delivered to the election administrator for custody."

Section 62. Section 13-16-420, MCA, is amended to read:

"13-16-420. Misplaced or missing *paper* ballots. If during a recount the county recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed *paper* ballots within the county precincts to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed in their proper precinct and sealed with the remaining ballots."

Section 63. Section 13-17-101, MCA, is amended to read:

"13-17-101. Secretary of state to approve voting ~~machines and devices~~ *systems*. (1) ~~Before any~~ *A* voting ~~machine or device can~~ *system may not* be used for any election in this state~~,~~ *unless the system is approved by* the secretary of state *as provided in this section*.

(2) The secretary of state shall:

(a) examine ~~the machine or device~~ *a voting system proposed for use* to determine if it complies with the requirements of ~~this chapter~~ *13-17-103*;

(b) within 30 days after examining ~~a machine or device~~ *the voting system*, file a report of the examination in ~~his~~ *the secretary of state's* office;

(c) include in the report the reasons for *the voting system's* approval or disapproval ~~of the use of the machine or device~~ and ~~his~~ *the secretary of state's* opinion ~~of~~ *about* the economic and procedural impact ~~of~~ *that* the *voting system's* use *or nonuse* ~~of the machine or device by~~ *may have on* the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to ~~the~~ *each* election administrator, *including school election administrators for elections under Title 20, chapter 20,* ~~of each county~~ a copy of the report.

~~(2)~~*(3)* Voting ~~machines and devices~~ *systems* may not be used *in an election* unless approved by the secretary of state 60 days or more prior to the election at which they will be used."

Section 64. Section 13-17-102, MCA, is amended to read:

"13-17-102. Use of qualified technicians and ~~advisors~~ *advisers*. (1) ~~The~~ *To the extent that funds are available, the* secretary of state may ~~employ and~~ compensate qualified technicians and ~~advisors who are electors of this state~~ *advisers* to assist ~~him~~ in *carrying out the secretary of state's* duties required by 13-17-101. ~~Advisors who are public officers or employees shall serve without additional compensation other than expenses of attending the examination if the examination takes place during their regular working hours.~~

(2) ~~The person or company~~ *An entity* submitting a ~~machine or device~~ *voting system* for examination shall pay ~~the compensation and expenses of technicians and advisors connected with the examination~~ to the secretary of state ~~for deposit in the state general fund~~ *certain costs connected with the examination based on an agreement reached between the two parties.* ~~The secretary of state and the person or company shall reach agreement on the number of technicians and advisors to be compensated before the examination is held.~~"

Section 65. Section 13-17-103, MCA, is amended to read:

"13-17-103. Required specifications for ~~equipment~~ *voting systems*. *(1)* A voting ~~machine or device~~ *system* may not be approved *under 13-17-101* unless *the voting system*:

~~(1)~~*(a) allows* an elector ~~can~~ *to* vote in secrecy;

~~(2)~~*(b) prevents* an elector ~~is prevented~~ from voting for any candidate or ~~upon~~ *on* any ballot issue more than once ~~and is also prevented from~~;

(c) prevents an elector from voting on any office or ballot issue for which ~~he~~ *the elector* is not entitled to vote;

~~(3)~~*(d)* ~~an elector can secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes~~ *allows an elector to vote only* for the candidates of ~~that~~ *the* party *selected* by the elector in the primary election;

~~(4)~~*(e) allows* an elector ~~can~~ *to* vote a split ticket in a general election if ~~he~~ *the elector* desires;

~~(5) every~~ *(f) allows each* valid vote cast ~~is~~ *to be* registered and recorded *within the performance standards adopted pursuant to subsection (2)*;

~~(6)~~*(g)* ~~the machine or device is constructed so that it cannot be tampered with for a fraudulent purpose and is also constructed so that during the progress of the voting no~~ *may be protected from tampering for a fraudulent purpose;*

(h) prevents an individual ~~can see or know~~ *from seeing or knowing* the number of votes registered for any candidate or on any ballot issue *during the progress of voting*;

~~(7)~~*(i)* ~~it~~ allows write-in voting; and

~~(8)~~*(j) will, if purchased by a jurisdiction within the state, be provided with* a guarantee ~~to provide~~ *that the* training and *technical* assistance *will be provided* to election officials ~~is included in each~~ *under the* contract for purchase of the ~~machine or device~~ *voting system*.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies."

Section 66. Section 13-17-104, MCA, is amended to read:

"13-17-104. Providing voting ~~machines or devices~~ *systems* — payment. (1) The county governing body may, *as practicable,* provide *for the use of any* ~~approved~~ voting ~~machines or devices as practicable~~ *system approved pursuant to 13-17-101.*

(2) Funds for voting ~~machines or devices~~ *systems* may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting ~~machines or devices~~ *systems* or the question of which type of voting ~~machine or device~~ *system* to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

(4) A county governing body may, in the manner provided in rules adopted under 13-17-107, submit a voting system for consideration under 13-17-101."

Section 67. Section 13-17-105, MCA, is amended to read:

"13-17-105. Experimental use of ~~machines or devices~~ *voting systems*. The governing body of a county may, *without adoption or purchase of the voting system,* provide for the experimental use *in one or more precincts* at an election of a voting ~~machine or device~~ *system* that has been approved by the secretary of

state ~~in one or more precincts without a formal adoption or purchase of the machine or device~~ *under 13-17-101*. ~~Its~~ *The voting system's* use at the election is valid for all purposes as if the ~~equipment~~ *system* had been formally adopted or purchased *by the county*."

Section 68. Section 13-17-106, MCA, is amended to read:

"13-17-106. General *application of* election laws ~~to apply~~. All laws applicable to elections ~~where~~ *when* voting is not done ~~by machine or device~~ *using a voting system* and all penalties prescribed for violations of those laws apply to elections and precincts ~~where~~ *when* voting ~~machines or devices~~ *systems* are used if ~~they~~ *those laws* are not in conflict with the provisions of this chapter."

Section 69. Section 13-17-107, MCA, is amended to read:

"13-17-107. Secretary of state to prescribe rules. (1) The secretary of state may prescribe rules for the submission of voting ~~machines and devices~~ *systems* for examination and additional requirements for approval of ~~machines and devices~~ *voting systems*.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting ~~machine or device~~ *system* now approved for use in this state and for each type of ~~machine or device~~ *system* approved for use under the provisions of this chapter."

Section 70. Section 13-17-201, MCA, is amended to read:

"13-17-201. Election administrator to instruct election judges. (1) Before each election *in which a voting system is used*, the election administrator shall instruct all election judges in the use of the ~~machines or devices. He shall give to each election judge who has received instruction and is fully qualified to conduct an election with the machine a certificate to that effect~~ *system as provided in 13-4-203*.

(2) A chief election judge may not serve in a precinct where *a* voting ~~machines or devices are~~ *system is* used unless ~~he~~ *the judge* has received *the required* instruction, is fully qualified to perform duties in connection with the ~~machine or device~~ *system*, and has received a certificate to that effect from the election administrator."

Section 71. Section 13-17-203, MCA, is amended to read:

"13-17-203. Publication of information concerning ~~machines or devices~~ *voting systems*. Not more than 10 or less than 3 days before an election at which *a* voting ~~machines or devices~~ *system* will be used, the election administrator shall publish on radio or television, as provided in 2-3-105 through 2-3-107, or in a newspaper of general circulation in the county:

(1) a diagram showing the voting ~~machine or device~~ *system* and ballot arrangement (in newspaper only);

(2) a statement of the locations where voting ~~machines or devices~~ *systems* are on public exhibition;

(3) ~~illustrated~~ instructions on how to vote."

Section 72. Section 13-17-204, MCA, is amended to read:

"13-17-204. Voting ~~machines or devices~~ *systems* to be exhibited. A voting ~~machine or device shall~~ *system must* be on exhibition in the office of the election administrator of ~~counties~~ *any county* where ~~such equipment~~ *the voting system* is used and may be exhibited at other locations. The election

administrator shall demonstrate the voting ~~machine or device~~ *system* to any inquiring elector."

Section 73. Section 13-17-206, MCA, is amended to read:

"13-17-206. Arrangement of ~~machine ballot~~ *voting system ballot*. The order and arrangement of ballots to be used with voting ~~machines or devices shall~~ *systems must* be the same as paper ballots insofar as possible and ~~shall~~ *must* be prescribed by the secretary of state ~~before each election~~ *in accordance with rules adopted pursuant to 13-12-202*."

Section 74. Section 13-17-305, MCA, is amended to read:

"13-17-305. Request to use paper ballots. (1) ~~(a) Where voting machines are~~ *When a nonpaper-based voting system is* used, an elector may request to vote by paper ballot instead of using the ~~machine~~ *system*. The election judges shall provide the elector with a paper ballot when requested.

~~(b) Where voting devices are used, the election administrator, with approval of the governing body of the county if the election administrator is an appointed official, may provide paper ballots if the election administrator believes such ballots are necessary. However, if more than 5% of the electors voting in the last preceding general election voted using paper ballots, the election administrator shall provide paper ballots.~~

(2) The printing of paper ballots provided pursuant to this ~~subsection~~ *section* is an allowable election cost under the provisions of 13-1-302.

~~(2)~~*(3)* ~~Paper ballots shall~~ *A paper ballot provided pursuant to this section must* be cast *according to proper instructions* and counted by the election judges in the manner provided ~~by law~~ *in [section 2]*.

~~(3) For the purposes of this section, "voting machine" means a mechanical apparatus which is used for voting by using levers which provide a tabulating system within the machine.~~"

Section 75. Section 13-17-306, MCA, is amended to read:

"13-17-306. Use of separate paper ballots for voting on certain candidates or issues. ~~Whenever~~ *Subject to 13-12-202, whenever* a voting ~~machine or device does not allow proper lockout or~~ *system* does not allow adequate space for ~~the~~ *all* candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state."

Section 76. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election — exception for county building code jurisdiction election. A mail ballot election must be conducted substantially as follows:

(1) ~~Official~~ *Subject to 13-12-202, official mail* ballots must be prepared and all other initial procedures followed as ~~otherwise~~ provided by law, except that mail ballots *must be paper ballots and* are not required to have stubs.

(2) (a) Except as provided in subsection (2)(b), an official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an

official ballot must be mailed to every record owner of real property in the county jurisdictional area.

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot ~~at home~~ and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as ~~otherwise~~ provided ~~by law~~ *in chapter 15*."

Section 77. Section 13-19-309, MCA, is amended to read:

"13-19-309. Disposition of ballots returned by mail. (1) Upon receipt of each return/verification envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning ~~a~~ *the validity of a* particular ballot, the ~~election administrator may not deposit the ballot in question. The election administrator shall retain all materials relating to the questioned ballot until the~~ question ~~is~~ *must be* resolved ~~satisfactorily or the question is determined~~ as provided in 13-19-314."

Section 78. Section 13-19-312, MCA, is amended to read:

"13-19-312. ~~Procedure at close of voting~~ *Counting procedure*. (1) ~~After~~ *Except as provided in subsection (2), after* the close of voting on election day, ~~election officials~~ *the counting board appointed pursuant to [section 1]* shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the ballot; and

(c) proceed to count the votes as ~~otherwise~~ provided ~~by law~~ *in chapter 15*.

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if ~~he~~ *the election administrator* complies with the procedures described in 13-15-103*(3)*."

Section 79. Section 13-19-314, MCA, is amended to read:

"13-19-314. Resolving ~~issues~~ *ballots* in question. Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to ~~resolve the issue to his satisfaction~~ *determine without doubt whether a ballot is valid or invalid,* ~~he~~ *the election administrator* shall give notice to the elector as provided in 13-19-313.

(2) If ~~the elector fails to appear or, if even after such an appearance, the issue is still not resolved to~~, *subsequent to following the procedure in 13-19-313,* the election ~~administrator's satisfaction, the election~~ administrator *is still unable to determine without doubt whether the ballot is valid or invalid, the election administrator* shall present the issue for a determination to the *counting* board ~~of judges~~ appointed *pursuant to [section 1]* ~~to count the ballots~~.

(3) If *a majority of* the counting board is unable to ~~resolve the issue to its satisfaction~~ *agree on whether the ballot is valid or invalid,* it may not count the ballot in question~~. Instead~~, *and* the election administrator shall present the ~~issue~~ *ballot* to the board of canvassers for a determination of the issue.

(4) If *a majority of* the board of canvassers is unable to ~~resolve the issue~~ *agree that the ballot is valid*, the ballot *is invalid and* ~~must~~ *may* not be counted."

Section 80. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors — ballot. (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state in a form prescribed by the secretary of state no later than 76 days before the general election, in the manner and number provided by law. However, in the event of the death of a candidate for president or vice president, a new candidate for president or vice president, or both, may be nominated for the affected political party and certificates of election may be filed with the secretary of state less than 76 days before a general election.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be placed on the ballot by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

(3) The names of candidates for electors of president and vice president may not ~~be printed upon~~ *appear on* the ballot."

Section 81. Section 13-27-501, MCA, is amended to read:

"13-27-501. Secretary of state to certify ballot form — abbreviated ballot. (1) The secretary of state shall furnish to the official of each county responsible for preparation ~~and printing~~ of the ballots, at the same time as ~~he~~ *the election administrator* certifies the names of the persons who are candidates

for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) Except as provided in subsection (4), the secretary of state shall list for each issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement, if applicable;

(e) the fiscal statement, if applicable; and

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition.

(4) The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that ~~he~~ *the county election administrator* be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which ~~he~~ *the secretary of state* has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f). If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place."

Section 82. Section 13-27-502, MCA, is amended to read:

"13-27-502. Preparation of ballots ~~by county officials~~ *with ballot issues*. *(1)* Each of the county officials responsible for the preparation ~~and printing~~ of the ballots shall ~~print~~ *provide for* the ballot issues *to appear* on the official ballot in the form and order in which the issues have been certified by the secretary of state.

(2) All ballot issues ~~shall~~ *must* be placed on the *same* official ballot ~~prescribed by 13-12-207, 13-12-212, and 13-17-206~~ *as the candidates* unless *the secretary of state provides the election administrator with* specific written approval ~~by the secretary of state for placing the ballot issues on a~~ *for* separate ~~ballot is received by the official responsible for printing the ballot~~ *ballots*. The secretary of state may issue ~~such~~ *an* approval only when the number of issues to be voted on at an election makes it impractical to print the entire ballot, including the ballot issues, on the *same* official ballot as ~~prescribed by 13-12-207, 13-12-212, and 13-17-206~~ *the candidates*."

Section 83. Section 13-35-202, MCA, is amended to read:

"13-35-202. Conduct of election officials and election judges. An election officer or judge of an election may not:

(1) deposit in a ballot box a *paper* ballot ~~on which the~~ *that is not marked as* official ~~stamp, as provided by law, does not appear~~;

(2) ~~prior to~~ *examine an elector's ballot before* putting the ballot ~~of an elector~~ in the ballot box~~, attempt to find out any name on the ballot or open or examine the folded ballot of an elector~~;

(3) look at any mark made by the elector upon the ballot;

(4) make or place any mark or device on any ~~folded~~ ballot with the intent to ascertain how the elector has voted;

(5) allow any individual other than the elector to be present at the marking of the ballot except as provided in 13-13-118 and 13-13-119; or

(6) make a false statement in a certificate regarding affirmation."

Section 84. Section 13-35-205, MCA, is amended to read:

"13-35-205. Tampering with election records and information. A person is guilty of tampering with public records or information and is punishable as provided in 45-7-208 whenever the person:

(1) suppresses any declaration or certificate of nomination ~~which~~ *that* has been filed;

(2) purposely causes ~~the~~ *a* vote ~~on a machine~~ to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after ~~the same~~ *it* has been ~~deposited in the ballot box or~~ *completed by the elector;*

(5) adds ~~any~~ *a* ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

~~(5)~~*(6)* causes ~~any~~ *a* name to be placed on the registry lists other than in the manner provided by this title; or

~~(6)~~*(7)* changes a poll list or checklist."

Section 85. Section 13-35-206, MCA, is amended to read:

"13-35-206. Injury to election equipment, materials, and records. A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 45-6-101 or 45-7-208, as applicable, whenever the person:

(1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;

(2) during an election:

(a) removes or defaces ~~the cards printed for the instruction of~~ *instructions for* the voters; or

(b) removes or destroys any of the supplies or other conveniences placed in the ~~booths or compartments~~ *voting station* for the purpose of enabling a voter to prepare ~~his~~ *the voter's* ballot;

(3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;

(4) carries away or destroys any poll lists, checklists, ballots, ~~or~~ ballot boxes, *or other equipment* for the purpose of disrupting or invalidating an election;

(5) knowingly detains, mutilates, alters, or destroys any election returns;

(6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting ~~machine~~ *system with the intent to alter the outcome of an election*;

(8) mutilates, injures, or destroys ~~any~~ *a* ballot or appliance used in connection with a voting ~~machine~~ *system*; or

(9) fraudulently defaces or destroys a declaration or certificate of nomination."

Section 86. Section 13-37-126, MCA, is amended to read:

"13-37-126. Names not to ~~be printed~~ *appear* on ballot. (1) The name of a candidate may not ~~be printed~~ *appear* on the official ballot for an election if the candidate or a treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner shall, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not ~~be printed~~ *appear* on the official ballot. The commissioner shall provide this notification by the ballot certification deadline provided in 13-10-208 for primary elections and by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections."

Section 87. Section 13-37-250, MCA, is amended to read:

"13-37-250. Voluntary spending limits. (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, ... is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101~~(18)(b)~~, who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) all committee loans or expenditures made by check or cash; and

(b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed $150,000.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of $5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner."

Section 88. Section 13-38-201, MCA, is amended to read:

"13-38-201. Election of committeemen at primary. (1) Each political party shall elect at each primary election one man and one woman ~~who shall~~ *to* serve as committeemen for each election precinct. The committeemen ~~shall~~ *must* be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party ~~shall be printed~~ *must appear* on the party ticket in the same manner as other candidates and ~~the voter shall vote~~ *are voted* for ~~them~~ in the same manner as ~~he does for~~ other candidates."

Section 89. Section 20-20-421, MCA, is amended to read:

"20-20-421. Voting ~~machines and electronic voting~~ systems. Whenever *a* voting ~~machines or electronic voting systems are~~ *system, as defined in 13-1-101, is* available to a district, ~~such~~ *the* voting ~~devices~~ *system* may be used for a school election~~. Any district that uses a~~ *if the* voting ~~machine or an electronic voting~~ system ~~shall do so in accordance~~ *has been approved pursuant to 13-17-101 and if the election administrator complies* with the provisions of ~~chapter 17 of~~ Title 13*, chapter 17*. In construing the provisions of that chapter, the "county governing body" and the "election administrator" ~~shall~~ *are*, for the purposes of this section, ~~be~~ considered to refer to trustees and "county" ~~shall be~~ *is* considered to refer to district."

Section 90. Section 76-15-303, MCA, is amended to read:

"76-15-303. General election — election by acclamation — appointment. (1) All qualified electors within the district are eligible to vote in the election.

(2) Except as provided in subsection (5), the candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of the individuals nominated must be ~~printed, as provided under~~ *arranged on ballots as prescribed in* 13-12-205~~, upon~~

~~ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the elector's preference~~.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regular general election ballot in the same manner as other nonpartisan candidates for the election of supervisors. The ballots must be delivered to the election judges in those precincts that contain registered electors prior to each general election and each primary election, if necessary. The election judges and other election officials in the precincts shall submit the ballots to qualified electors, conduct the election, and tabulate the results of the election in the manner provided in Title 13.

(5) (a) Except as provided in subsection (5)(b), if the number of candidates nominated is equal to or less than the number of positions to be elected, the election administrator shall give notice that an election will not be held.

(b) The governing body may require that an election be held if, not more than 10 days after the close of filing by candidates, the governing body passes a resolution to hold an election and notifies the election administrator.

(c) If an election is not held, the governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate has filed a nominating petition for the position, the governing body shall make an appointment to fill the position. Supervisors taking office pursuant to this subsection serve a term as if elected to the position."

Section 91. Repealer. Sections 13-12-208, 13-12-209, 13-13-221, 13-15-202, 13-16-413, and 13-17-301, MCA, are repealed.

Section 92. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 13, chapter 15, part 1, and the provisions of Title 13, chapter 15, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 13, chapter 15, part 2, and the provisions of Title 13, chapter 15, part 2, apply to [section 2].

(3) [Sections 3 and 4] are intended to be codified as an integral part of Title 13, chapter 17, part 2, and the provisions of Title 13, chapter 17, part 2, apply to [sections 3 and 4].

Section 93. Coordination instruction. (1) If House Bill No. 87 is passed and approved, then the bracketed language in the definition of "ballot" contained in the amendment to 13-1-101 in [this act] is void.

(2) If House Bill No. 201 and [this act] are both passed and approved, then:

(a) [section 13] of House Bill No. 201, amending 13-13-211, is void and [section 35] of [this act], amending 13-13-211, must read as follows:

"Section 35. Section 13-13-211, MCA, is amended to read:

"13-13-211. Time period for application. ~~An~~ *(1) Except as provided in 13-13-222, [section 4 of House Bill No. 201], and subsection (2) of this section, an* application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) ~~However, a~~ *A* qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot *as provided in 13-13-212(3)*.""

(b) [section 16] of House Bill No. 201, amending 13-13-214, is void and [section 37 of this act], amending 13-13-214, must read as follows:

"Section 37. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing *absentee* ballot to elector — *delivery to person other than elector*. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official *paper absentee* ballots are printed, the election administrator shall *immediately* send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application *under 13-13-211 and 13-13-212* whatever official ballots are necessary. ~~Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.~~

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) ~~a self-addressed~~ *an* envelope for the return of the ballots. ~~An~~ *The envelope must be self-addressed by the election administrator and an* affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ~~stamp~~ *ensure that* the ballots provided to an absentee elector *are marked* as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

~~(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.~~

~~(5)~~*(4)* If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

~~(6)~~*(5)* Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return ~~and verification~~ envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector;

(b) the elector is out of the state or will be out of the state at the time of the election; and

(c) the elector requests a voter information pamphlet.

~~(7) The return envelope must be self-addressed to the election administrator.~~""

(3) If both [this act] and House Bill No. 190 are passed and approved, then:

(a) [section 40 of this act], amending 13-13-231, is void.

(b) [section 41 of this act], amending 13-13-232, is void.

(c) [section 44 of this act], amending 13-13-241, is void.

(d) [section 45 of this act], amending 13-13-244, must read as follows:

"Section 45. Section 13-13-244, MCA, is amended to read:

"13-13-244. Opening of *return* envelopes after deposit. If ~~an~~ *a return* envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the *return* envelope ~~shall~~ *must* be ~~opened without a court order and the ballot cast~~ *processed as provided in 13-13-241*.""

Ap proved April 18, 2003

CHAPTER NO. 415

[HB 253]

AN ACT INCLUDING INTERNET WEBSITES AS A FORM OF COMMUNICATION COVERED BY ELECTION LAW DISCLOSURE REQUIREMENTS; CLARIFYING THAT A CANDIDATE OR A CANDIDATE'S CAMPAIGN IS ALSO SUBJECT TO DISCLOSURE REQUIREMENTS; AND AMENDING SECTION 13-35-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-225, MCA, is amended to read:

"13-35-225. Election materials not to be anonymous. (1) ~~Whenever a person makes an expenditure for the purpose of financing~~ *All* communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, *internet website,* or other form of general political advertising~~, the communication~~ must clearly and conspicuously ~~state~~ *include the attribution "paid for by" followed by* the name and address of the person who made or financed the expenditure for the communication~~.~~ ~~including in~~ *When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In* the case of a political committee, *the attribution must be* the name *of the committee, the name of the committee treasurer,* and *the* address of the *committee or the committee* treasurer.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue, if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b) that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement described in subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent if the election material was not prepared for a candidate or a candidate's political committee.

~~(2)~~*(4)* If a document or other article of advertising is too small for the requirements of ~~subsection~~ *subsections* (1) *through (3)* to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner *of political practices*, together with the required information, prior to its public distribution.

~~(3)~~*(5)* If information required in ~~subsection~~ *subsections* (1) *through (3)* is inadvertently omitted or not printed, upon ~~discovering~~ *discovery of or notification about* the omission, the *candidate responsible for the material or the* person financing the communication shall*:*

(a) file notification of the omission with the commissioner *of political practices* within 5 days ~~and~~ *of the discovery or notification;*

(b) make every reasonable effort to bring the material into compliance with ~~subsection~~ *subsections* (1) *through (3); and*

(c) withdraw any noncompliant communications from circulation as soon as reasonably possible."

Ap proved April 18, 2003

CHAPTER NO. 416

[HB 256]

AN ACT CLARIFYING THE JURISDICTION OF CAMPUS SECURITY OFFICERS; ALLOWING AGREEMENTS WITH LOCAL LAW ENFORCEMENT AGENCIES TO EXPAND JURISDICTION; AND AMENDING SECTION 20-25-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-25-321, MCA, is amended to read:

"20-25-321. Security department members — appointment — *campus security officer* powers. (1) The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system~~, as such security departments are constituted on July 1, 1971, or may thereafter be constituted~~. Persons *who are qualified under 7-32-303 to be campus security officers and who are* employed

and compensated ~~as members of the security departments when so appointed~~ *by a security department as campus security officers* are peace officers~~; however, such peace officers shall not~~ *and may* exercise their authority ~~except~~:

(a) upon the campuses of the Montana university system and~~, for campus-related activities,~~ *, for campus-related activities,* an area within 1 mile of the exterior boundaries of each ~~thereof~~ *campus*; ~~and~~

(b) in or about other grounds or properties owned, operated, controlled, or administered by the regents or any unit of the Montana university system*; and*

(c) if an agreement is reached under subsection (3), for activities and in areas described in the agreement.

(2) ~~Such~~ *Campus security* officers ~~shall have no power to~~ *may not* serve ~~and~~ *or* execute civil processes.

(3) Any university system security department may seek an agreement with local law enforcement agencies that specifies geographic and subject matter jurisdiction of campus security officers in areas outside the area described in subsections (1)(a) and (1)(b)."

Ap proved April 18, 2003

CHAPTER NO. 417

[HB 266]

AN ACT REVISING THE MONTANA TELECOMMUNICATIONS ACCESS PROGRAM; REMOVING THE REQUIREMENT FOR ASSISTING FACILITIES IN OBTAINING INFANT HEARING SCREENING EQUIPMENT; REVISING THE MEANS TEST FOR ELIGIBILITY; DELETING THE REQUIREMENT THAT A FEE BE PAID PRIOR TO DELIVERY OF SPECIAL EQUIPMENT; REQUIRING THE SPECIAL ASSESSMENT ON ALL TELEPHONE ACCESS LINES; AMENDING SECTIONS 53-19-302, 53-19-306, 53-19-307, 53-19-310, AND 53-19-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-19-302, MCA, is amended to read:

"53-19-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications access services for persons with disabilities established in 2-15-2212.

(2) "Local exchange company" means a telecommunications company that provides telephone access lines or wireless service to members of the general public who are its customers.

(3) "Mobility-impaired" means the condition of a person with reduced function of the arms and hands making activities related to moving, turning, or pressing objects difficult or impossible. The term includes difficulty in using a wide range of telecommunications equipment.

(4) "Person with a disability" means the condition of a person who is deaf and blind, deaf, hard-of-hearing, speech-impaired, or mobility-impaired.

(5) "Program" means the program established in 53-19-306.

(6) "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person with a disability to communicate with others by means of the conventional telephone network. The term includes but is not limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, telebraille, *and* equipment for the mobility-impaired~~, and hearing screening equipment~~.

(7) "Telecommunications relay service" means a service that permits full and simultaneous communication between those using specialized telecommunications equipment and those using conventional telephone equipment.

(8) "Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information."

Section 2. Section 53-19-306, MCA, is amended to read:

"53-19-306. Program established — purpose. (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons with disabilities ~~and to assist appropriate facilities in obtaining hearing screening equipment that determines if infants have a hearing impairment. The legislature may allocate funds to the Montana school for the deaf and blind to be used for the purposes established in subsection (2)~~.

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities; *and*

(b) provide a telecommunications relay service system to connect persons with disabilities with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101~~; and~~

~~(c) determine if infants are hearing-impaired as early as possible in order to reduce long-term costs in providing assistance~~.

(3) The legislature may allocate funds from this program to the Montana school for the deaf and blind to be used to provide services to hearing-impaired students for the biennium ending June 30, 2005."

Section 3. Section 53-19-307, MCA, is amended to read:

"53-19-307. Provision of services. (1) In administering the program established in 53-19-306 for individuals, the committee shall:

(a) develop an appropriate means test to determine eligibility for participation in the program based on family income of less than ~~250% of the federal poverty level but not more than 400%~~ *250%* of the federal poverty level;

(b) require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

(c) require that participants provide satisfactory evidence that they have disabilities and would benefit from the use of specialized telecommunications equipment;

(d) provide specialized telecommunications equipment to participants through loan, lease, cost sharing, or other methods that are determined appropriate by the committee;

(e) determine the type of specialized telecommunications equipment that it considers necessary and economically feasible for use by Montana's persons with disabilities;

(f) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(g) require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

(h) maintain records *for a minimum of 5 years* of each item of equipment, including the location, serial number, and telephone number of each device;

(i) at the discretion of the committee, require an appropriate security deposit for equipment at the time of delivery that must be refunded without interest when the equipment is returned;

(j) make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

(k) provide a telecommunications relay service system that would be available statewide for operation 7 days a week, 24 hours a day, including holidays; and

(l) adopt rules necessary to administer the program.

(2) In adopting rules to implement subsections (1)(a) and (1)(d), the committee may, based upon available funds, provide the specialized telecommunications equipment, without charge, to individuals whose family income is less than ~~250% of the federal poverty level. For individuals whose family income is more than 250% of the federal poverty level but less than 400%~~ *250%* of the federal poverty level.~~, the committee shall develop a sliding fee scale. The sliding fee scale must take into account the amount of funds available after providing the equipment to individuals whose family income is less than 250% of the federal poverty level. The fees must increase progressively based upon the increased percentage of family income.~~

~~(3) If a fee is required under the program, the rules must provide that the fee must be received by the program and deposited in the account provided for in 53-19-310 prior to providing the equipment to the individual.~~"

Section 4. Section 53-19-310, MCA, is amended to read:

"53-19-310. Fund for telecommunications services for persons with disabilities. (1) There is an account for telecommunications services for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; *and*

(b) all charges billed and collected pursuant to 53-19-311~~; and~~

~~(c) all fees received pursuant to 53-19-307~~.

(2) ~~Unless allocated to the Montana school for the deaf and blind, the~~ *Unless allocated to the Montana school for the deaf and blind, the* money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account."

Section 5. Section 53-19-311, MCA, is amended to read:

"53-19-311. Special assessment. (1) A charge of 10 cents a month ~~may~~ *must* be assessed on each telephone access line provided and billed by each local exchange company and is imposed for the purposes of this part.

(2) Each customer of a local exchange company is liable for payment to the local exchange company of any charge properly imposed pursuant to this part. The local exchange company is not liable for any uncollected charge, nor does the company have an obligation to take legal action to enforce the collection of any charge that is unpaid by its customers.

(3) Each local exchange company shall bill each customer for the charge provided for in subsection (1). Except as provided in subsection (4), all charges billed and collected by a local exchange company must be transmitted to the state treasurer no later than the last day of the month following the end of each calendar quarter in which the charge is billed. All charges received by the state treasurer must be deposited in the fund established in 53-19-310 to the credit of the committee.

(4) Each local exchange company may deduct and retain 3/4 of 1% of the total charges billed and collected each month to cover its administrative expenses in complying with the requirements of subsection (3)."

Section 6. Effective date. [This act] is effective July 1, 2003.

Ap proved April 18, 2003

CHAPTER NO. 418

[HB 270]

AN ACT PROHIBITING THE USE OR SALE OF REFRIGERANTS IN MOTOR VEHICLE AND SPECIAL MOBILE EQUIPMENT AIR CONDITIONING SYSTEMS THAT ARE NOT INCLUDED IN THE LIST OF SAFE ALTERNATIVE AIR CONDITIONING SUBSTITUTES PUBLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Air conditioning equipment — use of flammable refrigerant prohibited. (1) Air conditioning equipment must be maintained with due regard for the safety of the occupants of the vehicle, service technicians, and the public.

(2) Air conditioning equipment may contain only refrigerant that has been included in the list published by the United States environmental protection agency as a safe alternative motor vehicle air conditioning substitute for chlorofluorocarbon-12 pursuant to 42 U.S.C. 7671k(c).

(3) A person may not equip or maintain a motor vehicle or special mobile equipment with air conditioning equipment or refrigerants that do not comply with the requirements of this section.

(4) As used in [section 2] and this section, "air conditioning equipment" means mechanical, belt-driven, vapor compression refrigerant equipment that

is used to cool the driver's compartment or passenger compartment of a motor vehicle, as defined in 61-1-102, or special mobile equipment, as defined in 61-1-104.

Section 2. Air conditioning equipment — sale prohibited. (1) Refrigerant not allowed to be used pursuant to [section 1] may not be sold for use in motor vehicles in Montana.

(2) Motor vehicles and special mobile equipment with air conditioning equipment that have refrigerants not allowed in [section 1], if installed prior to [the effective date of this act], are not subject to any penalties provided for under Title 61, chapter 9.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [sections 1 and 2].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 419

[HB 468]

AN ACT REVISING WHAT INFORMATION MUST BE INCLUDED WITH ELECTION MATERIALS; REQUIRING PRINTED ELECTION MATERIALS THAT HAVE INFORMATION ABOUT VOTING RECORDS TO INCLUDE SPECIFIC INFORMATION AND A SIGNED STATEMENT ATTESTING TO THE ACCURACY OF THE INFORMATION; AND AMENDING SECTION 13-35-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-225, MCA, is amended to read:

"13-35-225. Election materials not to be anonymous — *statement of accuracy.* (1) ~~Whenever a person makes an expenditure for the purpose of financing~~ *All* communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising~~, the communication~~ must clearly and conspicuously ~~state~~ *include the attribution "paid for by" followed by* the name and address of the person who made or financed the expenditure for the communication~~, including in~~. *When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In* the case of a political committee~~,~~ *, the attribution must be* the name *of the committee, the name of the committee treasurer,* and *the* address of the *committee or the committee* treasurer.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

~~(2)~~*(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:*

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue, if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate, if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; or

(ii) by the person financing the communication or the person's legal agent, if the election material was not prepared for a candidate or a candidate's political committee.

(4) If a document or other article of advertising is too small for the requirements of ~~subsection~~ *subsections* (1) *through (3)* to be conveniently included, the *candidate responsible for the material or the* person financing the communication shall file a copy of the article with the commissioner *of political practices*, together with the required information *or statement*, ~~prior to~~ *at the time of* its public distribution.

~~(3)~~*(5)* If information required in ~~subsection~~ *subsections* (1) *through (3)* is ~~inadvertently~~ omitted or not printed, upon ~~discovering~~ *discovery or notification about* the omission, the *candidate responsible for the material or the* person financing the communication shall*:*

(a) file notification of the omission with the commissioner within 5 days *of the discovery or notification;* ~~and make every reasonable effort to~~

(b) bring the material into compliance ~~with subsection (1)~~*; and*

(c) withdraw any noncompliant communication from circulation as soon as reasonably possible."

Ap proved April 18, 2003

CHAPTER NO. 420

[HB 521]

AN ACT REVISING THE LAWS RELATING TO BAIL BONDS; PROVIDING THAT IF A SURETY RETURNS A DEFENDANT WITHIN 90 DAYS OF FORFEITURE OF A BOND THE FORFEITURE MUST BE DISCHARGED WITHOUT PENALTY; ALLOWING A SURETY TO SURRENDER A DEFENDANT TO A DETENTION CENTER FACILITY; AMENDING SECTIONS 46-9-503 AND 46-9-510, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-9-503, MCA, is amended to read:

"46-9-503. Violation of release condition — forfeiture. (1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

(2) If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days.

(3) If at any time within 90 days after the forfeiture the defendant's sureties *surrender the defendant pursuant to 46-9-510 or* appear and satisfactorily excuse the defendant's failure to appear, the judge ~~may~~ *shall* direct the forfeiture to be discharged ~~upon terms as may be just~~ *without penalty*. If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.

(4) The surety bail bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under subsection (3).

(5) A surety bail bond is an appearance bond only. It cannot be held or forfeited for fines, restitution, or violations of release conditions other than failure to appear. The original bond is in effect pursuant to 46-9-121 and is due and payable only if the surety fails, after 90 days from forfeiture, to surrender the defendant or if the defendant fails to appear on his own within the same time period."

Section 2. Section 46-9-510, MCA, is amended to read:

"46-9-510. Surrender of defendant. (1) At any time before the forfeiture of bail *or within 90 days after forfeiture*:

(a) the defendant may surrender to the court or any peace officer of this state; or

(b) the surety company may arrest the defendant and surrender the defendant to the court, ~~or~~ any peace officer ~~of this state~~, *or any detention center facility of this state*.

(2) The peace officer*or detention center facility* shall detain the defendant in ~~the officer's~~ custody as upon commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the defendant. The court ~~may~~ *shall* then order the bail exonerated."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 421

[HB 573]

AN ACT ALLOWING A PARENT OR GUARDIAN OF A DIABETIC STUDENT TO DESIGNATE A SCHOOL DISTRICT EMPLOYEE TO ADMINISTER GLUCAGON TO THE STUDENT IN AN EMERGENCY SITUATION; AND

LIMITING THE LIABILITY OF THE SCHOOL EMPLOYEE AND A SCHOOL DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition — parent-designated adult — administration of glucagon — training. (1) As used in [sections 1 and 2], "parent-designated adult" means a school district employee, selected by a parent or guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent or guardian of a diabetic student may designate an adult to administer glucagon to the student as provided in subsection (3). Written proof of the designation by a parent or guardian and acceptance of the designation by the parent-designated adult must be filed with the school district.

(3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation. The glucagon must be provided by the parent or guardian of the student.

(4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a recognized expert in diabetic care selected by the parent or guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district.

Section 2. Limits on liability. (1) A parent-designated adult who administers glucagon pursuant to [section 1] is not liable to a person for civil damages resulting from administering the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) The school district employing the parent-designated adult is not liable to a person for civil damages resulting from the administration of the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

Section 3. Two-thirds vote required. Because [section 2] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 5, part 4, and the provisions of Title 20, chapter 5, part 4, apply to [sections 1 and 2].

Ap proved April 18, 2003

CHAPTER NO. 422

[HB 631]

AN ACT PROVIDING THAT A SECURITY INTEREST IN A LIQUOR LICENSE IS CONSIDERED IN DEFAULT IF THERE HAS BEEN A NONJUDICIAL SALE BY THE SECURED PARTY MADE PURSUANT TO THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 16-4-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-801, MCA, is amended to read:

"16-4-801. Security interest in liquor license. (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license; ~~or~~

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; *or*

(C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and

(ii) "liquor license" means a license issued under this chapter.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license. If the person holding the license places the license on nonuser status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of the notice of the default of the licensee.

(c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 18, 2003

CHAPTER NO. 423

[HB 641]

AN ACT PROVIDING FOR NONDISCRIMINATORY PAYMENT OF INTERCARRIER COMPENSATION; DEFINING CERTAIN TERMS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 69-3-803, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-803, MCA, is amended to read:

"69-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Commercial mobile radio service" means commercial mobile radio service as defined in 47 CFR 20.9.

~~(1)~~*(2)* "Commission" means the public service commission.

~~(2)~~*(3)* "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under 69-3-840.

~~(3)~~*(4)* "Fund" means the universal service fund established in 69-3-842.

~~(4)~~*(5)* "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.

(6) "Local telecommunications" means:

(a) telecommunications originating in a wireline local calling area, including extended area service areas, and terminating in the same wireline local calling area or extended area service area; or

(b) commercial mobile radio service that originates from or terminates to a commercial mobile radio service provider within the same major trading area as defined in 47 CFR 24.202(a).

(7) "Nonlocal telecommunications" means:

(a) wireline telecommunications traffic carried by either an interlocal access transport area carrier or an intralocal access transport area toll provider that originates in one wireline local calling area and terminates in another wireline local calling area; or

(b) commercial mobile radio service that originates in a major trading area and terminates in a different major trading area, as defined in 47 CFR 24.202(a).

(8) "Originating carrier" means a telecommunications carrier from whose network a customer originates telecommunications traffic.

~~(5)~~*(9)* "Private telecommunications service" means a system, including the construction, maintenance, or operation of the system, for the provision of telecommunications service or any portion of the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

~~(6)~~*(10)* (a) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(b) ~~The~~ *Except as provided in [section 2], the* term does not include the provision of terminal equipment used to originate or terminate the regulated service, private telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

~~(7)~~*(11)* "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

~~(8)~~*(12)* "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

~~(9)~~*(13)* "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

~~(10)~~*(14) (a)* "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

(15) "Terminating carrier" means a telecommunications carrier upon whose network telecommunications traffic terminates.

(16) (a) "Transit traffic" means telecommunications traffic that an originating carrier delivers to a transiting carrier or carriers for delivery to a terminating carrier.

(b) The term does not mean traffic carried by interlocal access transport area carriers or providers of intralocal access transport area toll services.

(17) "Transiting carrier" means a telecommunications carrier or carriers that transport transit traffic from an originating carrier to a terminating carrier and that does not originate or terminate telecommunications traffic."

Section 2. Nondiscriminatory intercarrier compensation — billing records — enforcement — rulemaking. (1) An originating carrier of local telecommunications service shall transmit with the originating carrier's telecommunications traffic information necessary to enable the terminating carrier to identify, measure, and appropriately charge the originating carrier for the termination of the local telecommunications service.

(2) A provider of intralocal access transport area toll services or any other carrier that provides nonlocal telecommunications services in Montana shall transmit with its telecommunications traffic information necessary to enable the terminating carrier to identify, measure, and appropriately charge for the termination of the telecommunications traffic.

(3) A transiting carrier shall deliver telecommunications traffic to terminating carriers by means of facilities that enable the terminating carrier to receive from the originating carrier any and all information that the originating carrier transmits with its telecommunications traffic that enables the terminating carrier to identify, measure, and appropriately charge the originating carrier or the interlocal access transport area carrier or intralocal access transport area toll provider of nonlocal telecommunications traffic for the termination of its telecommunications traffic.

(4) A transiting carrier is required to provide billing records for its transit traffic to the terminating carrier upon request. The transiting carrier shall provide billing records pursuant to existing policies and agreements until the commission adopts rules pursuant to subsection (7).

(5) A local exchange carrier or commercial mobile radio services provider that delivers local telecommunications traffic to a terminating carrier, directly or indirectly through a transiting carrier, shall, upon request of the terminating carrier, negotiate an interconnection agreement with the terminating carrier, as provided in 69-3-831 through 69-3-839. The interconnection agreement must include rates, terms, and conditions for reciprocal compensation for the transport and termination of local telecommunications traffic.

(6) A telecommunications carrier registered to provide telecommunications services in Montana pursuant to 69-3-805 may file a complaint with the commission requesting enforcement of this section, including enforcement of an agreement approved by the commission under 69-3-839. Upon the filing of a complaint, the commission may authorize the terminating carrier to refuse to terminate traffic from the originating carrier or the commission may authorize interim payments. The commission may order compensation to the terminating carrier and may order other appropriate relief.

(7) The commission shall adopt rules for the implementation of this section. The rules must provide for the expedited resolution of complaints filed pertaining to the provisions of this section. The rules must identify what type of transit records are available and what the cost of the transit records should be and must determine which party is responsible for the payment of detailed call records to the transiting carrier.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [section 2].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective July 1, 2003.

Ap proved April 18, 2003

CHAPTER NO. 424

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects account to the Montana historical society $30,000 for the biennium ending July 1, 2005, for care and conservation of capitol complex artwork.

Section 2. Appropriation of general fund money and cultural and aesthetic grant funds. (1) There is appropriated $249,575 of general fund money in fiscal year 2004 and $249,575 of general fund money in fiscal year 2005 to the Montana arts council for the projects approved in this section. The general fund appropriation for fiscal year 2004 is a continuing appropriation for the biennium.

(2) The following projects are approved and amounts appropriated to the Montana arts council for the biennium ending June 30, 2005, from the cultural and aesthetic projects account first and from the general fund last:

(a) Category 1 - Special Projects $4,500 or Less:

Grantee/Amount	
Montana Storytelling Roundup	$4,500
Miles City Speakers Bureau	4,500
Friends of Chief Plenty Coups Association	4,500
Council for the Arts, Lincoln	2,500
Sunburst Community Service Foundation	2,700
International Choral Festival	4,000
Montana Wool Growers Association	3,700
Crow Tribe	2,250
Hobson Community Library	2,500

(b) Category 2 - Special Projects

Montana Committee for the Humanities	27,000
KUFM-TV, Montana PBS	18,000
Whitefish Theatre Company	12,000
Montana Performing Arts Consortium	20,000
Rattlesnake Productions	15,000
Montana Historical Society	12,000
Montana Preservation Alliance	15,000
MonDak Historical and Art Society	4,500
Grandstreet Theatre	10,000
Art Mobile of Montana	12,500
Glacier Orchestra and Chorale	10,000
Bozeman Symphony	10,000
Montana Alliance for Arts Education	10,000
VIAS, Inc.	10,000
Hockaday Museum of Art	13,000
Rimrock Opera	10,000
Missoula Symphony Association	7,000
Paris Gibson Square	8,000
Going-To-The-Sun Institute	8,000
Yellowstone Ballet Company	3,500
Feathered Pipe Foundation	2,000
Huntley Project Museum of Irrigated Agriculture	4,000
Montana Mandolin Society	1,000

(c) Category 3 - Operational Support

Schoolhouse History and Art Center	16,000

Custer County Art Center	20,000
Writer's Voice (Billings YMCA)	20,000
Great Falls Symphony Association, Inc.	18,000
Montana Art Gallery Directors' Association	15,000
Holter Museum of Art	16,000
Museum of the Rockies	15,000
Montana Agricultural Center and Museum	12,000
Western Heritage Center	15,000
Billings Symphony Society	15,000
Montana Repertory Theatre	15,000
Shakespeare in the Parks	15,000
VSA Arts of Montana	12,000
Alberta Bair Theatre	15,000
Butte Center for the Performing Arts	15,000
Missoula Children's Theatre, Inc.	15,000
Intermountain Opera	12,000
Montana Association of Symphony Orchestra	8,000
Garnet Preservation Association	12,000
Yellowstone Art Museum	16,000
Rocky Mountain Ballet Theatre	6,000
Montana Ballet Company	5,000
Myrna Loy Center	16,000
Butte Symphony Association	15,000
Vigilante Theatre Company	11,000
District 7 HRDC Growth Thru Art	10,000
Museums Association of Montana	12,000
Emerson Cultural Center	10,000
Carbon County Historical Society	8,000
Montana Arts	10,000
Mo-Trans Dance Company	5,000
Young Audiences of Western Montana	8,000
Gallatin County Historical Society	7,500
Northwest Montana Historical Society	7,500
Montana Dance Arts Association	3,000
Billings Cultural Partners	2,500
Big Horn Arts and Crafts Association	5,000
Carbon County Arts Guild	6,000
Montana Chorale	5,000

(d) Category 4 - Capital Expenditures

Archie Bray Foundation	16,500
Great Falls Civic Center	10,000
Livingston Depot Foundation	10,000
Lewistown Art Center	2,500
Art Museum of Missoula	15,000
Billings Preservation Society	10,000
Moosehorn Club	2,000
North Missoula Community Development Corporation	5,000
Tobacco Valley Improvement Association Board of Art	5,000
Cascade County Historical Society	5,000

Section 3. Reversion of grant money. On July 1, 2005, the unencumbered balance of the 2005 biennium grants revert to the cultural and aesthetic projects account provided for in 15-35-108 and the unencumbered balance of the general fund money reverts to the general fund.

Section 4. Reduction of grants. Except as provided in [section 1(3)], if money in the cultural and aesthetic projects account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to all projects will be made on a pro rata basis.

Section 5. Effective date. [This act] is effective July 1, 2003.

Ap proved April 21, 2003

CHAPTER NO. 425

[HB 94]

AN ACT REVISING AND CLARIFYING THE PUBLIC PARTICIPATION AND NOTICE REQUIREMENTS FOR OPEN MEETINGS; PROVIDING THAT AN AGENDA FOR AN OPEN MEETING MUST INCLUDE AN ITEM ALLOWING PUBLIC COMMENT ON ANY PUBLIC MATTER WITHIN THE JURISDICTION OF THE AGENCY CONDUCTING THE MEETING; CLARIFYING THAT AN AGENCY MAY NOT TAKE ACTION ON ANY MATTER DISCUSSED UNLESS SPECIFIC NOTICE OF THAT MATTER IS INCLUDED ON AN AGENDA AND PUBLIC COMMENT HAS BEEN ALLOWED; CLARIFYING WHAT CONSTITUTES A PUBLIC MATTER; CLARIFYING THAT THE GOVERNOR'S DUTY TO ENSURE THAT AGENCIES HAVE POLICIES AND PROCEDURES TO FACILITATE PUBLIC PARTICIPATION APPLIES TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; AMENDING SECTION 2-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-103, MCA, is amended to read:

"2-3-103. Public participation — governor to ~~insure~~ *ensure* guidelines adopted. (1) *(a)* Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures~~shall assure~~ *must ensure* adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. *The agenda for a meeting, as*

defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ~~insure~~ *ensure* that each board, bureau, commission, department, authority, agency, or officer of the *executive branch of the* state adopts coordinated rules for its programs~~.~~ ~~which~~ *The* guidelines ~~shall~~ *must* provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) ~~of this section~~. These guidelines ~~shall~~ *must* be adopted as rules and published in a manner ~~which~~ *so that the rules* may be provided to a member of the public upon request."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 22, 2003

CHAPTER NO. 426

[HB 152]

AN ACT REVISING INTERGOVERNMENTAL COOPERATION OF DISASTER AND EMERGENCY SERVICES LAWS; CLARIFYING ACCEPTANCE OF FUNDS RECEIVED FOR FEDERAL REIMBURSEMENT OF MUTUAL AID; REVISING THE STATUTORY APPROPRIATION OF FUNDS RECEIVED FROM THE FEDERAL GOVERNMENT FOR EMERGENCY OR DISASTER SERVICES TO INCLUDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FIRE SUPPRESSION; INCREASING THE STATUTORY APPROPRIATION UNDER THE EMERGENCY POWERS OF THE GOVERNOR FROM $12 MILLION TO $16 MILLION; AMENDING SECTIONS 10-3-203 AND 10-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-203, MCA, is amended to read:

"10-3-203. Acceptance of services, gifts, grants, and loans. (1) Whenever the federal government or any agency or officer of the federal government offers to the state, or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, *reimbursement of mutual aid,* or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer. Upon the acceptance, the governor of the state or the executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision to receive the services, equipment, supplies, materials, or funds on behalf of the state or political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth

in subsection (1) *or to the department of natural resources and conservation for fire suppression purposes or costs*."

Section 2. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor — appropriation. (1) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and, subject to subsection (2), the governor is authorized to expend from the general fund an amount not to exceed ~~$12~~ *$16* million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium. The statutory appropriation in this subsection may be used by any state agency designated by the governor.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178. The statutory appropriation in this subsection may be used by any state agency designated by the governor."

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved April 21, 2003

CHAPTER NO. 427

[HB 169]

AN ACT REVISING THE LAWS OF LICENSING FOR INSURANCE PRODUCERS, ADJUSTERS, AND CONSULTANTS; PROVIDING FOR INACTIVE STATUS FOR INSURANCE PRODUCERS SERVING IN THE ARMED FORCES; REQUIRING AN INSURANCE PRODUCER LICENSING BACKGROUND EXAMINATION AND PROVIDING EXAMINATION CRITERIA; DEFINING "CAR RENTAL INSURANCE"; REVISING THE PAYMENT OF FEES FOR LICENSES AND RENEWAL OF LICENSES RELATING TO INSURANCE; REVISING THE STATUS OF NONRESIDENT INSURANCE PRODUCERS; PROVIDING FOR BIENNIAL RENEWAL OF LICENSES AND PAYMENT OF BIENNIAL LICENSE FEES FOR CERTAIN PRODUCERS; SIMPLIFYING THE INSURANCE CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTIONS 33-2-305, 33-2-708, 33-7-525, 33-7-532, 33-17-102, 33-17-103, 33-17-201, 33-17-211, 33-17-212, 33-17-214, 33-17-301, 33-17-502, 33-17-503, 33-17-504, 33-17-1001, 33-17-1002, 33-17-1203, 33-17-1205, AND 33-17-1207, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Inactive status — insurance producers serving in armed forces. (1) The commissioner may place an insurance producer on inactive status if the insurance producer enters active service in the armed forces of the United States.

(2) An insurance producer may not transact the business of insurance while on inactive status.

(3) The commissioner shall waive the continuing education requirements in 33-17-1205 and the fee in 33-2-708 while an insurance producer is on inactive status.

(4) In order to be placed on inactive status, an insurance producer shall notify the commissioner when called to active service.

(5) In order to be taken off inactive status, an insurance producer shall notify the commissioner when discharged from active service.

Section 2. Licensing background examination — entity registry criteria. (1) (a) Each applicant shall obtain a complete background examination. The applicant or insurer shall pay the cost of the background examination. The background examination report must provide information to confirm:

(i) the applicant's:

(A) identity;

(B) current address;

(C) professional license certification; and

(D) military service; and

(ii) (A) existing or ongoing criminal investigations and court records relating to the applicant; and

(B) regulatory agencies' disciplinary actions concerning the applicant.

(b) The background examination is confidential and may not be held as part of the licensee's public file.

(2) An entity may not conduct licensing background examinations unless the entity maintains a current filing with the commissioner. The filing must:

(a) contain a description of the criteria, standards, and procedures used in conducting the background examination;

(b) ensure that the examination will be based on nationally recognized criteria, standards, and procedures; and

(c) ensure confidentiality of the applicant's information.

(3) The commissioner may adopt rules to further implement this section, including but not limited to rules on the length of time that a background examination is valid and rules for the electronic filing of fingerprints.

Section 3. Rental car insurance. Rental car insurance is insurance that:

(1) provides coverage for periods of less than 90 days;

(2) applies only to the rental car subject to the rental agreement; and

(3) is limited to the following kinds of insurance:

(a) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(b) liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

(c) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of or damage to personal effects in the rental car during the rental period; or

(d) motor club services, as defined in 61-12-301.

Section 4. Rulemaking authority for surety insurers. The commissioner may adopt rules regarding surety insurers who sell, solicit, or negotiate commercial bail bonds. The rules must include but are not limited to rules regarding the receipt of collateral, the description of collateral received, the penalty for failure to return collateral, and an annual list of forfeitures of bonds.

Section 5. Status of nonresident insurance producers — biennial renewal of license — payment of fees. A nonresident insurance producer's license continues in force until lapsed, suspended, revoked, or terminated. The license lapses if the licensee fails to remit a biennial renewal fee.

Section 6. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines insurance producer — fee ~~and bond~~. (1) A person may not place a contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a property and casualty insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance *producer's* license to any qualified holder of a current property and casualty insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner; *and*

(c) been licensed as a property and casualty insurance producer continuously for 5 years or more.~~; and~~

~~(d) filed with the commissioner and, for as long as the license remains in effect, kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that the insurance producer will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice of termination.~~

(3) The ~~license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license~~ *licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.*

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance.

(5) This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license."

Section 7. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, ~~100.00~~ *$100;*

(B) ~~annual~~ *biennial* renewal of license, ~~10.00~~ *$50;*

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $50;

~~(ii)~~*(iii)* surplus lines insurance ~~producer~~ *producer's* license:

(A) application for original license and for issuance of license, if issued, ~~50.00~~ *$50;*

(B) ~~annual~~ *biennial* renewal of license, ~~50.00~~ *$100;*

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

~~(iii)~~*(vi)* 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-28-201. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 8. Section 33-7-525, MCA, is amended to read:

"33-7-525. Insurance producer defined — *fraternal benefit society insurance contracts.* *(1)* The term "insurance producer", as used in this chapter, means any authorized or acknowledged insurance producer of a society who acts as ~~such~~ *an insurance producer* in the solicitation, negotiation, or ~~procurement or making~~ *sale* of a life insurance, accident and health insurance, or annuity contract.

(2) The term ~~"insurance producer"~~ does not include any regular salaried officer or employee of a licensed society who devotes substantially all of ~~his~~ *the officer's or employee's* services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of ~~such~~ *the* contracts no commission or other compensation directly dependent upon the amount of business obtained."

Section 9. Section 33-7-532, MCA, is amended to read:

"33-7-532. ~~Producer~~ *Insurance producer* licensing — *fraternal benefit society*. (1) A society's insurance producer ~~must be~~ *is* considered to be an insurance producer and is subject to the same licensing requirements as insurance producers under Title 33, chapter 17~~, except that an examination is not required of an individual who is licensed in this state as an insurance producer for a society as to the kind of insurance to be transacted on or before October 1, 1981, and who continues to be licensed as an insurance producer~~.

(2) A society doing business in this state may not pay to a person who is not a licensed insurance producer of the society any commission or other compensation for any services in obtaining in this state any new contract of life, accident, or health insurance or any new annuity contract."

Section 10. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) *(a)* "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for *a* fee or commission investigates and negotiates *the* settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

~~(a)~~*(i)* licensed attorney who is qualified to practice law in this state;

~~(b)~~*(ii)* salaried employee of an insurer or of a managing general agent;

~~(c)~~*(iii)* licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

~~(d)~~*(iv)* licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not ~~mean~~ *include*:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

~~(5)~~*(6)* "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

~~(6)~~*(7)* "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

~~(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of the person or the person's spouse, employer, or business.~~

(8) "Individual" means a ~~private or~~ natural person~~, as distinguished from a partnership, corporation, or association~~.

(9) "Insurance producer", except as provided in 33-17-103,~~:~~

~~(a) means:~~

~~(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:~~

~~(A) policies of insurance for risks residing, located, or to be performed in this state; or~~

~~(B) membership contracts as defined in 33-30-101;~~

~~(ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has the same meaning as set forth in 33-2-1501.~~

~~(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer~~ *means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.*

(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

~~(10)~~*(11)* "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the ~~kinds of insurance~~ *lines of authority* specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

~~(11)~~*(12)* "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

~~(12)~~*(13)* "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

~~(13)~~*(14)* "Limited lines insurance" means those lines of insurance ~~defined in 33-1-211 through 33-1-219 or any other line of insurance~~ that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

~~(14)~~*(15)* "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

~~(15)~~*(16)* "Lines of authority" means any kind of insurance as defined in Title 33.

(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

~~(16)~~*(18)* "Person" means an individual~~, partnership, corporation, association,~~ or ~~other legal entity~~ *a business entity.*

~~(17)~~*(19)* "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(22) "Suspend" means to bar the use of a person's license for a period of time.

~~(18)~~*(23)* "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 11. Section 33-17-103, MCA, is amended to read:

"33-17-103. Exemptions from definition of insurance producer. The definition of insurance producer ~~contained in 33-17-102~~ does not include:

(1) ~~a person~~ *an individual* who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation*,* *sale,* or solicitation of insurance;

(2) ~~a person~~ *an individual* who is a salaried employee in the office of an insurance producer and who devotes ~~his~~ *the individual's* full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of ~~his~~ *the individual's* employer, if the ~~employee~~ *individual* does not receive any commissions on the applications and ~~his~~ *the individual's* compensation is not varied by the volume of applications or premiums ~~he~~ *the individual* takes or receives;

(3) a person who secures and furnishes information for the purpose of group life insurance*, group property and casualty insurance, group* annuities*, or* group or blanket accident and disability insurance or for the purpose of enrolling individuals under ~~such~~ *those* plans, issuing certificates under ~~such~~ *those* plans, or otherwise assisting in administering ~~such~~ *those* plans~~,~~ if ~~no~~ *a* commission is *not* paid for the service;

(4) an employer, ~~his~~ *the employer's* officers~~,~~ or employees, or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged in the administration ~~of~~ *or* operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the contracts; ~~or~~

(5) a person who is:

(a) an employee of an insurer or of an organization employed by an insurer, which insurer or organization is engaged in the inspection, rating, or classification of insurance risks or in the supervision of the training of insurance producers; and

(b) not individually engaged in the *selling,* solicitation, or negotiation of insurance policies and contracts*;*

(6) an attorney advising a client on general insurance matters, provided the attorney does not sell, solicit, or negotiate insurance;

(7) a salaried full-time employee who counsels or advises the employer or the subsidiaries or affiliates of the employer about the life insurance or annuities if the employee does not sell or solicit insurance or receive a commission or fee~~.~~;

(8) a person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of this state if the person does not sell, solicit, or negotiate insurance contracts with respect to risks located in this state; or

(9) a person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks with respect to an insured with risks located in more than one state that are insured under the contract if the person is licensed in the state where the insured maintains its principal place of business and the contract insures risks located in that state."

Section 12. Section 33-17-201, MCA, is amended to read:

"33-17-201. License required of insurance producer — forms — *background examinations.* (1) ~~A~~ *A* person may not ~~in this state~~ *sell, solicit, or negotiate insurance or* act as ~~or hold himself out to be~~ an insurance producer *in this state* ~~for subjects of insurance located, residing, or to be performed in this state~~ unless licensed as an insurance producer under this chapter.

(2) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, *suspension,* or termination of a license.

(3) All resident applicants shall undergo prelicensing background examinations. The applicant or insurer shall pay the cost of the background examinations.

~~(3) Unless licensed as a life insurance producer as required by this section, a person may not in this state solicit life insurance or annuities or procure applications for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of~~

~~the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of the employees.~~

~~(4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.~~

~~(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:~~

~~(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or~~

~~(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of $50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society.~~

~~(6) The commissioner may not grant or extend a license to a person if the license is being or will be used to write controlled business. The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.~~"

Section 13. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state.

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code that govern the applicant's operations as an insurance producer; ~~and~~

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state*; and*

(i) has completed a background examination pursuant to [section 2].

(2) A resident or nonresident business entity acting as an insurance producer is required to obtain an insurance producer's license. Application must be made using the uniform business entity application. In order to approve the application, the commissioner shall verify that:

(a) the business entity has paid the appropriate fee; and

(b) the business entity has designated an individual licensed insurance producer who is responsible for the business entity's compliance with the insurance laws of this state.

~~(2)~~*(3)* A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

~~(3)~~*(4)* The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for

the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

~~(4)~~*(5)* An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 14. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection (6), an individual applying for a license is required to pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (5) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all forms before being rescheduled for another examination.

(4) If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall meet the qualifications as provided in this section.

(5) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

(d) casualty insurance;

(e) surety insurance;

(f) ~~credit life and disability~~ *limited lines credit* insurance;

(g) title insurance.

(6) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or ~~refused to continue~~

terminated the previous license~~, except that this subsection (6)(b) does not apply to a title insurance producer, as defined in 33-25-105~~;

(c) an applicant for a license as a nonresident insurance producer;

~~(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance;~~

~~(e)~~*(d)* transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

~~(f)~~*(e)* an association applying for a license under 33-17-211;

~~(g) a mechanical breakdown insurance producer;~~

~~(h) a prepaid legal plans producer;~~

~~(i) a gap insurance producer;~~

~~(j) involuntary unemployment insurance producer;~~

~~(k) a credit property insurance, credit unemployment insurance, or mortgage guaranty insurance producer;~~ or

~~(l)~~*(f)* an individual who, within ~~60~~ *90* days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state.

(7) (a) Subject to the provisions of subsection (7)(b), an individual who applies for a nonresident insurance producer license in this state and who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination.

(b) The exemption in subsection (7)(a) is available only if the individual is currently licensed in the other state or the individual's application is received within 90 days of the cancellation of the individual's previous license and if the other state issues a certification that, at the time of the cancellation, the individual was in good standing in that state or the state's database records, maintained by the national association of insurance commissioners or any of the association's affiliates or subsidiaries that the association oversees, indicate that the insurance producer is or was licensed in good standing for the lines of authority requested."

Section 15. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license — insurance producer lines of authority — license data — lapse of license — change of address. (1) A person who has met the requirements of 33-17-211 and 33-17-212 must be issued a license, unless that person has been denied a license pursuant to 33-17-1001.

(2) An insurance producer may receive a license qualifying the insurance producer in one or more of the following lines of authority:

(a) life insurance coverage on human lives, including benefits of endowment and annuities, and the coverage may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) accident and health or sickness insurance coverage providing for sickness, bodily injury, or accidental death, and the coverage may provide benefits for disability income;

(c) property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) casualty insurance coverage against legal liability, including liability for death, injury, or disability or damage to real or personal property;

(e) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(f) personal lines of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) limited line credit insurance; or

(h) any other line of insurance permitted under Title 33.

(3) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and other information that the commissioner considers necessary.

(4) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(5) Each license remains in effect, unless *it is* suspended, ~~or~~ revoked, *or terminated or the license lapses*.

(6) A person shall inform the commissioner in writing of a change of address within 30 days of the change."

Section 16. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) ~~A person~~ *An individual* may not act as or purport to be an adjuster in this state unless licensed as an adjuster under this chapter. ~~A person~~ *An individual* shall apply for an adjuster license to the commissioner according to forms that the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) ~~must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make the applicant competent to fulfill the responsibilities of an adjuster~~ *shall pass an adjuster licensing examination as prescribed by the commissioner and pay the fee pursuant to 33-2-708*;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until ~~expired~~ *lapsed*, suspended, revoked, or terminated. ~~The license is subject to renewal upon written request to the commissioner~~ *The licensee shall renew the license by the biennial renewal date and pay the appropriate fee or the license will lapse. The biennial fee is established pursuant to 33-2-708*.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

Section 17. Section 33-17-502, MCA, is amended to read:

"33-17-502. Prohibition on holding out as consultant — receiving fee. (1) A person not licensed as an insurance consultant in this state who identifies or represents to the public that the person is an insurance consultant without having been licensed as an insurance consultant under this part or a person who uses any other designation or title that is likely to mislead the public and represents to the public that the person has particular insurance qualifications other than those for which the person may be otherwise licensed or otherwise qualified ~~is guilty of a misdemeanor and upon conviction shall be fined $1,500~~ *may be fined pursuant to 33-1-317*.

(2) A person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives a fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who makes recommendations or gives advice with regard to any insurance policy, annuity or pension contract, plan, or program without first having been licensed by the commissioner as an insurance consultant ~~is guilty of a misdemeanor and upon conviction shall be fined $1,500~~ *may be fined pursuant to 33-1-317*.

(3) This part does not apply to:

(a) licensed attorneys at law in this state acting in their professional capacity; or

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in a professional capacity if neither the actuary nor the certified public accountant or the actuary's or certified public accountant's employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services."

Section 18. Section 33-17-503, MCA, is amended to read:

"33-17-503. Application — fee — expiration. (1) Before a consultant license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee ~~of $50, which the commissioner shall deposit with the state treasurer to be credited to the state's general fund~~ *pursuant to 33-2-708*.

(2) ~~Each consultant license must be renewed each year by the consultant paying a continuation fee on or before May 31, and the license continues in force unless suspended, revoked, or otherwise terminated~~ *A consultant license continues in force until lapsed, suspended, revoked, or terminated*."

Section 19. Section 33-17-504, MCA, is amended to read:

"33-17-504. Issuing license — limitations. The commissioner may issue a consultant license to an individual who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, *33-1-214 through 33-1-219*, and 33-1-221 through 33-1-229, as specified in the license."

Section 20. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) The commissioner may suspend, revoke, refuse to renew, or refuse to issue an insurance producer's license, *adjuster license, or consultant license,* ~~or~~ may levy a civil penalty in accordance with 33-1-317, or *may* choose any combination of actions~~,~~ when an insurance producer, *adjuster, consultant,* or applicant for ~~an insurance producer's license~~ *those licenses* has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused;

(b) obtained or attempted to obtain a license through misrepresentation or fraud, *including but not limited to providing incorrect, misleading, incomplete, or materially untrue information in the license application or in the continuing education affidavit*;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to the licensee's or applicant's own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of the affairs under the license, used fraudulent, coercive, or dishonest practices or the licensee or applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

~~(g) made a materially untrue statement in the license application or in the continuing education affidavit;~~

~~(h)~~*(g)* misrepresented the terms of an actual or proposed insurance contract *or application for insurance*;

~~(i)~~*(h)* been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

~~(j)~~*(i)* had a similar license suspended or revoked in any other state;

~~(k)~~*(j)* forged another's name to an application for insurance *or to any document related to an insurance transaction*;

~~(l)~~*(k)* cheated on an examination for a license; or

~~(m)~~*(l)* knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) ~~The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204~~ *The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered or has lapsed*."

Section 21. Section 33-17-1002, MCA, is amended to read:

"33-17-1002. Procedure following suspension or revocation. (1) Upon suspension, ~~or~~ revocation*, or refusal* of a license, the commissioner shall ~~immediately~~ notify the licensee ~~of the suspension or revocation either in person or~~ *or applicant* by mail addressed to the licensee *or applicant* at ~~his~~ *the last-known* address ~~last of record with~~ *contained in the records of* the commissioner. Notice ~~by mail~~ is effectuated when ~~the notice is~~ mailed.

(2) The commissioner may reissue a license that has lapsed if the insurance producer has paid the lapsed license reinstatement fee pursuant to 33-2-708 and has filed certification of completion of continuing education requirements for the preceding biennium within 1 year of the lapse occurring.

~~(2)~~*(3)* The commissioner may not again issue a license under this code to a person whose license has been revoked until after expiration of 1 year and ~~thereafter not~~ until the person again qualifies for a license in accordance with this code. If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation. A person whose license has been revoked twice is not again eligible for any license under this code.

~~(3)~~*(4)* If the license of a partnership or corporation is suspended or revoked, ~~no~~ *a* member of the partnership or officer or director of the corporation may *not* be licensed or be designated in a license to exercise its powers during the period of the suspension or revocation unless the commissioner determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 22. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer ~~for property, casualty, surety, or title insurance~~ or as a consultant ~~for general insurance~~ *other than a*

person licensed for limited lines credit insurance shall, during each ~~calendar year~~ *24-month period*, complete at least ~~10~~ *24* credit hours of approved continuing education;

~~(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;~~

~~(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;~~

~~(d)~~*(b)* a person licensed to act as an insurance producer only for *limited lines* credit ~~life and disability~~ insurance shall, during each ~~calendar year~~ *biennium*, complete ~~2 1/2~~ *5* credit hours of approved continuing education in the areas of insurance law, ethics, or ~~credit life and disability~~ *limited lines credit* insurance;

~~(e)~~*(c)* a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a ~~year~~ *biennium* than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next ~~year~~ *biennium*.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

~~(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(6)(d) through (6)(l);~~

~~(b)~~*(a)* a person holding a temporary license issued under 33-17-216; *or*

~~(c) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;~~

~~(d) a person who only executes surety bail bonds; or~~

~~(e)~~*(b)* an insurance producer or consultant otherwise exempted by the commissioner."

Section 23. Section 33-17-1205, MCA, is amended to read:

"33-17-1205. Compliance — failure to comply — *rulemaking authority*. (1) Each person subject to the requirements of 33-17-1203 shall file ~~annually on a form~~ *biennially in a format* supplied by the commissioner ~~written~~ certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding ~~calendar year~~ *biennium*.

(2) ~~The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under 33-17-1203 and may impose a late renewal fee of $20, which is the same amount previously determined by an administrative rule in effect on November 3, 1998. The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the provisions of this part. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the~~

~~insurance producer or consultant~~ *If a person fails to comply with this section, the person's license lapses.*

(3) In the continuing education affidavit, an insurance producer shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer in another jurisdiction or by another governmental agency in this state. As used in this subsection, "final disposition of any criminal action" means a plea agreement or sentence and judgment.

~~(3)~~*(4)* Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

~~(4)~~*(5)* The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection ~~(3)~~ *(4)*. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection ~~(3)~~*(4)*. The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits."

Section 24. Section 33-17-1207, MCA, is amended to read:

"33-17-1207. Funding for continuing education program. All ~~annual~~ continuing education filing fees collected by the commissioner and fees paid to the commissioner for the review of initial applications for approval of continuing education courses or the periodic review of these courses must be turned over promptly to the state treasurer who shall place the money in the state special revenue fund to the credit of the state auditor's office to be used for the continuing education program. The funds allocated by this section to the state special revenue fund may be used only to defray the expenses of the state auditor's office in discharging its duties as prescribed by this part, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The state auditor is responsible for the proper expenditure of this money as provided by law."

Section 25. Coordination instruction. If Senate Bill No. 254 and [this act] are passed and approved, then [section 7] of this act, amending 33-2-708, is amended to read:

"Section 7. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, ~~.....100.00~~ *$100;*

(B) ~~annual~~ *biennial* renewal of license ~~.....10.00~~, *$50;*

(C) lapsed license reinstatement fee, $100;

(ii) resident insurance producer's license lapsed license reinstatement fee, $100;

~~(ii)~~*(iii)* surplus lines insurance ~~producer~~ *producer's* license:

(A) application for original license and for issuance of license, if issued, ~~.....50.00~~ *$50;*

(B) ~~annual~~ *biennial* renewal of license ~~.....50.00~~*, $100;*

(C) lapsed license reinstatement fee, $200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, $50;

(B) biennial renewal of license, $100;

(C) lapsed license reinstatement fee, $200;

(vi) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, $100;

(B) quarterly filing fee, $25;

~~(iii)~~*(vii)* 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, and 33-28-201. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.""

Section 26. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 33, chapter 26, and the provisions of Title 33, chapter 26, apply to [section 4].

(4) [Section 5] is intended to be codified as an integral part of Title 33, chapter 17, part 4, and the provisions of Title 33, chapter 17, part 4, apply to [section 5].

Section 27. Effective date — applicability. (1) Except as provided in subsection (2), [this act] is effective July 1, 2003, and applies to licenses issued or renewed on or after July 1, 2003.

(2) [Section 2] applies to license applications postmarked on or after July 1, 2004.

Ap proved April 21, 2003

CHAPTER NO. 428

[HB 185]

AN ACT GENERALLY REVISING LAWS GOVERNING COMMERCIAL DRIVER LICENSING TO CONFORM WITH REQUIREMENTS OF THE FEDERAL MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999 (MCSIA) AND THE FEDERAL REGULATIONS IMPLEMENTING MCSIA; DEFINING "NONCOMMERCIAL MOTOR VEHICLE"; REVISING THE DEFINITIONS OF "COMMERCIAL MOTOR VEHICLE" AND "COMMERCIAL DRIVER'S LICENSE"; CLARIFYING THE REQUIREMENTS FOR OPERATION OF A COMMERCIAL MOTOR VEHICLE; REVISING THE REQUIREMENTS GOVERNING THE APPLICATION FOR AND RENEWAL OF A COMMERCIAL DRIVER'S LICENSE; REVISING REQUIREMENTS FOR REQUESTING DRIVING RECORDS FROM A PRIOR STATE OF LICENSURE; REVISING LICENSE SUSPENSION PERIODS AND COMPUTATION REQUIREMENTS FOR NONCOMMERCIAL AND COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT LAWS; REVISING REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR MAJOR OFFENSES OR FOR CONDUCT OCCURRING WHILE OPERATING A NONCOMMERCIAL MOTOR VEHICLE; CLARIFYING THE REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE WITHOUT A COMMERCIAL DRIVER'S LICENSE OR PROPER ENDORSEMENT OR WHILE THE PERSON'S COMMERCIAL DRIVER'S LICENSE IS SUSPENDED; INCLUDING NONCOMMERCIAL MOTOR VEHICLE OFFENSES IN THE LIST OF FELONY-DRUG OFFENSES FOR WHICH SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE IS REQUIRED; AMENDING SECTIONS 61-1-134, 61-1-135, 61-5-102, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-118, 61-5-212, 61-8-402, 61-8-802, 61-8-803, 61-8-804, 61-8-805, 61-8-806, AND 61-11-102, MCA; REPEALING SECTION 61-5-117, MCA; AND PROVIDING APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Noncommercial motor vehicle defined. "Noncommercial motor vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-134 and includes but is not limited to the vehicles listed in 61-1-134(2).

Section 2. Suspension of commercial driver's license — railroad crossing offenses. (1) The department shall suspend a person's commercial driver's license upon the report of a conviction of any of the following railroad crossing offenses or conduct:

(a) for drivers who are not required to always stop:

(i) failing to slow down and check that the tracks are clear of an approaching train; or

(ii) failing to stop before reaching the crossing if the tracks are not clear;

(b) for drivers who are always required to stop, failing to stop before driving onto the crossing;

(c) for all drivers:

(i) failing to have sufficient space to drive completely through the crossing without stopping;

(ii) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(iii) failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) Upon receipt of a report of a conviction of any railroad crossing offense or conduct described in subsection (1), the following suspension periods must be imposed:

(a) 60 days upon a first conviction;

(b) 120 days upon a second conviction within a 3-year period; or

(c) 1 year upon a third or subsequent conviction within a 3-year period.

Section 3. Probationary drivers's license ineligibility. A person whose commercial driver's license or commercial motor vehicle operating privilege is suspended under this part:

(1) is not eligible for a restricted probationary driver's license that would permit operation of a commercial motor vehicle during the period of suspension; and

(2) may not operate a commercial motor vehicle until the period of suspension is completed and the person is otherwise eligible, under state and federal law, to have the commercial driver's license restored or to reapply for a commercial driver's license.

Section 4. Section 61-1-134, MCA, is amended to read:

"61-1-134. Commercial motor vehicle defined — exceptions. (1) Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(a) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(b) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(c) is designed to transport at least 16 passengers, including the driver;

(d) is a school bus as defined in 20-10-101; or

(e) is of any size and is used to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations.

(2) The following vehicles are not commercial motor vehicles:

(a) ~~a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;~~

~~(b) a police emergency response vehicle~~ *an authorized emergency service vehicle:*

(i) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(ii) entitled to the exemptions granted under 61-8-107~~;~~ or

~~(c)~~*(b)* a vehicle:

(i) controlled and operated by a farmer*, family member of the farmer,* or person employed by ~~a~~ *the* farmer;

(ii) used to transport farm products, farm machinery, or farm supplies within Montana ~~or~~ within 150 miles of the farm ~~headquarters~~ *or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state*; and

(iii) not used to transport goods for compensation or hire.

(3) For purposes of this section:

(a) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(b) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle; and

(c) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle."

Section 5. Section 61-1-135, MCA, is amended to read:

"61-1-135. Commercial driver's license. "Commercial driver's license" means*:*

(1) a ~~Montana~~ driver's license *issued under or granted by the laws of this state* that authorizes ~~the licensee~~ *a person* to operate a class of commercial motor vehicle*; and*

(2) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license."

Section 6. Section 61-5-102, MCA, is amended to read:

"61-5-102. Drivers to be licensed. (1) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the

person's possession or under the person's control more than one valid Montana driver's license at any time.

(2) (a) A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A motorcycle endorsement is required for the operation of a quadricycle.

(b) A license is not valid for the operation of a commercial *motor* vehicle unless the holder of the license has completed the requirements of 61-5-110, ~~and~~ the license has been clearly marked with the words "commercial driver's license"*, and the license bears the proper endorsement for:*

(i) the specific vehicle type or types being operated; or

(ii) the passengers or type or types of cargo being transported.

(3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter."

Section 7. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, *commercial driver's license,* or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must ~~include a statement that allows the department to determine if~~ *provide the following additional information*:

(a) *the name of each jurisdiction in which* the applicant has previously been licensed ~~as a driver or commercial vehicle operator, and, if so, when and by what state or country~~ *to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application*;

(b) ~~any commercial driver's license has ever been suspended or revoked~~ *a certification from the applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction*;

~~(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;~~

~~(d)~~*(c)* ~~the applicant has a~~ *a brief description of any* physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

~~(e)~~*(d)* ~~the applicant relies upon, or intends to rely upon,~~ *a brief description of* any adaptive equipment or operational restrictions *that the applicant relies*

upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) When *an* application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from ~~the previous licensing jurisdiction~~ *each jurisdiction in which the applicant was licensed in the preceding 10-year period*. The driving record may be transmitted manually or by electronic medium. When received, the driving records ~~become a part of~~ *must be appended to* the driver's record *created and maintained* in this state ~~with the same force and effect as though entered on the driver's record in this state in the original instance~~. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 8. Section 61-5-110, MCA, is amended to read:

"61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs. (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, ~~or~~ *and* the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, quadricycle, or motorcycle. The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3).

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

Section 9. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts.

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary signature or a digital reproduction of the licensee's customary signature. The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department *shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and* may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 a year or fraction of a year;

(ii) intrastate — $3.50 a year or fraction of a year.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 10. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — *reciprocity agreements*. *(1)* The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

~~(1)~~*(a)* subject to the exceptions provided in this section, comport with the requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391;

~~(2)~~*(b)* allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

~~(3)~~*(c)* allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older;

~~(4)~~*(d)* allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

~~(5)~~*(e)* prescribe the operational and seasonal restrictions for a seasonal commercial driver's license; ~~and~~

~~(6)~~*(f)* prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license*; and*

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license as provided in 61-1-134(2)."

Section 11. Section 61-5-118, MCA, is amended to read:

"61-5-118. Third-party commercial driver testing program — test waiver. (1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) has a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under ~~61-5-117~~ *61-5-112*.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by:

(a) a third-party commercial driver testing program certified under subsection (1); or

(b) a third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program, as determined by the department.

(3) An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal rules."

Section 12. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable. (1) *(a)* A person ~~who~~ *commits the offense of driving a motor vehicle during a suspension or revocation period if the person* drives*:*

(i) a motor vehicle ~~or commercial motor vehicle~~ on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state*; or*

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle under federal regulations.

(b) A person convicted of the offense of driving a motor vehicle during a suspension or revocation period ~~is guilty of a misdemeanor and upon conviction~~

shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) *(a)* The department upon receiving a record of the conviction of any person under this section upon a charge of driving a *noncommercial* vehicle while the person's driver's license *or privilege to drive* was suspended or revoked shall extend the period of suspension or revocation for an additional like period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 13. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

(6) *(a)* ~~The~~ *Except as provided in subsection (6)(b), the* following suspension and revocation periods are applicable upon refusal to submit to one or more tests:

~~(a)~~*(i)* upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

~~(b)~~*(ii)* upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a one-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of

a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Section 14. Section 61-8-802, MCA, is amended to read:

"61-8-802. Suspension of commercial driver's license — disqualification. (1) ~~Except as provided in subsection (3), if the department receives notice from a court or from another licensing jurisdiction that a person holding a commercial driver's license has been convicted of any offense or conduct requiring driver disqualification under 49 U.S.C. 31310 or 49 CFR 383.51~~ *Upon receipt of a report of a major offense committed by a person who holds a commercial driver's license or a person required to have a commercial driver's license*, the department shall suspend the person's commercial driver's license:

(a) upon ~~notice~~ *receipt of a report* of a first ~~conviction~~ *major offense*, for 1 year, except that if the *major* offense occurred while operating a commercial motor vehicle transporting placardable hazardous material, the suspension must be for 3 years; or

(b) upon ~~notice~~ *receipt of a report* of a second ~~conviction of the same offense or conduct~~ *or subsequent major offense arising from an incident that is separate from the prior major offense*, for life, subject to *department rules adopted to implement* federal rules allowing for license reinstatement, if *the person is* otherwise eligible, upon completion of a minimum suspension period of 10 years.

(2) ~~The department is required by federal law to suspend a person's commercial driver's license upon the report of~~ *For purposes of this section, the term "major offense" refers to a refusal to take a test under an implied consent law or* a conviction of *or forfeiture of bail not vacated for* any of the following offenses ~~or conduct~~:

(a) ~~operating a commercial~~ *driving or being in actual physical control of a* motor vehicle *while* under the influence of alcohol, ~~or a controlled substance~~ *a drug, or a combination of the two*;

(b) driving or being in actual physical control of:

(i) a noncommercial motor vehicle and having an alcohol concentration of 0.10 or more; or

(ii) a commercial motor vehicle and having an alcohol concentration of 0.04 or more;

~~(b)~~*(c)* leaving the scene of an accident involving ~~a commercial motor vehicle operated by the person~~ *death or personal injury or failing to give information and render aid*;

~~(c)~~*(d)* using a ~~commercial~~ motor vehicle in the commission of a felony, other than a felony under 61-8-804;

~~(d)~~*(e)* operating a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled or the person is disqualified from operating a commercial motor vehicle; *or*

~~(e)~~*(f)* causing a fatality through negligent or criminal operation of a commercial motor vehicle~~; or~~

~~(f) committing one of the following railroad grade crossing violations:~~

~~(i) for drivers who are not required to always stop:~~

~~(A) failing to slow down and check that the tracks are clear of an approaching train; or~~

~~(B) failing to stop before reaching the crossing if the tracks are not clear;~~

~~(ii) for drivers who are always required to stop, failing to stop before driving onto the crossing;~~

~~(iii) for all drivers:~~

~~(A) failing to have sufficient space to drive completely through the crossing without stopping;~~

~~(B) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or~~

~~(C) failing to negotiate a crossing because of insufficient undercarriage clearance.~~

~~(3) The department shall suspend the commercial driver's license of a person who is convicted of a railroad grade crossing violation for:~~

~~(a) 60 days upon a first conviction;~~

~~(b) 120 days upon a second conviction within a 3-year period; or~~

~~(c) 1 year upon a third or subsequent conviction within a 3-year period.~~

~~(4) A person whose commercial driver's license is suspended under this section:~~

~~(a) is not eligible for a restricted probationary driver's license; and~~

~~(b) may not operate a commercial motor vehicle until the suspension is lifted and the person's commercial driver's license is restored~~."

Section 15. Section 61-8-803, MCA, is amended to read:

"61-8-803. Suspension of commercial driver's license — serious traffic violations. (1) If the department receives notice from a court or another licensing jurisdiction that a person holding *or required to hold* a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding in excess of 15 miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely;

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident;

(f) operating a commercial motor vehicle without a commercial driver's license;

(g) operating a commercial motor vehicle without a commercial driver's license in one's possession or refusing to display a commercial driver's license upon request; or

(h) operating a commercial motor vehicle ~~when the minimum testing standards for the class of vehicle operated or the type of cargo carried have not been satisfied by the individual~~ *without the proper class of commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported*."

Section 16. Section 61-8-804, MCA, is amended to read:

"61-8-804. Suspension of commercial driver's license — felony involving a controlled substance while driving a commercial vehicle. If the department receives information that a ~~commercial motor vehicle operator~~ *person who holds or is required to hold a commercial driver's license* has been convicted of using a commercial *or noncommercial* motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by federal regulations, or a felony involving possession with intent to manufacture, distribute, or dispense a controlled substance, the department shall suspend the ~~operator's~~ *person's* commercial driver's license for life *and may not reinstate the license at any time for any reason*."

Section 17. Section 61-8-805, MCA, is amended to read:

"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more — hearing. (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle *or a prior refusal to be tested under an implied consent law* must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

Section 18. Section 61-8-806, MCA, is amended to read:

"61-8-806. Blood and breath tests of commercial vehicle operators — procedure — suspension. (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to one or more tests of the person's blood or breath for the purpose of determining a measured amount or detected presence of alcohol in the person's body if the person is requested to submit to the test or tests by a peace officer who has reasonable grounds to believe that the person was driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while having a measured alcohol concentration or detected presence of alcohol. The peace officer may designate the blood or breath test or tests to be administered and may request that the person submit to a preliminary alcohol screening test before a blood, breath, or urine test is taken.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a person refuses to submit to one or more tests designated by the officer, the test or tests may not be given, but the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a report certified under penalty of law that the officer had reasonable grounds to believe that the person was driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having a measurable alcohol concentration or detected presence of alcohol and that the person had refused to submit to one or more tests upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a person's commercial driver's license, the peace officer shall issue, on behalf of the department, a temporary 5-day noncommercial driving permit, effective 12 hours after the time of issuance, and shall provide the person with written notice of the license suspension and the right to a hearing under 61-8-808.

(5) Upon receipt of the officer's certified report, the department shall suspend the person's commercial driver's license, with no provision for a restricted probationary commercial driver's license, for:

(a) 1 year, upon a first refusal, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension for a first refusal must be for 3 years;

(b) life, upon a second or subsequent refusal at any time as determined from the records of the department, subject to *department rules adopted to implement* federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension. *If the person has a prior conviction of a major offense listed in 61-8-802(2) arising*

from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (5)(b)."

Section 19. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by the department. (1) The department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each ~~thereof note~~ the reasons for ~~such~~ denial;

(b) all applications granted; and

(c) the name of ~~every~~ *each* licensee whose license has been suspended or revoked by the department and after each ~~such~~ name ~~note~~ the reasons for ~~such~~ *the* action.

(2) *(a)* The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state. ~~and in connection therewith~~ *The department shall* maintain ~~convenient~~ records ~~or make suitable notations~~ in ~~order~~ *a manner* that *allows* an individual record of each licensee, showing the convictions of ~~such~~ *the* licensee and certain traffic accidents in which ~~he~~ *the licensee* has been involved. ~~shall~~ *The records must* be readily ascertainable and available for the consideration of the department upon any application for renewal of *a* license and at other suitable times. ~~No~~ *A* record of involvement in a traffic accident may *not* be entered on a licensee's record unless ~~he~~ *the licensee* was convicted, as defined in 61-11-203, for an act causally related to the accident.

(b) If the department receives notice that a licensee has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the licensee's record.

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of ~~such~~ *the* record to the motor vehicle administrator in the state ~~wherein~~ *in which* the person ~~so convicted~~ is a resident.

(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. ~~Such a~~ *A* photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.

(5) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records ~~need~~ *are* not *required to* be placed on a computer storage device.

(6) A reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the following certification by a custodian of the record appears on each page:

The individual named below, being a ~~duly~~ designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed: .....

(Print Full Name)"

Section 20. Repealer. Section 61-5-117, MCA, is repealed.

Section 21. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61 apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 61, chapter 8, part 8, and the provisions of Title 61 apply to [sections 2 and 3].

Section 22. Coordination instruction. If Senate Bill No. 13 and [this act] are both passed and approved, then the number 0.10 in [section 14(2)(b)(i)], amending 61-8-802, must be replaced by the number 0.08.

Section 23. Applicability. (1) [Sections 4 through 6] apply to the operation of a commercial motor vehicle on or after October 1, 2003.

(2) [Sections 1 and 7 through 11] apply to a driver's license issued or renewed on or after October 1, 2003.

(3) [Sections 2, 3, and 12 through 19] apply to conduct or offenses that occur on or after October 1, 2003.

Ap proved April 22, 2003

CHAPTER NO. 429

[HB 213]

AN ACT GENERALLY REVISING RETIREMENT LAWS; GENERALLY REVISING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDEN AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; GENERALLY REVISING THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CLARIFYING TERMINOLOGY RELATED TO SERVICE CREDIT; CLARIFYING PROVISIONS REGARDING THE PURCHASE OF SERVICE CREDIT; REVISING THE PURCHASE OF SERVICE CREDIT FOR RESERVE MILITARY SERVICE; CLARIFYING DEFINITIONS WITH RESPECT TO COMPENSATION, HIGHEST AVERAGE COMPENSATION, AND FINAL AVERAGE COMPENSATION; REVISING DISABILITY PROVISIONS; CLARIFYING SURVIVORSHIP PAYMENT PROVISIONS; REVISING PROVISIONS RELATED TO COURT SETTLEMENTS CONCERNING PAYMENT OF RETIREMENT BENEFITS; REVISING DEFINITIONS IN THE DEFERRED RETIREMENT OPTION PLAN WITHIN THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 7-33-2313, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-702, 19-2-704, 19-2-706, 19-2-708, 19-2-709, 19-2-801, 19-2-802, 19-2-907, 19-2-908, 19-2-909, 19-2-1010, 19-3-108, 19-3-401, 19-3-403, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-514, 19-3-521, 19-3-904, 19-3-906, 19-3-908, 19-3-1002, 19-3-1008, 19-3-1015,

19-3-1106, 19-3-1201, 19-3-1202, 19-3-1205, 19-3-1210, 19-3-1501, 19-3-2103, 19-3-2111, 19-3-2112, 19-3-2113, 19-3-2114, 19-3-2115, 19-3-2116, 19-3-2117, 19-3-2126, 19-3-2133, 19-3-2141, 19-5-101, 19-5-301, 19-5-409, 19-5-501, 19-5-502, 19-5-701, 19-6-101, 19-6-401, 19-6-502, 19-6-503, 19-6-601, 19-6-709, 19-6-801, 19-6-803, 19-6-804, 19-6-805, 19-7-101, 19-7-301, 19-7-312, 19-7-502, 19-7-601, 19-7-801, 19-7-803, 19-7-804, 19-7-805, 19-7-1001, 19-8-101, 19-8-301, 19-8-302, 19-8-308, 19-8-604, 19-8-701, 19-8-801, 19-8-901, 19-8-904, 19-8-905, 19-8-906, 19-9-104, 19-9-301, 19-9-403, 19-9-405, 19-9-406, 19-9-410, 19-9-411, 19-9-903, 19-9-1202, 19-9-1204, 19-9-1205, 19-9-1206, 19-9-1207, 19-9-1208, 19-13-104, 19-13-301, 19-13-403, 19-13-405, 19-13-406, 19-13-701, 19-13-704, 19-13-803, 19-13-1007, 19-17-108, 19-17-402, 19-17-403, 19-17-405, 19-50-102, AND 25-13-608, MCA; REPEALING SECTIONS 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, AND 19-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purchase of Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system to the extent that the member either has received or is eligible to receive a refund of accumulated contributions. To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(b).

(b) Upon receiving the member's payment under subsection (1)(a), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of service credit for full-time service performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes full-time public service, subject to 19-2-403.

Section 2. Section 7-33-2313, MCA, is amended to read:

"7-33-2313. Powers and duties of chief — request for assistance — definitions. (1) The chief of every fire department shall inquire into the cause of every fire occurring in the town in which the chief serves as the chief and ~~must~~ *shall* keep a record of every fire. The chief ~~must~~ *shall* aid in the enforcement of all fire ordinances, examine buildings in the process of erection, report

violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions for the violation of those ordinances, and perform other duties as may be imposed upon the chief by proper authority. The chief's compensation, if any, must be fixed and paid by the city or town authorities. The chief ~~must~~ *shall* attend all fires, with the chief's badge of office conspicuously displayed. The chief shall prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, must be fixed by a justice of the peace.

(2) The chief shall devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of the chief's department not less than 30 hours of instruction ~~per~~ *each* year in matters pertaining to firefighting.~~, and the~~ *The* chief shall supervise the operation of the *training* plan or program *and maintain training records for each current and former firefighter for the purposes of the public employees' retirement board provided for in 2-15-1009*.

(3) If the county commissioners, trustees of a fire district, or governing body of a fire service area have not concluded a mutual aid agreement to protect an unincorporated town or village against natural incidents, emergencies, or disasters or incidents, emergencies, or disasters caused by persons, the chief may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ~~ascribed to the term~~ *provided* in 10-3-103."

Section 3. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service *retirement benefit, early retirement benefit,* or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

~~(14) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate service or disability retirement or survivorship benefits under a defined benefit retirement plan.~~

~~(15)~~*(14)* "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

~~(16)~~*(15)* "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

~~(17)~~*(16)* "Department" means the department of administration.

~~(18)~~*(17)* "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

~~(19)~~*(18)* "Disability" *or "disabled"* means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(19) "Early retirement benefit" means the retirement benefit payable to a member following early retirement, and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who is not an active or retired member.

(25) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

(26) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) *(a)* "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a

defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and ~~employee~~ *member* contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service *retirement*, early *retirement*, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

~~(41)~~*(43)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(42)~~*(44)* "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(43)~~*(45)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(44)~~*(46)* "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(45)~~*(47)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(46)~~*(48)* "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account~~,~~*;*

(b) the vested portion of the employer's contribution account~~,~~*;* and

(c) the member's account for other contributions.

~~(47)~~*(49)* "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under the retirement plan; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

~~(48)~~*(50)* "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary."

Section 4. Section 19-2-403, MCA, is amended to read:

"19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in ~~an account in the state special revenue fund and must be appropriated to the board~~ *the appropriate retirement system fund* for the benefit of participants of retirement systems or plans administered by the board.

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act.

(13) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

Section 5. Section 19-2-506, MCA, is amended to read:

"19-2-506. Payment of contributions by employers — accompanying reports — penalty. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. *Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.*

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish the method of reporting, the reporting period, and the frequency of reports to meet the demands of the relevant retirement system or plan. *The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.*

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials."

Section 6. Section 19-2-603, MCA, is amended to read:

"19-2-603. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without ~~credit for any~~ previous membership service *or service credit*. The person may reinstate that membership service *or service credit* by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the *membership service and* service ~~credits~~ *credit* previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in ~~this section~~ *19-2-801*."

Section 7. Section 19-2-702, MCA, is amended to read:

"19-2-702. Membership service. A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The *membership* service must be used to determine:

(1) whether a member is vested;

(2) when the member is eligible for ~~early or normal~~ service retirement*, early retirement,* or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits."

Section 8. Section 19-2-704, MCA, is amended to read:

"19-2-704. Purchasing service credits allowed — payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions

required by the member's retirement system to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service ~~credits~~ *credit*, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service *credit* as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be signed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any contributions made before the effective date or to any

contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction*, except when a member with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j).*

(7) If a member terminates service or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid as of the date of termination unless further payment is made as provided in this subsection. In the case of a termination, the member may make a lump-sum payment for *up to* the balance of the service *credit remaining to be purchased,* subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 9. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service *credit* for member involuntarily terminated from ~~membership~~ service. (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a legislator, because of term limits terminating the service of the legislator in either one of the houses of the legislature;

(c) the employee is eligible for ~~a normal~~ service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service *credit* purchased under this section is the total actuarial cost of purchasing the service *credit* based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service *credit* that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804,

or 19-8-904. The employer-paid portion ~~applied toward the service purchase~~ must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service *credit* that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service *credit* purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service *credit* to be purchased and the ~~amount contributed by~~ *contribution required from* the employer under subsection (3). A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) *(a)* A member who has received additional service *credit* under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system forfeits the additional service *credit*. The employer's contribution to purchase that member's additional service *credit*, minus any retirement benefits already paid, must be credited to the employer.

(b) As used in ~~this~~ subsection *(6)(a)*, the ~~same jurisdiction~~ *term "same jurisdiction"* means all agencies of the state, including the university system."

Section 10. Section 19-2-708, MCA, is amended to read:

"19-2-708. Rollover of contributions. (1) A member who elects to and is eligible to purchase service *credit* from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, file a written application with the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service *credit* that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code."

Section 11. Section 19-2-709, MCA, is amended to read:

"19-2-709. Transfer of service and contributions from other Montana public employee retirement systems. (1) A member eligible to transfer service *credit*, pursuant to ~~19-3-509,~~ *[section 1] and* 19-3-511, ~~19-6-802, 19-7-802, 19-8-902, 19-9-405, or 19-13-404,~~ into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board."

Section 12. Section 19-2-801, MCA, is amended to read:

"19-2-801. Designation of beneficiary. (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, *estate of the payment recipient,* or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board. *The most recent beneficiary designation filed with the board is effective for all purposes.*

(2) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

~~(2)~~*(3)* A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient."

Section 13. Section 19-2-802, MCA, is amended to read:

"19-2-802. Effect of no designation or no surviving designated beneficiary. (1) If a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate*, as either a designated beneficiary or as a beneficiary by default as provided in this subsection,* would not be probated but for the amount due *to the estate* from the retirement system, all of the amount due *to the estate* must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed.

Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 14. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) ~~Service retirement~~ *Retirement* benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned as a percentage only if existing benefit

payments are apportioned as a percentage. The adjustments must be apportioned as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments ~~from~~ *or* an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

Section 15. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated ~~covered~~ service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before terminating ~~covered~~ service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the ~~service~~ retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that ~~service~~ retirement benefits from a defined

benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 16. Section 19-2-909, MCA, is amended to read:

"19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) ~~Service retirement~~ *Retirement* benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may not be established for an alternate payee.

(b) If the participant is receiving periodic payments ~~from~~ *or* an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments apportioned from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

Section 17. Section 19-2-1010, MCA, is amended to read:

"19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the plan to retain its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules, *policies, and plan documents* adopted by the board.

(3) The board may adopt rules to implement this section."

Section 18. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a);

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service *or, with respect to a member who has attained 65 years of age but has not served at least 36 months, total compensation earned divided by the number of months the member has served.* Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 19. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees shall become members of the defined benefit plan on the first day of

service. Each employer shall file with the board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) A member of the defined benefit plan with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member of the defined benefit plan with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement plan. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) A member of either the defined benefit plan or the defined contribution plan who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as *membership* service in determining eligibility for ~~membership under this chapter~~ *retirement benefits*."

Section 20. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for ~~service~~ *employment*. It is the purpose of this subsection to prevent a person from receiving credit for the same ~~service~~ *employment* in two retirement systems supported wholly or in part by public funds, except when the service qualifies~~,~~ *and* is applied for~~,~~ and *the service credit* is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service *credit* excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive ~~credited~~ service *credit* for the excluded service under the provisions of 19-3-505."

Section 21. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option by filing an irrevocable, written application with the board within 180 days of commencement of their employment:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service *credit*. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service *credit* under this subsection (2)(b).

(3) If an employee declines optional membership, the employee shall sign a statement waiving membership and file it with the employer. The employer shall file the statement with the board and retain a copy of the statement. An

employee who declines optional membership may not receive membership ~~credit~~ *service* or service credit for the employment for which membership was declined.

(4) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service *credit* pursuant to this subsection must comply with 19-3-505.

(5) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(6) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more, an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(7) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service.

(8) If an employee or official fails to file with the board an irrevocable, written application within the time allowed in this section, the employee or official waives membership."

Section 22. Section 19-3-503, MCA, is amended to read:

"19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection ~~(2)~~ *(1)(b)* and subject to 19-3-514, a member with at least 10 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit *and membership service* for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

~~(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(2)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to

August 15, 1945, with a military service retirement benefit based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 10 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."

Section 23. Section 19-3-504, MCA, is amended to read:

"19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service ~~credits~~ *credit* and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to ~~covered~~ service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to ~~covered~~ service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence."

Section 24. Section 19-3-505, MCA, is amended to read:

"19-3-505. Purchase of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase of service *credit* under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay the amount that the member and the member's employer would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(c).

(c) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees."

Section 25. Section 19-3-510, MCA, is amended to read:

"19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may purchase the federal employment as service *credit* in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) purchase *service credit for* the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation, provided that the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee."

Section 26. Section 19-3-511, MCA, is amended to read:

"19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system. (1) Except as provided in

subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service *credit* under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514*, except as provided in subsection (3)(c)*.

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who ~~also~~ has service credit in the teachers' retirement system dies before the member purchases this service *credit* in the public employees' retirement system and if the service ~~credits~~ *credit* from both systems, when combined, ~~entitle~~ *entitles* the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service *credit* in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service *credit*, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request."

Section 27. Section 19-3-512, MCA, is amended to read:

"19-3-512. Purchase of service *credit* from other public retirement systems. (1) Subject to 19-3-514, a member with at least 5 years of membership service in the public employees' retirement system may purchase *service credit for*:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service *credit* under this section. To purchase this service *credit*, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service *credit* in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service *credit* purchased under this section may not be used to qualify a member to purchase military service under 19-3-503.

(4) Service *credit* purchased under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If, upon the member's retirement, the member's purchased service *credit* cannot be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid to purchase the service *credit*, plus regular interest on that amount."

Section 28. Section 19-3-513, MCA, is amended to read:

"19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service *credit* under this section, a member shall pay the actuarial cost of the service *credit*, based on the system's most recent actuarial valuation.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for service retirement."

Section 29. Section 19-3-514, MCA, is amended to read:

"19-3-514. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, and 19-3-513.

(2) A member who has purchased service *credit* under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service *credit* under 19-3-513 must receive credit for the full months of service *credit* purchased on or before January 1, 1990."

Section 30. Section 19-3-521, MCA, is amended to read:

"19-3-521. Service credit for legislative members. A member of the legislature of Montana must ~~be credited with~~ *receive* membership service *and*

service credit for that portion of each year for which the member pays regular contributions."

Section 31. Section 19-3-904, MCA, is amended to read:

"19-3-904. Amount of service retirement benefit. (1) Except as provided in subsection (2), the monthly amount of *service* retirement benefit payable to a member following ~~service~~ retirement is the greater of subsection (1)(a) or (1)(b) as follows:

(a) one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit; or

(b) a monthly benefit that is the sum of:

(i) the actuarial equivalent of double the member's regular contributions and regular interest; plus

(ii) the actuarial equivalent of any additional contributions and regular interest.

(2) ~~The~~ *For a member with at least 25 years of membership service, the* monthly amount of *service* retirement benefit ~~payable to a member who has at least 25 years of membership service is~~ *must be* equal to one-fiftieth of the member's highest average compensation multiplied by the number of years of the member's total service credit *instead of the amount calculated under subsection (1)(a)*."

Section 32. Section 19-3-906, MCA, is amended to read:

"19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of *membership* service ~~credit~~ pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any additional service *credit* purchased under 19-3-513."

Section 33. Section 19-3-908, MCA, is amended to read:

"19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service *credit* that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service *credit* for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service *credit* provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for ~~normal~~ service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service *credit*, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions."

Section 34. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service *retirement* or early retirement but *who* has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008(1).

(2) An active member ~~age~~ *who is* 60 *years of age* or older *and* who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71,

for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3)."

Section 35. Section 19-3-1008, MCA, is amended to read:

"19-3-1008. Benefit for disability. (1) The monthly amount of the *disability* retirement benefit payable to a member ~~eligible for disability retirement~~ under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service *credit* purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service *credit* purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to one-fiftieth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service *credit* purchased under 19-3-513.

(4) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature."

Section 36. Section 19-3-1015, MCA, is amended to read:

"19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines *that* the member is not incapacitated or if the member refuses to submit to a medical examination, the member's *disability* retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit."

Section 37. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exception. (1) A retired member under 65 years of age who is receiving a service *retirement benefit or early* retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in ~~covered~~ service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

Section 38. Section 19-3-1201, MCA, is amended to read:

"19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death ~~benefit~~ *payment* to the designated beneficiary of any member who dies:

(1) while in service;

(2) within 6 months after the discontinuance of service but before retirement;

(3) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months; ~~or~~

(4) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit*; or*

(5) while an inactive member."

Section 39. Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of lump-sum death payment. *(1)* The amount of payment to be made to those eligible for death payments is the sum of subsections (1)*(a),* ~~(2)~~ *(1)(b)*, and ~~(3)~~ *(1)(c)* as follows:

~~(1)~~*(a)* the member's accumulated contributions;

~~(2)~~*(b)* an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

~~(3)~~*(c)* the accumulated regular interest on the amounts in subsections ~~(1)~~ *(1)(a)* and ~~(2)~~ *(1)(b)* to the first day of the month in which the payment is made.

(2) A beneficiary of an inactive member is not eligible to receive the payment described in subsection (1)(b)."

Section 40. Section 19-3-1205, MCA, is amended to read:

"19-3-1205. Amount of survivorship benefit. The survivorship benefit payable to a member's designated beneficiary is the actuarial equivalent of:

(1) the accrued portion of the early retirement benefit pursuant to 19-3-906 that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of *membership* service ~~credit~~ at the time of death;

(2) if the deceased member had attained age 50 or earned 25 years of *membership* service ~~credit~~ at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(3) if the deceased member had attained age 60 or earned 30 years of *membership* service ~~credit~~ at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death."

Section 41. Section 19-3-1210, MCA, is amended to read:

"19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary *or estate* must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

Section 42. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has ~~not been granted the~~ *no* right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ *a* family law order*, as defined in 19-2-907*.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement*, designate a different contingent annuitant, or select a different option* if:

(i) the contingent annuitant has died, in which case the optional benefit ~~must~~ *may* revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 43. Section 19-3-2103, MCA, is amended to read:

"19-3-2103. Legislative intent. It is the intent of the legislature that, in implementing and administering the defined contribution plan:

(1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;

(2) the administrative structure for the plan be configured in an economical and efficient manner;

(3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;

(4) reasonable ~~participant~~ *member* services be provided for and that fees be commensurate with the services;

(5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and

(6) employers be encouraged to provide paid time for ~~employees~~ *members* to attend educational programs sponsored by the board pursuant to 19-3-112."

Section 44. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period*;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within 12 months after the member's rehire date, elect to transfer to and become a member of the plan *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period*;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within 12 months of the member's hire date, elect to become a member of the plan *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period*.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after ~~an employee~~ *a member* has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined

contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

Section 45. Section 19-3-2112, MCA, is amended to read:

"19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights. (1) If ~~an employee of~~ *a member who is employed by* the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer *membership* to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A *member employed by the* university ~~employee~~ *system* who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within 12 months after that date, elect to transfer to and become a member of the optional retirement program *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period*.

(ii) A ~~university employee~~ *member* who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within 12 months after the member's hire or rehire date, elect to transfer to and become a member of the optional retirement program *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period*.

(iii) ~~An employee~~ *A member* who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within 12 months of the member's hire date, elect to become a member of the optional retirement program *regardless of whether the member remains active, becomes inactive, or terminates covered employment and plan membership within the 12-month period*.

(b) Elections made pursuant to this section must be made on a form prescribed by the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this

subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) ~~A~~ *Except as provided in subsection (2)(g), a* university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under *chapters 3 and 21 of* this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

~~(g)~~*(h)* The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

~~(h)~~*(i)* A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer *membership* to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

Section 46. Section 19-3-2113, MCA, is amended to read:

"19-3-2113. Reinstatement of plan membership — purchase of prior service *credit* in defined benefit plan. (1) (a) A ~~participant~~ *member* who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months shall become a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A ~~participant~~ *member* who terminated membership in ~~either~~ the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan may reinstate prior membership service *and service credit* as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan may purchase prior membership service *and service credit* by paying to the board the full actuarial cost of the service *credit* as of the latest actuarial valuation of the defined benefit plan. The ~~employee~~ *member* may not purchase membership service *and service credit* under this section in excess of the ~~employee's~~ *member's* length of service ~~as a member of~~ *in* the defined contribution plan or the optional retirement program."

Section 47. Section 19-3-2114, MCA, is amended to read:

"19-3-2114. Amount available to transfer. (1) (a) For an employee who was a system member on the day before the effective date of the defined contribution plan and who elects to transfer to the plan, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of *membership* service, the percentage of the employer contributions that may be transferred are as follows:

Years of *membership* service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been credited to the member's

account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus 8% compounded annual interest."

Section 48. Section 19-3-2115, MCA, is amended to read:

"19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting. (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another ~~qualified~~ *eligible retirement* plan to the member's vested account *as allowed under applicable federal law*.

(b) To transfer service *credit* from another retirement system in this title, an employee must be a member of the defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the defined contribution plan. The transferred service *credit* may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

(2) ~~(a) After-tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after-tax basis.~~

~~(b) To the extent that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code.~~ *The board shall accept a direct rollover of eligible distributions from another eligible retirement plan only to the extent permitted by the Internal Revenue Code.*"

Section 49. Section 19-3-2116, MCA, is amended to read:

"19-3-2116. Vesting — mandatory termination of membership — forfeitures. (1) A ~~member is fully vested with~~ *member's contribution account includes* the member's contributions and the income on those contributions *and is vested* from the date that the employee becomes a member of the plan~~, but is not considered a vested member unless the member meets the criteria under subsection (2)~~.

(2) A ~~member is not vested with~~ *member's employer contribution account includes* the employer's contributions and the income on those contributions and ~~does not attain the status of a vested member until~~ *is vested only when* the member has a total of 5 years of membership service under the system.

(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates covered employment after becoming a vested member may terminate plan membership as provided in 19-3-2123.

~~(3)~~*(5)* A member who terminates covered employment before becoming a vested member shall terminate plan membership ~~by removing from the plan the member's entire vested account balance~~ as provided in 19-3-2123 *and subject to 19-3-2126*. ~~The employer contributions and income on the employer's contributions in the member's retirement account are forfeited and must be allocated as provided in 19-3-2117.~~

(6) If the member's employer contribution account is not vested upon termination of covered employment, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117."

Section 50. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) Each plan member's retirement account must be credited with the ~~employee~~ *member* contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in 19-3-2121, beginning on the plan's effective date, of the employer contributions under 19-3-316, an amount equal to:

(a) 4.19% of compensation must be allocated to the member's retirement account;

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate; and

(c) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(c).

(3) Subject to adjustment by the board pursuant to 19-3-2121(6) and beginning on the plan's effective date, of the employer contributions under 19-3-316, 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141.

(4) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 51. Section 19-3-2126, MCA, is amended to read:

"19-3-2126. Refunds — minimum account balance — adjustment by rule. (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account *balance.*

(2) Except as provided in 19-3-2142, a ~~nonvested~~ member who terminates from service and whose vested account balance is less than $200 must be paid the vested account balance in a lump sum. *If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.* The payment must be made as soon as administratively feasible after the member's termination without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a ~~nonvested~~ member who terminates from service and whose vested account balance is between $200 and $5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible after the member's termination. *If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.*

(4) (a) Except as provided in 19-3-2142, upon the written application of a terminating member whose vested account balance is $200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating,

on forms provided by the board, ~~a~~ *an eligible* retirement plan that allows the rollover ~~and is qualified~~ under applicable federal law.

(b) The direct rollover distribution must be paid directly to the ~~qualified~~ *eligible* retirement plan.

~~(c) Except as provided in 19-3-2142, the amount of the member's vested account balance not eligible for a direct rollover distribution under subsection (4)(a) must be paid to the member in a lump sum.~~

(5) A member who terminates service with an account balance greater than $5,000, whether vested or not, may remain in the plan.

~~(5)~~*(6)* The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation."

Section 52. Section 19-3-2133, MCA, is amended to read:

"19-3-2133. ~~Creation of employee~~ *Employee* investment advisory council. The board shall~~, by August 1, 1999,~~ create an employee investment advisory council. The advisory council shall meet at least ~~quarterly~~ *four times a year* to:

(1) advise the board concerning the ~~establishment and~~ operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(2) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(3) review existing deferred compensation plans and to advise the board on the administration of the program."

Section 53. Section 19-3-2141, MCA, is amended to read:

"19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking. (1) (a) Except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service *credit*, including any service credit purchased under 19-3-513.

(b) An eligible member with at least 25 years of *membership* service ~~credit~~ is entitled to a disability benefit equal to one-fiftieth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) *if the member's disability occurred when the member was 60 years of age or less,* the benefit may be paid only until the member reaches ~~60~~ *65* years of age; ~~and~~

(c) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years; and

~~(c)~~*(d)* the member ~~must~~ *shall* satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(3) Application for a disability benefit must be made in accordance with 19-3-1005.

(4) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(5) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.

(6) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(7) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section."

Section 54. Section 19-5-101, MCA, is amended to read:

"19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration, as defined in 2-16-403, 3-5-211, and 3-7-222, paid to a member.

(2) "Current salary" means the current compensation for the office retired from.

(3) "Highest average compensation" means ~~the average of the~~ *a* member's highest *average* monthly compensation during any 36 consecutive months of membership service ~~in the retirement system~~.

(4) "Involuntary retirement" means a retirement not for cause and before retirement age.

(5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

Section 55. Section 19-5-301, MCA, is amended to read:

"19-5-301. Membership — inactive vested members — inactive nonvested members. (1) Except for a judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge provided for in 3-7-221 must be members of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 56. Section 19-5-409, MCA, is amended to read:

"19-5-409. Application to purchase additional service. (1) At any time before retirement, a member may file a written application with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has in the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board.

(3) A member may not purchase more than 5 years of service *credit* under 19-2-707 and this section.

(4) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 57. Section 19-5-501, MCA, is amended to read:

"19-5-501. Eligibility for service retirement. (1) A member who has at least 5 years of membership service and has reached the age of 60 has attained normal retirement age and may retire and receive the *service* retirement benefits provided in 19-5-502.

(2) Retirement benefits may not be approved by the board while the member is drawing full compensation as a judge or justice. However, benefits may not be withheld for receiving compensation as a judge pro tempore."

Section 58. Section 19-5-502, MCA, is amended to read:

"19-5-502. Service retirement benefit. ~~Upon retirement~~ *After termination* from service *and upon application for service retirement,* the service retirement benefit must be as follows:

(1) for members not covered under 19-5-901, 3 1/3% a year of the member's current salary for the first 15 years of ~~credited~~ service *credit* and 1.785% a year for each year of ~~credited~~ service *credit* after 15 years; or

(2) for members covered under 19-5-901, the benefit provided under subsection (1) except that the benefit must be calculated using highest average compensation."

Section 59. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, *as defined in 19-2-907,* in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has ~~not been granted the~~ *no* right to receive the optional retirement benefit as part of ~~the divorce settlement~~ *a family law order.*

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 60. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) *(a)* "Compensation" means remuneration paid ~~for services to a member out of~~ *from* funds controlled by an employer *in payment for the member's services*

or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by ~~the Internal Revenue Code have been~~ *state or federal law are* made. ~~and exclusive of~~

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Dependent child" means an unmarried child of a deceased retired member, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Highest average compensation" means ~~the~~ *a member's* highest average monthly compensation ~~received by a member for~~ *during* any ~~3 years of continuous service upon which contributions have been made~~ *36 consecutive months of membership service* or, in the event a member has not served ~~3 years~~ *at least 36 months*, the total compensation earned divided by the number of months ~~served~~ *of service*. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee~~ *the member* upon termination of ~~service~~ *employment* may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(4) "Surviving spouse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 61. Section 19-6-401, MCA, is amended to read:

"19-6-401. Payments into pension trust fund. All appropriations made by the state, all contributions by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, *all fees or portions of fees that are required by law to be paid to the retirement system or trust fund*, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be ~~paid to~~ *deposited in* the pension trust fund."

Section 62. Section 19-6-502, MCA, is amended to read:

"19-6-502. Service retirement benefit. ~~Upon retirement~~ *After termination* from service *and upon application for service retirement*, a member must receive a service retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

Section 63. Section 19-6-503, MCA, is amended to read:

"19-6-503. Early retirement benefit for member discontinued from service other than for cause. If a member is discontinued from service other than for cause after having completed 5 years of membership service but before reaching *normal* retirement age, the member must, upon filing a written application with the board, be paid an early *service* retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60."

Section 64. Section 19-6-601, MCA, is amended to read:

"19-6-601. Disability retirement benefit. (1) ~~In the case of the disability of a~~ *A* member~~,~~ *who becomes disabled must be granted* a disability retirement benefit ~~must be granted the member~~ that is the actuarial equivalent of the service retirement benefit under 19-6-502 standing to the member's credit at the time of the member's disability retirement. ~~If the disability is~~

(2) A member who becomes disabled as a direct result of ~~any~~ *the member's* service ~~to the Montana highway patrol~~ in the line of duty~~, then the member who is disabled must be retired on a disability retirement benefit of one-half the member's highest average compensation regardless of the member's length of service.~~*:*

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit.

~~(2)~~*(3)* Upon the death of a ~~retired~~ member receiving a disability retirement benefit ~~as provided in subsection (1)~~ *under this section*, ~~the benefit must be paid to~~ the member's surviving spouse or dependent child~~, if there is a spouse or child, in the same manner~~ *is eligible for benefits* as provided ~~for~~ in 19-6-505~~(2) and (3)~~."

Section 65. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees. (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability benefit under 19-6-601 or a survivorship benefit under 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's ~~covered~~ service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) The ~~lump-sum payment~~ *amount of fees transferred to the pension trust fund pursuant to 15-1-122(3)(e), 61-3-527(4)(b), and 61-3-562(1)(b)* must be distributed proportionally *as a lump-sum benefit payment* to ~~all~~ *each* eligible ~~recipients~~ *recipient* based on service credit at the time of retirement, subject to the following:

(a) a recipient under subsection (2)(c) is considered to have 20 years of service *credit* for the purposes of the distributions;

(b) any recipient of a ~~service~~ retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(c) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. (Terminates upon death of last eligible recipient—sec. 1, Ch. 567, L. 1991.)"

Section 66. Section 19-6-801, MCA, is amended to read:

"19-6-801. Application to purchase military service. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-6-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(2) To purchase this military service:~~

~~(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.~~

~~(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-6-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section:

(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The combined total of active and reserve military service credit and membership service that a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation."

Section 67. Section 19-6-803, MCA, is amended to read:

"19-6-803. Application to purchase law enforcement service performed in another state. (1) Subject to 19-6-805, a member with at least 5 years of *membership* service ~~credit~~ may, at any time before retirement, file a written application with the board to purchase 1 year of out-of-state law enforcement employment for each year of service credit, unless the member is eligible to receive a retirement benefit in another system or plan for that same service.

(2) To purchase this service *credit*, a member shall pay the actuarial cost of the service *credit* in the retirement system, as determined by the board, based on:

(a) the member's compensation for the 12 months immediately preceding the date of the member's election to ~~cover~~ *purchase* the service *credit* under the retirement system; and

(b) the actuarial rate in effect at the time of purchase of service *credit*.

(3) Service *credit* purchased under this section may not be used to qualify a member to purchase military service *credit* under 19-6-801.

(4) Service *credit* purchased under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If, upon retirement, a member's purchased service *credit* may not be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid by the member to purchase the service *credit*, plus regular interest on that amount."

Section 68. Section 19-6-804, MCA, is amended to read:

"19-6-804. Application to purchase additional service. (1) Subject to 19-6-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has in the retirement system.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit*, based on the system's most recent actuarial valuation as determined by the board.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 69. Section 19-6-805, MCA, is amended to read:

"19-6-805. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service *credit* under 19-6-801, 19-6-803, and 19-6-804."

Section 70. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) *(a)* "Compensation" means remuneration paid ~~for services to a member out of~~ *from* funds controlled by an employer *for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence* before any pretax deductions allowed by ~~the Internal Revenue Code~~ *state or federal law* are made ~~and exclusive of~~.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Highest average compensation" means ~~the~~ *a member's* highest average monthly compensation ~~received by a member for~~ *during* any ~~3 years~~ *36 consecutive months* of ~~continuous service from which contributions were deducted~~ *membership service* or, in the event ~~that~~ a member has not served ~~3 years~~ *at least 36 months*, the total compensation earned divided by the number of months ~~served~~ *of service*. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee~~ *the member* upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 71. Section 19-7-301, MCA, is amended to read:

"19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator ~~must~~ *shall* become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(4) A sheriff or investigator who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 72. Section 19-7-312, MCA, is amended to read:

"19-7-312. Transfer of membership — ~~qualification~~ *purchase* of previous service. A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's ~~creditable~~ service *credit* in the public employees' retirement system into the sheriffs' retirement system under the provisions of ~~19-7-802~~ *[section 1]*."

Section 73. Section 19-7-502, MCA, is amended to read:

"19-7-502. ~~Early retirement~~ *Retirement* option. A member with at least 5 *but less than 20* years of membership service ~~and who has not met the minimum eligibility requirements for service retirement~~ may retire with ~~an early~~ *a* retirement benefit commencing no sooner than the first day of the month following the member's 50th birthday. The ~~early~~ retirement benefit must be calculated to be the actuarial equivalent of the member's *service* retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed 20 years of membership service or reached age 60, whichever event would have occurred first."

Section 74. Section 19-7-601, MCA, is amended to read:

"19-7-601. Disability retirement benefit. *(1)* ~~In the case of the disability of a member, regardless of the member's length of service~~, *A member who becomes disabled must be granted* a disability retirement benefit ~~must be awarded to the member based on~~ *that is* the actuarial equivalent of the ~~member's~~ service retirement benefit under 19-7-503 standing to the member's credit at the time of the member's disability retirement. ~~If the disability is~~

(2) A member who becomes disabled as a direct result of the member's service ~~as a member~~ in the line of duty~~, then the member must be awarded a benefit of one-half of the member's highest average compensation.~~:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

Section 75. Section 19-7-801, MCA, is amended to read:

"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service *credit* in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service ~~credited~~ *credit* under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service ~~credited~~ *credit*, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as

defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

Section 76. Section 19-7-803, MCA, is amended to read:

"19-7-803. Application to purchase military service. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-7-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-7-805, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

(4) Military service *credit and membership service* purchased under ~~this section~~ *subsection (1) or (2)* is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."

Section 77. Section 19-7-804, MCA, is amended to read:

"19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit* in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service *credit* purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.

(4) Service *credit* purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits."

Section 78. Section 19-7-805, MCA, is amended to read:

"19-7-805. Service purchase limitation. A member may not purchase a combined total of more than 5 years of service *credit* under 19-7-803 and 19-7-804."

Section 79. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant, as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, *as defined in 19-2-907,* in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has ~~not been granted the~~ *no* right to receive the optional retirement benefit as part of the ~~divorce settlement~~ *a family law order.*

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 80. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) *(a)* "Compensation" means remuneration paid ~~for services to a member out of~~ *from* funds controlled by an employer *in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence* before any pretax deductions allowed by ~~the Internal Revenue Code~~ *state or federal law* are made ~~and exclusive of~~.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Highest average compensation" means ~~the~~ *a member's* highest average monthly compensation ~~received by a member for~~ *during* any ~~3 years~~ *36 consecutive months* of ~~continuous service upon which contributions were made~~ *membership service* or, in the event a member has not served ~~3 years~~ *at least 36 months,* the total compensation earned divided by the number of months ~~served~~ *of service.* Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to ~~an employee~~ *the member* upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 81. Section 19-8-301, MCA, is amended to read:

"19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, shall become and remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) wardens and deputy wardens employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock;

(h) motor vehicle inspectors employed by the department of justice; and

(i) drill instructors employed by the department of corrections.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 82. Section 19-8-302, MCA, is amended to read:

"19-8-302. Public employees' retirement system — transfer of membership. (1) Except as provided in subsections (2) and (4), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of ~~covered~~ service.

(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by

filing a written election that must be received by the board no later than December 31, 2001.

(3) A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the retirement system by filing a written election with the board no later than 30 days after transfer to the new position.

(4) A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than 30 days after transfer to the new position."

Section 83. Section 19-8-308, MCA, is amended to read:

"19-8-308. Transfer of service. A person who elects to become a member of the game wardens' and peace officers' retirement system pursuant to 19-8-302 may transfer the member's service *credit* in the public employees' retirement system into the game wardens' and peace officers' retirement system under the provisions of ~~19-8-902~~ *[section 1]*."

Section 84. Section 19-8-604, MCA, is amended to read:

"19-8-604. Early retirement benefit. If a member is discontinued from service after having completed 5 years of membership service but before reaching *normal* retirement age, the member must, upon filing a written application with the board, be paid a *service* retirement benefit beginning on the member's 55th birthday calculated under the provisions of 19-8-603."

Section 85. Section 19-8-701, MCA, is amended to read:

"19-8-701. Disability retirement benefit. (1) A member who ~~is determined by the board to be~~ *becomes* disabled must be granted a disability retirement benefit ~~in an amount calculated on~~ *that is* the actuarial equivalent of the service retirement benefit *under 19-8-603* standing to the member's credit at the time of the member's disability retirement.

(2) ~~If the disability is~~ *A member who has at least 5 years of membership service and who becomes disabled as* a direct result of ~~any~~ *the member's* service ~~to the state~~ in the line of duty ~~and the member has at least 5 years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's highest average compensation.~~*:*

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's highest average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's highest average compensation for each year of service credit."

Section 86. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must, in lieu of all other benefits under this chapter, be converted into an optional retirement benefit that is the

actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to a contingent annuitant as follows:

(a) option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—upon the initial payee's death, other actuarially equivalent amounts payable to a contingent annuitant as may be approved by the board.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary ~~was not granted the~~ *has no* right to receive the optional retirement benefit as part of ~~the dissolution settlement or~~ a family law order, *as defined in 19-2-907*, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the ~~dissolution settlement or~~ family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the ~~value~~ *amount* of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

(7) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of ~~the divorce settlement~~ *a family law order*.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 87. Section 19-8-901, MCA, is amended to read:

"19-8-901. Application to purchase military service. (1) (a) Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-8-906, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.~~

~~(2)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-8-906, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service based on the system's most recent actuarial valuation."

Section 88. Section 19-8-904, MCA, is amended to read:

"19-8-904. Application to purchase additional service. (1) Subject to 19-8-906, a member with at least 5 years of membership service, may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified in the retirement system.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit*, based on the system's most recent actuarial valuation as determined by the board.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of

an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 89. Section 19-8-905, MCA, is amended to read:

"19-8-905. Absence due to injury or illness. (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service ~~credits~~ *credit* for the absence unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service ~~credits~~ *credit* and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to ~~covered~~ service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to ~~covered~~ service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence."

Section 90. Section 19-8-906, MCA, is amended to read:

"19-8-906. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service *credit* under 19-8-901 and 19-8-904."

Section 91. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) *(a)* "Compensation" means the remuneration~~, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave,~~ paid ~~for services to a member out of~~ *from* funds controlled by an employer *in payment for the member's services* before any pretax deductions allowed by~~the Internal Revenue Code have been~~ *state or federal law are* made.

(b) Compensation does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave and annual leave; and

(ii) maintenance, allowances, and expenses.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member~~,~~ averaged over the last 36 months of the member's service or, in the event a member has not~~been a member that long, over the period of membership~~ *served at least 36 months, the total compensation earned divided by the number of months of service.*

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Police officer" means an appointed, lawfully trained, appropriately salaried, and regularly acting officer with the requisite professional certification and licensing.

(8) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(9) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(10) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(11) "Survivor" means a surviving spouse or dependent child of the member."

Section 92. Section 19-9-301, MCA, is amended to read:

"19-9-301. Active membership — inactive vested member — inactive nonvested member. (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system, as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date. A person who is a member of the public employees' retirement system on the date of the employer's election may remain in the public employees' retirement system or may elect to become a member of

the municipal police officers' retirement system by filing a written election with the board no later than 30 days after the date of the employer's election.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 93. Section 19-9-403, MCA, is amended to read:

"19-9-403. Application to purchase military service. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-9-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-9-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

(4) The combined total of active and reserve military service credit and membership service a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less."

Section 94. Section 19-9-405, MCA, is amended to read:

"19-9-405. Purchase of other Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' and peace officers' retirement system to the extent that the member either has received or is eligible to receive a refund of the member's accumulated contributions.

(b) To purchase this service *credit*, the member shall pay the actuarial cost of the service *credit* in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, file a written application with the board to purchase all or a portion of full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to the board's rules. To purchase service *credit* under this section, the employee shall pay the actuarial cost of the service *credit* in the municipal police officers' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service."

Section 95. Section 19-9-406, MCA, is amended to read:

"19-9-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service *credit* under 19-9-403 and 19-9-411."

Section 96. Section 19-9-410, MCA, is amended to read:

"19-9-410. Transfer to public employees' retirement system. When an injured nonvested member accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under the public employees' retirement system, all service and contributions previously credited with the municipal police officers' retirement system must be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred must be equal to the amount that would have been contributed if the transferred service *credit* had been normal employment covered under the public employees' retirement system."

Section 97. Section 19-9-411, MCA, is amended to read:

"19-9-411. Application to purchase additional service. (1) Subject to 19-9-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation as determined by the board.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 98. Section 19-9-903, MCA, is amended to read:

"19-9-903. Amount of disability retirement benefit — continuation of benefit after death of member. (1) A member who ~~is eligible under 19-9-902 before earning 20 years of service credit must receive a disability retirement benefit equal to one-half the member's final average compensation~~ *becomes disabled:*

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's final average compensation; or

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

~~(2) A member who is retired under 19-9-902 and who, at the time of the member's injury or disability, was eligible at the member's option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of service credit and was then serving additional years must be paid for the additional years at the rate prescribed in 19-9-804.~~

~~(3)~~*(2)* Upon the death of a member receiving a disability retirement benefit under this section, the member's surviving spouse or dependent child is eligible for benefits as provided in 19-9-804."

Section 99. Section 19-9-1202, MCA, is amended to read:

"19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP accrual" means the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes, plus interest.

~~(2)~~*(3)* "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

~~(3)~~*(4)* "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated employment and retired.

~~(4)~~*(6)* "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part."

Section 100. Section 19-9-1204, MCA, is amended to read:

"19-9-1204. Eligibility — participation criteria — membership status — service interruptions. (1) Any member eligible to retire under 19-9-801(2) is eligible and may elect to participate in the DROP by filing a one-time irrevocable election with the board on a form prescribed by the board.

(2) A member electing to participate in the DROP shall participate for a minimum of 1 month and may not participate for more than 5 years.

(3) A member may participate in the DROP only once.

(4) A participant remains a member of the retirement system, but may not receive membership service or service credit in the system for the duration of the member's DROP period.

(5) If participation is interrupted by military service or ~~disability~~ *other temporary absence from work* and the participant has not received any distribution from the DROP, then the duration of the absence may not be included in calculating the DROP period."

Section 101. Section 19-9-1205, MCA, is amended to read:

"19-9-1205. Retirement system contributions — benefit payments to individual accounts — investment returns. (1) During a member's participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a DROP ~~benefit~~ *accrual* ~~equal to the monthly benefit, including any postretirement adjustments, that would have been payable had the participant terminated employment and retired, multiplied by each month of the DROP period that the participant completes~~."

Section 102. Section 19-9-1206, MCA, is amended to read:

"19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit *and the member's accumulated contributions minus any benefits paid from the member's account, including monthly DROP accruals*.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

Section 103. Section 19-9-1207, MCA, is amended to read:

"19-9-1207. Employment and benefits after DROP period. (1) Except as otherwise provided in this section, if a member continues employment in a

covered position after the DROP period ends, the board shall consider the member newly hired as of the date the DROP period ended.

(2) When a member, after the end of the DROP period, continues employment in a covered position, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(3) A member who, after the end of the DROP period, continues employment in a covered position:

(a) is immediately vested for benefits accrued subsequent to the end of the DROP period; and

(b) is, upon terminating covered employment, entitled to:

(i) the member's service retirement benefit earned prior to the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter;

(ii) a service retirement benefit based on the member's service *credit* and final average compensation during membership subsequent to the end of the DROP period, including any postretirement benefit adjustment for which the member is eligible under this chapter; and

(iii) the member's DROP benefit."

Section 104. Section 19-9-1208, MCA, is amended to read:

"19-9-1208. Distribution of DROP benefit. (1) Upon termination of covered employment, a participant is entitled to:

(a) receive a lump-sum distribution of the participant's DROP benefit;

(b) roll the participant's DROP benefit into another ~~qualified~~ *eligible retirement* plan in a manner prescribed and authorized by the board; or

(c) any other distribution or method of payment of the DROP benefit approved by the board.

(2) A distribution pursuant to this section is subject to the provisions of 19-2-907 and 19-2-909 and all other applicable provisions of Title 19 *and the Internal Revenue Code.*

(3) The amount of a distribution, rollover, transfer, or other payment of a DROP benefit pursuant to this section must include interest reflecting the retirement system's annual investment earnings from the date the member's DROP period commenced."

Section 105. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the ~~regular~~ remuneration~~, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid for the firefighter's service as a firefighter out of~~ *paid from* funds controlled by an employer *in payment for the*

member's services before any pretax deductions allowed ~~under the Internal Revenue Code have been~~ *by state and federal law are* made;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(c) Compensation for full-paid and part-paid firefighters does not include:

(i) overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave; and

(ii) maintenance, allowances, and expenses.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under 18 years of age; or

(b) unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211 or, with respect to firefighters covered in the retirement system pursuant to 19-13-210(2), the department of military affairs established in 2-15-1201.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, ~~if the member has not been a member that long, over the period of the member's~~ *in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of* service. Lump-sum payments for annual leave paid to the member upon termination of ~~service~~ *employment* may be used to replace, on a month-for-month basis, the ~~normal~~ *regular* compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed *by an employer* as a firefighter under *the standards provided in* 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Retirement system" means the firefighters' unified retirement system provided for in this chapter.

(13) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 106. Section 19-13-301, MCA, is amended to read:

"19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) Except as provided in subsection (7), a full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board within 6 months of becoming a part-paid firefighter or March 21, 2001, whichever is later.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service *credit* and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.

(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 30 days of being hired into the position otherwise covered under the firefighters' unified retirement system."

Section 107. Section 19-13-403, MCA, is amended to read:

"19-13-403. Application to purchase military service. (1) (a) Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-13-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.~~

~~(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(3)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-13-406, a member with at least 15 years of service credit may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the service credit based on the system's most recent actuarial valuation.

(4) The combined total of active and reserve military service credit and membership service a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

~~(4)~~*(5)* Military service *credit and membership service* purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit."

Section 108. Section 19-13-405, MCA, is amended to read:

"19-13-405. Application to purchase additional service. (1) Subject to 19-13-406, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit*, based on the system's most recent actuarial valuation as determined by the board.

(3) Service *credit* purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for ~~normal~~ service retirement."

Section 109. Section 19-13-406, MCA, is amended to read:

"19-13-406. Service purchase limitation. A member may not purchase more than a combined total of 5 years of service *credit* under 19-13-403 and 19-13-405."

Section 110. Section 19-13-701, MCA, is amended to read:

"19-13-701. Eligibility for service retirement. (1) A member who has completed 20 years or more of membership service has attained normal retirement age and is eligible for service retirement.

(2) A vested member who terminates service before ~~the minimum retirement date~~ *completing 20 years of service* and keeps the member's accumulated contributions on deposit has attained normal retirement age and is eligible for service retirement commencing on the member's minimum retirement date."

Section 111. Section 19-13-704, MCA, is amended to read:

"19-13-704. Amount of service retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of *membership* service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of *membership* service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the benefit as long as they remain dependent children as defined in 19-13-104."

Section 112. Section 19-13-803, MCA, is amended to read:

"19-13-803. Amount of disability retirement benefit. (1) A member who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's final average compensation;

(b) after completing 20 years or more of membership service must receive a disability retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) ~~A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's~~ *Upon the* death *of a member receiving a disability retirement benefit under this section,* the ~~member leaves no~~ *member's* surviving spouse or ~~upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as~~

~~they remain~~ dependent ~~children~~ *child is eligible for benefits* as ~~defined~~ *provided* in 19-13-104."

Section 113. Section 19-13-1007, MCA, is amended to read:

"19-13-1007. Minimum benefit adjustment. (1) The following applies to a member with 10 or more years of *membership* service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of the employer that last employed the member as a firefighter, as provided each year in the budget of that employer.

(b) If after a member retires, the employer that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters of the employer that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those employers that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

Section 114. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal

program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) the volunteer firefighter's participation in the program is documented in the fire department records filed and maintained by the chief or supervisor;

~~(b)~~*(c)* the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more; and

~~(c)~~*(d)* the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates."

Section 115. Section 19-17-402, MCA, is amended to read:

"19-17-402. Certificate of eligibility. The chief or presiding officer of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath *before a notary*, stating whether the company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date of organization. The certificate must list the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits."

Section 116. Section 19-17-403, MCA, is amended to read:

"19-17-403. Application for benefits. (1) A member may, as provided in this section, apply for retirement benefits before terminating ~~covered~~ service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of service."

Section 117. Section 19-17-405, MCA, is amended to read:

"19-17-405. Survivorship benefits to surviving spouse or dependent children. (1) Subject to *subsection (2) and* the limitation in subsection ~~(3)~~*(4)*, survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to*:*

(a) the surviving spouse ~~or~~*, unless the spouse is convicted of knowingly, purposely, or intentionally causing a member's death or disability;*

(b) the dependent children upon the spouse's death; or

(c) if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) Benefits payable to a dependent child must be paid pursuant to 19-2-803.

~~(2)~~*(3)* The survivorship benefit must be paid in each of the following circumstances:

(a) the death on or after July 1, 1995, of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death on or after July 1, 1985, of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

~~(3)~~*(4)* Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including any pension or disability benefits paid to the retiree before death. At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits."

Section 118. Section 19-50-102, MCA, is amended to read:

"19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954, ~~(~~26 U.S.C. 457~~)~~, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee's compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission, *unless exempt from the commission's regulation*;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission, *unless exempt from the commission's regulation*; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

Section 119. Section 25-13-608, MCA, is amended to read:

"25-13-608. Property exempt without limitation — exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support; ~~and~~

(h) a burial plot for the judgment debtor and the debtor's family~~.~~*;*

(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004; and

(j) benefits or payments paid or payable from a retirement system or plan within Title 19, chapter 20, as provided by 19-20-706.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, disability benefits, and assets of individual retirement accounts are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse."

Section 120. Repealer. Sections 19-3-509, 19-3-1604, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404, MCA, are repealed.

Section 121. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [section 1].

Section 122. Coordination instruction. If either House Bill No. 44 or Senate Bill No. 66, or both, and [this act] are passed and approved then:

(1) Section 22 of [this act], amending 19-3-503, MCA, must read as follows:

"Section 22. Section 19-3-503, MCA, is amended to read:

"19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection ~~(2)~~ *(1)(b)* and subject to 19-3-514, a member with at least ~~10~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase service credit *and membership service* for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

~~(b) To purchase this service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(2)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.""

(2) Section 66 of [this act], amending 19-6-801, must read as follows:

"Section 66. Section 19-6-801, MCA, is amended to read:

"19-6-801. Application to purchase military service. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-6-805, ~~a~~ *an eligible* member ~~with at least 15 years of service credit~~ may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(2) To purchase this military service:~~

~~(a) a member who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The member may not purchase more military service under this subsection (2)(a) than the member has service credit in excess of 15 years.~~

~~(b) a member who is covered by 19-6-710 shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-6-805, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section:

(a) a member with at least 15 years of service credit who is not covered by 19-6-710 shall contribute the amount determined by the board to be due based on the member's compensation and regular contribution rate in the member's 16th year for the 1st year purchased and, for each subsequent year purchased, an amount based on the member's compensation and contribution rate in each of as many years succeeding the member's 16th year as are required to complete the purchase, with regular interest from the date the member becomes eligible for this benefit to the date the purchase is complete. The combined total of active and

reserve military service credit and membership service that a member may purchase may be no more than the member's service credit in excess of 15 years or 5 years, whichever is less.

(b) a member with at least 5 years of membership service who is covered by 19-6-710 shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.""

(3) Section 76 of [this act], amending 19-7-803, must read as follows:

"Section 76. Section 19-7-803, MCA, is amended to read:

"19-7-803. Application to purchase military service. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-7-805, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-7-805, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

~~(4) Military service credit purchased under this section subsection (1) or (2) is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.~~""

(4) Section 77 of [this act], amending 19-7-804, must read as follows:

"**Section 77.** Section 19-7-804, MCA, is amended to read:

"19-7-804. Application to purchase additional service. (1) Subject to 19-7-805, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 additional year of service credit for each 5 years of membership service.

(2) To purchase service *credit* under this section, a member shall pay the actuarial cost of the service *credit* in the sheriffs' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

~~(3) Service purchased under this section may not be used to qualify a member for the purchase of military service under 19-7-803.~~

~~(4)~~*(3)* Service *credit* purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.""

(5) Section 87 of [this act], amending 19-8-901, must read as follows:

"Section 87. Section 19-8-901, MCA, is amended to read:

"19-8-901. Application to purchase military service. (1) (a) Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-8-906, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(b) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation as determined by the board.~~

~~(2)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-8-906, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service based on the system's most recent actuarial valuation.""

(6) Section 93 of [this act], amending 19-9-403, must read as follows:

"Section 93. Section 19-9-403, MCA, is amended to read:

"19-9-403. Application to purchase military service. (1) *(a)* Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-9-406, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active duty

service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(2) To purchase this military service, the member shall pay the actuarial cost of the member's military service, based on the system's most recent actuarial valuation.~~

~~(3) The member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(4)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with a military retirement benefit based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-9-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.""

(7) Section 107 of [this act], amending 19-13-403, must read as follows:

"Section 107. Section 19-13-403, MCA, is amended to read:

"19-13-403. Application to purchase military service. (1) (a) Except as ~~otherwise~~ provided in ~~this section~~ *subsection (1)(b)* and subject to 19-13-406, a member with at least ~~15~~ *5* years of *membership* service ~~credit~~ may, at any time prior to retirement, file a written application with the board to purchase *service credit and membership service for* up to 5 years of the member's active duty service in the armed forces of the United States ~~for the purpose of calculating retirement benefits~~.

~~(b) To purchase this military service, the member shall pay the actuarial cost of the service, based on the system's most recent actuarial valuation.~~

~~(2) A member may not purchase more military service than the member's years of membership service in excess of 15 years.~~

~~(3)~~*(b)* A member is not eligible to purchase *active* military service *credit and membership service* under ~~this section~~ *subsection (1)(a)* if the member:

~~(a)~~*(i)* has retired from active duty in the armed forces of the United States with military retirement benefits based on that military service;

~~(b)~~*(ii)* is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

~~(c)~~*(iii)* is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-13-406, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the service credit based on the system's most recent actuarial valuation.

~~(4) Military service purchased under this section is not membership service and may not be used in determining the member's eligibility for a service retirement benefit.~~""

Section 123. Effective date. [This act] is effective July 1, 2003.

Ap proved April 21, 2003

CHAPTER NO. 430

[HB 292]

AN ACT CLARIFYING THAT THE LAW GOVERNING COUNTY ACQUISITION OF REAL PROPERTY APPLIES TO THE ACQUISITION OF CONSERVATION EASEMENTS; PROVIDING FOR AN INDEPENDENT APPRAISAL OF CERTAIN CONSERVATION EASEMENTS BY A CERTIFIED GENERAL REAL ESTATE APPRAISER PRIOR TO A COUNTY PURCHASE OF THOSE CONSERVATION EASEMENTS; CLARIFYING THAT LAWS GOVERNING OPEN SPACE AND CONSERVATION EASEMENTS DO NOT SUPERSEDE THE PROCEDURE FOR COUNTY ACQUISITION OF REAL PROPERTY AND CONSERVATION EASEMENTS; AMENDING SECTIONS 7-8-2202 AND 76-6-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2202, MCA, is amended to read:

"7-8-2202. Appraisal required for certain purchases of real property *or conservation easements*. Unless otherwise provided *by law*, ~~no~~ *a county may not* purchase ~~of~~ real property ~~exceeding the value~~ *in an amount in excess* of ~~$2,500~~ *$10,000 or a conservation easement using public funds in an amount in excess of $40,000* ~~may be made~~ unless the value of the ~~same~~ *property or conservation easement* has been previously estimated by ~~three disinterested citizens of the county appointed by the district judge~~ *a disinterested certified general real estate appraiser selected by the county commission, county attorney, and landowner.* ~~for that purpose, and no~~ *A county may not pay* more than the appraised value ~~must be paid therefor~~ *for the real property or conservation easement*."

Section 2. Section 76-6-109, MCA, is amended to read:

"76-6-109. Powers of public bodies — *county real property acquisition procedure maintained*. (1) A public body has the power to carry

out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and use grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, subject to subsection (3); and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Property taxes levied to pay the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

(a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;

(b) forest land as defined in 15-44-102;

(c) all agricultural improvements on agricultural land referred to in subsection (3)(a);

(d) all noncommercial improvements on forest land referred to in subsection (3)(b); *and*

(e) agricultural implements and equipment described in 15-6-138(1)(a)~~; and~~

~~(f) livestock described in 15-6-136(1)(a)~~.

(4) This chapter does not supersede the provisions of 7-8-2202."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 21, 2003

CHAPTER NO. 431

[HB 299]

AN ACT LIMITING THE LIABILITY OF OWNERS OF STOCK FOR TRESPASS TO INSTANCES OF NEGLIGENCE; CLARIFYING THAT HERD DISTRICT LAW APPLIES TO TRESPASSING ANIMALS IN HERD DISTRICTS; AMENDING SECTION 81-4-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-215, MCA, is amended to read:

"81-4-215. Liability of owners of stock for trespass. If any cattle, horses, mules, asses, hogs, sheep, llamas, alpacas, bison, or other domestic animals break into any enclosure and the fence of the enclosure is legal, as provided in 81-4-101, the owner of the animals ~~is~~ *is* liable for ~~all~~ damages to the owner or occupant of the enclosure *if the owner or person in control of the animals was negligent*. This section may not be construed to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law. *In the case of trespassing animals in a herd district, the liability and damage provisions of 81-4-307 apply.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to actions brought on or after [the effective date of this act].

Ap proved April 21, 2003

CHAPTER NO. 432

[HB 338]

AN ACT INCREASING THE LENGTH OF TIME FOR WHICH AN INDIVIDUAL IS ELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS TO 28 WEEKS; REVISING THE RATIOS USED TO CALCULATE UNEMPLOYMENT INSURANCE CONTRIBUTION RATES; INCREASING THE MAXIMUM WEEKLY BENEFIT AMOUNT TO 66.5 PERCENT OF THE AVERAGE WEEKLY WAGE; AMENDING SECTIONS 39-51-1218, 39-51-2201, AND 39-51-2204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	~~(.0260)~~ *(.0245)*	~~(.0245)~~ *(.0225)*	~~(.0225)~~ *(.0200)*	~~(.0200)~~ *(.0170)*
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27
Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

	Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
	~~(.0170)~~ *(.0135)*	~~(.0135)~~ *(.0095)*	~~(.0095)~~ *(.00575)*	~~(.0075)~~ *(.0050)*	~~(.0050)~~ *(....)*	~~(....)~~ *(....)*
	2.17	2.37	2.57	2.77	2.97	3.17

Contribution Rates for Eligible Employers					
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37”

Section 2. Section 39-51-2201, MCA, is amended to read:

“39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. The maximum weekly benefit amount is ~~63%~~ *66.5%* of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. The maximum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount must be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, must be computed to the nearest lower full dollar amount.”

Section 3. Section 39-51-2204, MCA, is amended to read:

"39-51-2204. Maximum benefit amount. Any otherwise eligible individual is entitled during the individual's benefit year to a total amount of benefits equal to the individual's weekly benefit amount, as calculated according to 39-51-2201, times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual's ratio of total base period earnings to the highest quarter of earnings in the base period:

Ratio of Total Base Period Earnings to High Quarter		Full Weeks
At Least	But Less Than	of Benefits
1.00	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—— *3.50*	26
3.50	—	*28"*

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to claims for benefits filed on or after October 1, 2003.

Ap proved April 21, 2003

CHAPTER NO. 433

[HB 396]

AN ACT REQUIRING ANY PERSON WHO IS BORN AFTER JANUARY 1, 1985, TO PROVIDE A CERTIFICATE OF COMPLETION FROM A HUNTER SAFETY AND EDUCATION COURSE BEFORE THE PERSON MAY BE ISSUED A MONTANA HUNTING LICENSE; CLARIFYING THAT THE PERSON ISSUING THE LICENSE IS REQUIRED TO DETERMINE PROOF OF COMPLETION OF THE COURSE; CLARIFYING THAT THE MONTANA HUNTER SAFETY AND EDUCATION COURSE IS NOT LIMITED TO YOUTHS; AND AMENDING SECTION 87-2-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) A hunting license may not be issued to a ~~resident~~ person who is ~~under 18 years of age~~ *born after January 1, 1985,* unless the person authorized to issue the license ~~receives a certificate~~ *determines proof* of completion ~~from the~~ *of:*

(a) a Montana ~~youth~~ hunter safety and education course established in subsection ~~(5).~~

~~(2) A hunting license may not be issued to a nonresident person who is under 18 years of age unless the person authorized to issue the license receives a certificate of completion from the Montana youth hunter safety and education course established in subsection (5) or a certificate verifying that the nonresident has successfully completed~~ *(4) or (6); or*

(b) a hunter safety course in any *other* state or province.

~~(3)~~*(2)* A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license ~~receives~~ *determines* proof of completion of a hunter safety course approved by the department or a ~~certificate verifying that the member or dependent has successfully completed a~~ hunter safety course in any state or province.

~~(4)~~*(3)* A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or ~~receives~~ *determines* proof of completion of a bowhunter education course from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

~~(5)~~*(4)* The department shall provide for a~~youth~~ hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions ~~to youth~~ in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's ~~youth~~ hunter safety and education course to a person successfully completing the course.

~~(6)~~*(5)* The department shall provide for a course of instruction from the national bowhunter education foundation and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

~~(7) The department may develop an adult hunter education course.~~

(6) The department may develop an adult hunter safety and education course.

~~(8)~~*(7)* The department may adopt rules regarding how a person authorized to issue a license determines proof of completion ~~or achievement~~ *of a required course*."

Ap proved April 21, 2003

CHAPTER NO. 434

[HB 408]

AN ACT REQUIRING THE PAYMENT OF LOCAL REGISTRAR FEES TO A COUNTY DEPARTMENT IF THE LOCAL REGISTRAR IS A COUNTY EMPLOYEE; AMENDING SECTION 50-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-107, MCA, is amended to read:

"50-15-107. Payment of fees to local registrars. (1) The department may specify by ~~regulation~~ *rule* a fee to be paid each local registrar for each complete birth, *fetal* death, or ~~fetal~~ death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from ~~his~~ *the* county with the names of the local registrars and the amount due each.

(3) *(a)* The *county* treasurer shall pay each local registrar out of the county general fund.

(b) If the local registrar, appointed pursuant to 50-15-104, is employed by the county, the payment under subsection (3)(a) must be made to the county office in which the local registrar is employed."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 22, 2003

CHAPTER NO. 435

[HB 410]

AN ACT PROVIDING THAT AN EMPLOYEE WHO IS INJURED OR DIES WHILE TRAVELING IN THE COURSE OF EMPLOYMENT IS ENTITLED TO COMPENSATION IF THE EMPLOYER FURNISHES THE EMPLOYEE'S TRANSPORTATION; PROVIDING THAT A PAYMENT MADE TO AN EMPLOYEE UNDER A COLLECTIVE BARGAINING AGREEMENT, PERSONNEL POLICY MANUAL, EMPLOYEE HANDBOOK, OR ANY OTHER DOCUMENT PROVIDED TO THE EMPLOYEE AS AN INCENTIVE TO WORK AT A JOBSITE IS NOT A REIMBURSEMENT FOR COSTS OF TRAVEL, GAS, OIL, OR LODGING; AMENDING SECTION 39-71-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers — limitations. (1) Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) *(a)* An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

~~(a)~~(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement~~;~~ and

~~(ii)~~ the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

~~(b)~~*(ii)* the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(7) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to claims for injuries that occur on or after [the effective date of this act].

Ap proved April 21, 2003

CHAPTER NO. 436

[HB 441]

AN ACT PROVIDING FOR THE PRORATION OF PROPERTY TAXES ON CENTRALLY ASSESSED PROPERTY WHEN LAND IS SUBDIVIDED; AND AMENDING SECTIONS 15-16-102 AND 76-3-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) (a) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(b) If taxes on property qualifying under the low-income property tax assistance provisions of 15-6-134(1)(c) and 15-6-191 are paid within 20 calendar days of the date on which the taxes are due, the taxes may be paid without penalty or interest. If a tax payment is made later than 20 days after the taxes were due, the penalty must be paid and interest accrues from the date on which the taxes were due.

(5) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided that taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

(8) The county treasurer may accept a partial payment of centrally assessed property taxes as provided in 76-3-207."

Section 2. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or ~~which~~ *that* redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) *(a)* ~~A~~ *Subject to subsection (3)(b), a* division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold, before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due."

Ap proved April 22, 2003

CHAPTER NO. 437

[HB 478]

AN ACT ALLOWING A CRIMINAL SENTENCE TO INCLUDE A PROVISION FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE OF THE CONVICTED PERSON UPON THE FAILURE TO COMPLY WITH ANY PENALTY, RESTRICTION, OR CONDITION OF THE SENTENCE; PROVIDING A PROCEDURE FOR THE SUSPENSION OF THE LICENSE OR DRIVING PRIVILEGE; AMENDING SECTIONS 46-18-201 AND 61-5-214, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

(c) a term of incarceration at a county detention center or state prison, as provided in Title 45, for the offense;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of

corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any penalties imposed pursuant to ~~subsection (1)~~ *this section*, if the sentencing judge finds that the victim of the offense has sustained

a pecuniary loss, the sentencing judge shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

~~(6)~~*(7)* In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

~~(7)~~*(8)* If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 2. Section 61-5-214, MCA, is amended to read:

"61-5-214. Mandatory suspension for failure to appear or pay fine — notice. (1) The department shall suspend the license or driving privilege of a person immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the person:

(a) is charged with or convicted of a violation of chapters 3 through 10 of this title *or fails to comply with a sentence imposed pursuant to 46-18-201*;

(b) (i) failed to post the set bond amount or appear upon issued complaint, summons, or court order; or

(ii) when assessed a fine, costs, or restitution of $100 or more, failed to pay the fine, costs, or restitution; and

(c) received prior written notice that the driver's license or driving privileges of the person will be suspended upon a failure to post bond or appear on an issued complaint, summons, or court order or upon a failure to pay assessed fines, costs, or restitution.

(2) The suspension continues in effect until the court notifies the department that the person has paid the reinstatement fee and either appeared in court or paid the assessed fines, costs, or restitution.

(3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days."

Section 3. Applicability. [This act] applies to sentences imposed for offenses committed on or after [the effective date of this act].

Ap proved April 22, 2003

CHAPTER NO. 438

[HB 484]

AN ACT PROVIDING THAT ASSESSMENT AND COUNSELING FOR A PERSON CONVICTED OF PARTNER OR FAMILY MEMBER ASSAULT MUST INCLUDE A FOCUS ON CONTROLLING BEHAVIOR; AND AMENDING SECTION 45-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family member assault — penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) (i) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense.

(ii) An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year.

(iii) Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state,

conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, *controlling behavior,* dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling *that holds the offender accountable for the offender's violent or controlling behavior* must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; ~~or~~ *or*

(iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent *or controlling* conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent *or controlling* conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

Ap proved April 21, 2003

CHAPTER NO. 439

[HB 512]

AN ACT PROVIDING FOR THE ADDITION OF TERRITORY ADJACENT TO AN EXISTING PLANNING AND ZONING DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Addition of territory adjacent to existing planning and zoning district. Territory that is directly adjacent to an existing planning and zoning district but that is not part of the district may be added to the district subject to the procedures provided in Title 76, chapter 2, part 1.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 1].

Ap proved April 21, 2003

CHAPTER NO. 440

[HB 537]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMMISSION A NEW STUDY TO RECALCULATE THE ANNUAL SUSTAINABLE YIELD ON FORESTED STATE LANDS; SETTING THE ANNUAL TIMBER SALE TARGET AT 50 MILLION BOARD FEET UNTIL THE NEW STUDY IS COMPLETED; AMENDING SECTION 77-5-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-222 , MCA, is amended to read:

"77-5-222. Determination of annual sustainable yield. (1) The department~~, under the direction of the board,~~ *, under the direction of the board,* shall commission a *new* study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested state lands. *The department shall direct the qualified independent third party to determine the yield pursuant to, but not exceeding, all state and federal laws.*

(2) Until the *new* study required by subsection (1) is completed, the ~~annual sustainable yield is considered to be a range of 45 million board feet to 55~~ *department is directed to set the annual timber sale target at 50* million board feet *a year* ."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 21, 2003

CHAPTER NO. 441

[HB 540]

AN ACT REVISING THE LAWS RELATING TO THE SELECTION OF TRIAL JURIES; PROVIDING THAT TRIAL JURORS MUST BE SELECTED FROM A COMBINED LIST OF QUALIFIED ELECTORS AND LICENSED DRIVERS AND HOLDERS OF MONTANA IDENTIFICATION CARDS; ENSURING THAT NO PERSON'S NAME APPEARS ON THE COMBINED LIST MORE THAN ONCE; ELIMINATING THE REQUIREMENT THAT JURORS MUST BE REGISTERED ELECTORS; AMENDING SECTIONS 2-6-109, 3-15-301, 3-15-402, 3-15-403, 3-15-404, AND 46-17-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Providing lists of licensed drivers and holders of Montana identification cards to clerks of district court — jury selection purposes. (1) On the second Monday of May of each year, the department shall submit to the clerk of the district court of each county a list, prepared from the department's databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards, authorized by 61-12-501, who are 18 years of age or older and whose address is in that county. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are composed of only those residents living within a city's jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general's designee.

(3) The department may not provide the social security or driver's license numbers of persons on the list for any purpose.

Section 2. Section 2-6-109, MCA, is amended to read:

"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115, ~~or~~ to lists of the names of employees governed by Title 39, chapter 31, *or to lists of persons holding driver's licenses or Montana identification cards provided for under [section 1].*

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 3. Section 3-15-301, MCA, is amended to read:

"3-15-301. Who competent — *duty to serve.* ~~A~~ *It is the policy of this state that all qualified citizens have an obligation to serve on juries upon being summoned for jury duty, unless excused. Except as provided in 3-15-303, a* person is competent to act as a juror if ~~he~~ *the person* is*:* ~~a registered elector whose name appears on the most recent list of all registered electors, as prepared by the county registrar~~

(1) 18 years of age or older;

(2) a resident for at least 30 days of the state and of the city, town, or county in which the person is called for jury duty; and

(3) a citizen of the United States."

Section 4. Section 3-15-402, MCA, is amended to read:

"3-15-402. Selection of qualified persons. (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present*, working with the office of the secretary of state,* shall select from the most recent list of all registered electors, as prepared by the county registrar*, working with the office of the secretary of state*, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. *The officers, working with the office of the secretary of state, shall then combine the resulting list with the list submitted to the clerk of the district court under [section 1], ensuring that a person's name does not appear on the combined list more than once.* Each name appearing on the *combined* list must be assigned a number that must be placed opposite the name on the ~~jury~~ *combined* list and must be considered the number of the juror opposite whose name it appears. A person's name may not appear on a ~~jury~~ *combined* list for more than one court during a 1-year term.

(2) The *combined* list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."

Section 5. Section 3-15-403, MCA, is amended to read:

"3-15-403. ~~Lists delivered to clerk~~ *Jury lists — filing — public inspection.* (1) ~~A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the~~ *The combined* list *prepared under 3-15-402* must be delivered by ~~those officers~~ *the office of the secretary of state* to the clerk of the district court and filed by the clerk *of the district court* in the ~~clerk's~~ *clerk of the district court's* office *no later than 5 business days after the receipt of the combined list.*

(2) A copy of the latest jury ~~list~~ *lists filed under subsection (1) and compiled under 3-15-404 and 46-17-202* and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of court and be made available for public inspection during normal business hours.

~~(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court.~~"

Section 6. Section 3-15-404, MCA, is amended to read:

"3-15-404. Duty of jury commissioner — jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (3), or a computer database, as provided in subsection (4), as the means for selecting jurors in the county.

(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips must be placed in a box of ample size to permit them to be thoroughly mixed. The box must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number on the slip. The box may contain only one slip for each number corresponding to the number before the name of each juror on the jury list *filed under 3-15-403*.

(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors ~~prepared under the provisions of 3-15-402~~ *filed under 3-15-403* to be entered into a computerized database.

(5) A person's name may not appear on a jury list for more than one court during a 1-year term.

(6) The clerk of court shall prepare a jury list for the district court or each division of the district court.

(7) If the clerk of court is satisfied that a person whose name is drawn is deceased, mentally incompetent, or has permanently moved from the county, the person's name must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court."

Section 7. Section 46-17-202, MCA, is amended to read:

"46-17-202. Formation of trial jury for justices', municipal, and city courts. (1) At the time of preparing the district court jury list *under 3-15-404(6)*, the ~~county commissioners and clerk and recorder~~ *clerk of the district court* shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be ~~filed~~ *kept on file* in the office of the clerk of the district court *as provided in 3-15-403*. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required."

Section 8. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61 apply to [section 1].

Section 9. Effective date. [This act] is effective October 1, 2005.

Section 10. Applicability. [This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] by the department of justice to the clerks of the district courts on and after the second Monday of May 2006.

Ap proved April 21, 2003

CHAPTER NO. 442

[HB 618]

AN ACT INCREASING TO $200 THE FEE FOR REINSTATEMENT OF A DRIVER'S LICENSE THAT HAS BEEN REVOKED AS A RESULT OF CERTAIN OFFENSES, INCLUDING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING THAT HALF OF THE FEES COLLECTED BE DEPOSITED INTO THE GENERAL FUND AND THE OTHER HALF INTO AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND AMENDING SECTION 61-2-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-107, MCA, is amended to read:

"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs. (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of ~~$100~~ *$200* in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit *one-half of* the fees collected under subsection (1) in the general fund~~. One-half of the fees must be appropriated and~~ *and the other half in an account in the state special revenue fund to be* used for

funding county drinking and driving prevention programs as provided in 61-2-108."

Section 2. Coordination instruction. If Senate Bill No. 37 and [this act] are both passed and approved, then [this act] is void.

Ap proved April 21, 2003

CHAPTER NO. 443

[HB 640]

AN ACT REVISING LOCAL GOVERNMENT BUILDING CODE AUTHORITY; ELIMINATING THE ABILITY OF A COUNTY TO DESIGNATE A PORTION OF A COUNTY OUTSIDE OF A CITY OR TOWN AS THE COUNTY JURISDICTIONAL AREA; ELIMINATING ELECTION REQUIREMENTS RELATED TO BUILDING CODES; REVISING DEFINITIONS AND THE USE OF DEFINED TERMS; PROVIDING A TRANSITION PERIOD CONCERNING JURISDICTION; AMENDING SECTIONS 13-19-106, 50-3-103, 50-60-101, 50-60-102, 50-60-106, 50-60-107, 50-60-109, 50-60-110, 50-60-115, 50-60-118, 50-60-205, 50-60-211, 50-60-212, 50-60-213, 50-60-301, 50-60-302, 50-60-303, 50-60-404, 50-60-506, 50-60-510, 50-60-604, 50-60-605, AND 50-60-607, MCA; REPEALING SECTIONS 50-60-310, 50-60-311, 50-60-312, 50-60-313, AND 50-60-314, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election — ~~exception for county building code jurisdiction election~~. A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided by law, except that mail ballots are not required to have stubs.

(2) ~~(a) Except as provided in subsection (2)(b), an~~ *An* official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

~~(b) In an election to determine whether to adopt a building code enforcement program within a county jurisdictional area, as defined in 50-60-101 and designated by a board of county commissioners pursuant to 50-60-310, an official ballot must be mailed to every record owner of real property in the county jurisdictional area.~~

(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot at home and place it in a secrecy envelope.

(5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or

delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.

(6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.

(7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.

(8) After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided by law."

Section 2. Section 50-3-103, MCA, is amended to read:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

(q) combustible fibers;

(r) hazardous chemicals or materials;

(s) rubbish;

(t) open-flame devices;

(u) parking of vehicles;

(v) dust explosions;

(w) lightning protection;

(x) storage of smokeless powder and small arms primers; and

(y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state *building code* or a ~~municipal~~ *county, city, or town* building code, the rules are effective upon approval of the department of labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 3. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts of a building".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "City or town" means an incorporated city or town as provided for in Title 7, chapter 2, part 41.

~~(4)~~*(5)* "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

~~(5)~~*(6)* "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~(6) "County jurisdictional area" means the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality.~~

(7) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(9) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

(10) "Local building department" means the agency or agencies of a ~~municipality~~ *county, city, or town* charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(11) "Local legislative body" means the council or commission charged with governing the ~~municipality~~ *county, city, or town.*

~~(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality.~~

~~(13) "Municipality" means any incorporated city or town.~~

~~(14)~~*(12)* "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(15)~~*(13)* (a) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center.

(b) Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

~~(16)~~*(14)* "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

~~(17)~~*(15)* "Public sidewalk" means a sidewalk located in a public right-of-way.

~~(18)~~*(16)* "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

~~(19)~~*(17)* "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

~~(20)~~*(18)* "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(21)~~*(19)* "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 4. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) Except as provided in subsection (5), the state building code, as defined in 50-60-203(3), does not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building of any size, and any private garage or private storage structure of any size used only for the owner's own use, located within ~~the municipality's or county's jurisdictional area~~ *a county, city, or town*, unless the local legislative body ~~or board of county commissioners~~ by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act;

(c) petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). ~~Local governments~~ *A county, city, or town* that ~~have~~ *has* made the state building code applicable to the buildings referred to in subsection (1) may enforce within ~~their jurisdictional areas~~ *the area of its jurisdiction* the state building code as adopted by the ~~respective local government~~ *county, city, or town.*

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based on size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

Section 5. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of ~~municipalities~~ *counties, cities, and towns.* (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the ~~municipal jurisdictional area~~ *limits of a city or town* are the responsibility of the ~~municipalities~~ *city or town* of the state. *The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code are the responsibility of the county.*

(2) Each ~~municipality or~~ county, *city, or town* certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state *building code* or ~~municipal~~ *county, city, or town* building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state *building code* or ~~municipal~~ *county, city, or town* building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission;

(d) during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the ~~applicable~~ state *building code* or ~~municipal~~ *county, city, or town* building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

(e) issue certificates of occupancy as provided in 50-60-107;

(f) issue permits, licenses, and other required documents in connection with the construction of a building;

(g) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

(i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program established in 50-60-116.

(3) Each ~~municipality or county~~ *county, city, or town with a building code enforcement program that has been* certified under 50-60-302 may, within ~~its jurisdictional~~ *the* area *of its jurisdiction*:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;

(b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state *building code* or ~~municipal~~ *county, city, or town* building code; and

(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the ~~municipality or~~ county, *city, or town* under which the ~~municipality or~~ county, *city, or town* will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. ~~Municipal or county~~ *County, city, or town* powers of enforcement may not be exercised."

Section 6. Section 50-60-107, MCA, is amended to read:

"50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state *building code* or ~~municipal~~ *county, city, or town* building code ~~shall~~ *must* certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all ~~municipal~~ *county, city, or town* agencies as to all matters set forth, and ~~no~~ *an* order, directive, or requirement at variance ~~therewith~~ *with the certificate of occupancy*

may *not* be made or issued by any other state *agency* or ~~municipal~~ *county, city, or town* agency."

Section 7. Section 50-60-109, MCA, is amended to read:

"50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state *building code* or ~~municipal~~ *county, city, or town* building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section ~~will be~~ *is* governed by the Montana Rules of Civil Procedure."

Section 8. Section 50-60-110, MCA, is amended to read:

"50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or ~~a municipal~~ *county, city, or town* building code is guilty of a misdemeanor."

Section 9. Section 50-60-115, MCA, is amended to read:

"50-60-115. Building codes council — purpose and structure. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by ~~local governments~~ *counties, cities, or towns*. The council shall work cooperatively with the department and with representatives of the construction industry, as well as members of the interested public, to harmonize building codes and related rules with both the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

(a) a practicing architect licensed in Montana;

(b) a practicing professional engineer licensed in Montana;

(c) a representative from the building contractor industry;

(d) a ~~municipal~~ *county, city, or town* building inspector;

(e) a representative of the manufactured housing industry;

(f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;

(g) the director of the department of health and human services or the director's designee;

(h) a licensed electrician selected by the board of electricians;

(i) a licensed plumber selected by the board of plumbers;

(j) the state fire marshal or the fire marshal's designee; and

(k) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

(4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) The council and its members are entitled to compensation as provided in 2-15-122."

Section 10. Section 50-60-118, MCA, is amended to read:

"50-60-118. Examination of single-family dwelling plans — statewide approval for model plans — fee adjustments — mandatory checklist. (1) The department shall accept for examination and approval or disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a statewide basis and that no further examination is warranted except with respect to:

(a) zoning;

(b) footings, foundations, and basements;

(c) curbs;

(d) gutters;

(e) landscaping;

(f) utility connections;

(g) street requirements;

(h) sidewalks; and

(i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department's examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of ~~municipalities and~~ counties, *cities, and towns*.

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in 50-60-115.

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a ~~municipality or~~ county, *city, or town* for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist."

Section 11. Section 50-60-205, MCA, is amended to read:

"50-60-205. When state building code applies — health care facility and public health center doors. (1) If a ~~municipality or~~ county, *city, or town* does not adopt a building code as provided in 50-60-301, the state building code applies within the ~~municipal or~~ county, *city, or town* ~~jurisdictional area~~ and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 or to a public health center as defined in 7-34-2102."

Section 12. Section 50-60-211, MCA, is amended to read:

"50-60-211. Inspections. (1) The construction of a public building or alteration to a primary function area of a public building must be inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a ~~municipal or~~ county, *city, or town* building code.

(b) (i) ~~Municipalities and counties~~ *Counties, cities, and towns* that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) ~~Municipalities and counties~~ *Counties, cities, and towns* conducting inspections pursuant to this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including but not limited to denying building permits or certificates of occupancy, injunctions, or other civil enforcement procedures allowed by law.

(4) Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section."

Section 13. Section 50-60-212, MCA, is amended to read:

"50-60-212. Disclaimer. A building permit or certificate of occupancy issued by the state or by a ~~municipality or~~ county, *city, or town* must contain a statement that reads: "Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing.""

Section 14. Section 50-60-213, MCA, is amended to read:

"50-60-213. Accessible exterior routes — exceptions. (1) Except as provided in subsection (6), for a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of the building site, from accessible parking and accessible passenger loading zones within the boundaries of the building site, and from public sidewalks that are immediately adjacent to the building site, if sidewalks exist, to the building's accessible entrance served by the transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of 50-60-214 and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited to telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessible exterior route between accessible public parking and an accessible building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate that due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent that compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entire lot, unless otherwise required by law, ordinance, or applicable building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessible exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state *building code* or ~~local government~~ *county, city, or town* building code.

(6) An accessible route is not required in cases where there is not a pedestrian route for the general public.

(7) The state, ~~municipalities, and~~ counties*, cities, and towns* shall use the same accessibility standards."

Section 15. Section 50-60-301, MCA, is amended to read:

"50-60-301. ~~Municipal and county~~ *County, city, and town* building codes authorized — health care facility and public health center doors — fee adjustment for model plans. (1) The local legislative body of a ~~municipality or~~ county*, city, or town* may adopt a building code to apply to the ~~municipal or~~ county*, city, or town* ~~jurisdictional area~~ by an ordinance *or resolution, as appropriate*:

(a) adopting a building code; or

(b) authorizing the adoption of a building code by administrative action.

(2) A ~~municipal or~~ county*, city, or town* building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the ~~municipality or~~ county, *city, or town* shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the ~~municipality or~~ county, *city, or town* may impose the full examination fee permitted under 50-60-106."

Section 16. Section 50-60-302, MCA, is amended to read:

"50-60-302. Certification of ~~municipal and~~ county, *city, or town* building codes. (1) A county, ~~or municipality~~ *city, or town* may not enforce a building code unless:

(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;

(b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of the code have been filed with and approved by the department; and

(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.

(2) The department shall adopt additional rules and standards governing the certification of ~~municipal and~~ county, *city, and town* building code enforcement programs that must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county, ~~or municipality~~ *city, or town* a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county, ~~or municipal~~ *city, or*

town code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county, ~~or municipality~~ *city, or town* is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.

(3) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the ~~municipal or~~ county, *city, or town* area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the ~~local government~~ *county, city, or town*, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.

(4) If a ~~local government~~ *county, city, or town* voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The ~~local government~~ *county, city, or town* retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the ~~local government~~ *county, city, or town* prior to decertifying its code enforcement program."

Section 17. Section 50-60-303, MCA, is amended to read:

"50-60-303. ~~Municipal and county~~ *County, city, or town* appeal procedure. (1) If a ~~municipality or~~ county, *city, or town* adopts a building code, it shall also establish an appeal procedure by ordinance *or resolution, as appropriate,* that is acceptable to the department.

(2) If a ~~municipality or~~ county, *city, or town* does not adopt a code, appeals on the application of the state building code within the ~~municipal or~~ county, *city, or town* ~~jurisdictional area~~ must be made to the department."

Section 18. Section 50-60-404, MCA, is amended to read:

"50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A ~~municipality~~ *county, city, or town* may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the ~~municipality~~ *county, city, or town*;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the ~~municipality~~ *county, city, or town* has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a ~~municipality~~ *county, city, or town* under this section may be recognized and accepted by any other ~~municipality~~ *county, city, or town* of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted."

Section 19. Section 50-60-506, MCA, is amended to read:

"50-60-506. Exceptions to permit requirement. (1) ~~No~~ *A* permit is *not* required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) ~~No~~ *A* permit is *not* required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) ~~No~~ *A* state permit is *not* required whenever the installation occurs in an area governed by a ~~municipality~~ *county, city, or town* and where there is in effect a ~~municipal~~ *county, city, or town* building code ~~which~~ *that* covers plumbing installations and ~~which~~ *that* provides inspection procedures.

(4) ~~Nothing contained in this~~ *This* part ~~shall~~ *does not* prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit ~~providing he~~ *if the owner personally* does the work ~~himself~~.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless *the* work is subject to the permit provisions of this part."

Section 20. Section 50-60-510, MCA, is amended to read:

"50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of labor and industry or an authorized representative or *by* a ~~municipality or~~ county, *city, or town* certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of plumbers."

Section 21. Section 50-60-604, MCA, is amended to read:

"50-60-604. Inspections — electrical permits — fees. The department of labor and industry or an authorized representative or a ~~municipality or~~ county, *city, or town* certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."

Section 22. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation without electrical permit. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections that the department of labor and industry may authorize by rule for

a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an electrical permit covering the installation, issued by the department of labor and industry or a ~~municipality or~~ county, *city, or town* certified to enforce the electrical code pursuant to 50-60-302."

Section 23. Section 50-60-607, MCA, is amended to read:

"50-60-607. Energizing electrical installation without permit — misdemeanor. Any person, partnership, company, firm, association, or corporation, other than a power supplier, that energizes an electrical installation under this part for which an electrical permit has not been issued by the department of labor and industry or a ~~municipality or~~ county, *city, or town* certified to enforce the electrical code pursuant to 50-60-302 is guilty of a misdemeanor."

Section 24. Area of applicability of county, city, or town building code — enforcement. (1) A city or town that adopts a building code under this chapter may enforce its building code only within the incorporated limits of the city or town.

(2) A county may adopt a building code under this chapter on a countywide basis unless a city or town within the county has adopted a building code. If a city or town within the county has adopted a building code, then the county may not enforce the county building code in that city or town.

(3) A county, city, or town may contract for the enforcement of its building code.

Section 25. Transition. (1) A municipality is responsible for completing inspections that are required for those building, electrical, plumbing, and mechanical permits issued by the municipality in an extended jurisdictional area prior to October 1, 2003.

(2) A project in an extended jurisdictional area that required a building permit prior to October 1, 2003, is subject to city or town jurisdiction until the project is completed. A municipality may not apply its building code to a new project after October 1, 2003.

(3) A county that has not adopted a building code prior to [the effective date of this section] may adopt a building code, but the building code may not be effective before October 1, 2003.

Section 26. Repealer. Sections 50-60-310, 50-60-311, 50-60-312, 50-60-313, and 50-60-314, MCA, are repealed.

Section 27. Codification instruction. [Section 24] is intended to be codified as an integral part of Title 50, chapter 60, part 3, and the provisions of Title 50, chapter 60, part 3, apply to [section 24].

Section 28. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2003.

(2) [Section 25 and this section] are effective on passage and approval.

Ap proved April 21, 2003

CHAPTER NO. 444

[HB 648]

AN ACT PROVIDING THAT A REPRODUCTIVE TECHNOLOGY BUSINESS HAS A LIEN ON ANIMAL EMBRYOS OR SEMEN UNTIL THE AMOUNT DUE FOR SERVICES IS PAID; DEFINING "REPRODUCTIVE TECHNOLOGY BUSINESS"; PROVIDING THAT A LIEN CREATED UNDER THE AGISTERS' LIEN LAWS BY A REPRODUCTIVE TECHNOLOGY BUSINESS MAY NOT TAKE PRECEDENCE OVER OTHER LIENS UNLESS THE REPRODUCTIVE TECHNOLOGY BUSINESS PROVIDES NOTICE TO OTHER LIENHOLDERS OR SECURED PARTIES WITHIN 30 DAYS FROM THE TIME OF HARVESTING OR COLLECTING THE EMBRYOS OR SEMEN; AMENDING SECTIONS 71-3-1201 AND 71-3-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. For the purposes of this part, "reproductive technology business" means a business that collects, processes, packages, and stores embryos or semen from animals or provides breeding services for compensation.

Section 2. Section 71-3-1201, MCA, is amended to read:

"71-3-1201. Who may have lien — agisters' lien — lien for service — towing and storage lien. (1) *(a)* If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a ~~ranchman~~ *rancher*, farmer, agister, herder, hotelkeeper, livery, ~~or~~ stablekeeper, *or reproductive technology business* to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock *or for providing a service listed in subsection (1)(b)* and may retain possession of the stock until the sum due is paid.

(b) If there is an express or implied contract for collecting, processing, packaging, or storing embryos or semen from livestock provided for in this subsection (1), a reproductive technology business to whom embryos or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos or semen until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing, protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as directed under authority of law has a special lien on it. The lien is dependent on possession and is for the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage."

Section 3. Section 71-3-1202, MCA, is amended to read:

"71-3-1202. Priority. (1) *Subject to subsection (4), the* ~~The~~ lien ~~hereby~~ created ~~shall~~ *may* not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of receiving the

property, the person desiring to assert a lien ~~thereon shall give~~ *upon the property gives* notice in writing to ~~said~~ *the* secured party or other lienholder, stating ~~his~~ *the* intention to assert a lien on ~~said~~ *the* property, under the terms of this part, and stating the nature and approximate amount of the work performed or feed or other services furnished or intended to be performed or furnished ~~therefor~~.

(2) ~~Such service~~ *Service* may be made either by personal service or by mailing by registered or certified mail a copy of ~~said~~ *the* notice to the secured party or other lienholder at ~~his~~ *the* last-known post-office address. ~~Said service shall~~ *Service must* be ~~deemed~~ *considered* complete upon the deposit of the notice in the post office.

(3) Within 20 days after the date of ~~such~~ mailing or 10 days after ~~such~~ personal service, the secured party or other lienholder or ~~his~~ *the secured party's or other lienholder's* representative ~~shall have~~ *has* the right to take possession of ~~said~~ *the* property upon payment of the amount of the lien ~~then accrued~~. A failure on the part of ~~such~~ *the* secured party or other lienholder ~~so to do shall constitute~~ *to take possession of the property constitutes* a waiver of the priority of ~~such~~ *the* security interest or other lien over the lien created by this part.

(4) With regard to a reproductive technology business, the lien created may not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the embryos or semen involved unless, within 30 days from the time of harvesting or collecting the embryos or semen, the person desiring to assert a lien upon the embryos or semen gives notice in writing to the secured party or other lienholder stating the intention to assert a lien on the embryos or semen, under the terms of this part, and stating the nature and approximate amount of the work performed or other services furnished or intended to be performed or furnished."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 71, chapter 3, part 12, and the provisions of Title 71, chapter 3, part 12, apply to [section 1].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 21, 2003

CHAPTER NO. 445

[HB 653]

AN ACT AUTHORIZING THE GRAIN DEPOSITOR TO STATE A PREFERENCE OF GRADING FACILITY THROUGH A WRITTEN AGREEMENT; PROVIDING THAT THE OPTIONS PROVIDED FOR GRADING FACILITIES IN THE WRITTEN AGREEMENT MUST INCLUDE BUT MAY NOT BE LIMITED TO THE STATE GRAIN LAB; PROVIDING THAT THE WRITTEN AGREEMENT MUST SPECIFY THE TIME PERIOD TO WHICH THE AGREEMENT APPLIES; PROVIDING THAT ALL FEES AND OTHER CHARGES ASSOCIATED WITH THE GRAIN SAMPLE ANALYSIS MUST REFLECT AS NEARLY AS POSSIBLE THE ACTUAL COST OF THE SERVICES; REQUIRING A WAREHOUSE OPERATOR OR

COMMODITY DEALER TO POST FEES, INCLUDING ANTICIPATED SHIPPING AND HANDLING FEES; AMENDING SECTIONS 80-4-711 AND 80-4-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-711, MCA, is amended to read:

"80-4-711. Agricultural commodity sampling — appeal procedure. (1) At the time of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale, each warehouse operator or commodity dealer shall take a representative sample from each load of agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's name marked on the container. A *written agreement must be given to the depositor authorizing the depositor to state a preference of grading facility. The options provided for grading facilities in the agreement must include but may not be limited to the state grain laboratory. The written agreement must specify the time period to which the agreement applies. If the state grain lab is chosen as the grading facility, a* composite sample consisting of a minimum of 1 1/2 quarts or 1,050 grams of the representative sample must~~, upon written request of the depositor,~~ be submitted directly to the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain a minimum of 1 1/2 quarts or 1,050 grams of the remaining sample for 60 days.

(2) All fees and other charges associated with the grain sample analysis must reflect as nearly as possible the actual cost of the services.

~~(2)~~*(3)* If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis, the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When an appeal is made, the warehouse operator or commodity dealer shall submit 1 1/2 quarts or 1,050 grams of the representative sample to the state grain laboratory for appeal analysis.

~~(3)~~*(4)* If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a state grain laboratory analysis, as provided in subsection (1) or ~~(2)~~ *(3)*, the depositor, warehouse operator, or commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must be a portion of that agricultural commodity retained by the state grain laboratory when it conducted its analysis. The results on the state grain laboratory appeal sample are final and binding. In the absence of an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the state grain laboratory's analysis is final and binding.

~~(4)~~*(5)* Each warehouse operator or commodity dealer shall post in a conspicuous place a placard, issued by the department, stating the procedures provided for in this section~~.~~ *and the fees established in 80-4-721. The department shall provide space on the placard on which the warehouse operator or commodity dealer is required to list anticipated shipping and handling fees.*

~~(5)~~*(6)* All samples submitted for analysis are the property of the state grain laboratory and subject to its disposition.

~~(6)~~*(7)* An agricultural commodity purchased for resale as seed is exempt from the requirements of this section.

~~(7)~~*(8)* A producer of malting barley may by contract waive the right to submit a sample to the state grain laboratory provided in this section."

Section 2. Section 80-4-721, MCA, is amended to read:

"80-4-721. Fees for inspection, testing, and weighing agricultural commodities — disposition — investment. (1) The department shall by rule fix the fees for inspection, testing, and weighing of agricultural commodities.

(2) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of agricultural commodities, must reflect as nearly as possible the actual cost of the services.

(3) All ~~those~~ fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund must be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of agricultural commodities.

(4) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the proper department account in the state special revenue fund.

(5) All fees collected under this part must be expended for the purposes of this part as provided in Article XII, section 1, of the Montana constitution."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 22, 2003

CHAPTER NO. 446

[HB 667]

AN ACT INCLUDING PONZI SCHEMES IN THE LAW CRIMINALIZING THE CONDUCT OR PROMOTION OF PYRAMID PROMOTIONAL SCHEMES; INCREASING THE PENALTIES FOR OPERATING A PYRAMID PROMOTIONAL SCHEME; AND AMENDING SECTIONS 30-10-324 AND 30-10-325, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-324, MCA, is amended to read:

"30-10-324. Definitions. As used in 30-10-324 through 30-10-326, the following definitions apply:

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme includes a Ponzi scheme, in which a person makes payments to investors from money obtained from later investors, rather than from any profits or other income of an underlying or purported underlying business venture.

~~(b)~~*(c)* A pyramid promotional scheme does not include a sales plan or operation that:

(i) subject to the provisions of subsection (6)(b)(v), provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and not primarily for obtaining the participation of other persons in the sales plan or operation and that provides compensation to the participant based upon the sale of goods or services by persons whose participation in the sales plan or operation has been obtained by the participant;

(ii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iii) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(iv) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(v) (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)(v) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase."

Section 2. Section 30-10-325, MCA, is amended to read:

"30-10-325. Operating pyramid promotional scheme unlawful. (1) A person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.

(2) A person who *willfully* violates the provisions of subsection (1) shall, *for each participant giving consideration,* be fined an amount not more than ~~$10,000~~ *$100,000* or be imprisoned for not more than 10 years, or both.

(3) A person who violates the provisions of subsection (1) shall, for each participant giving consideration, be assessed a civil penalty in an administrative proceeding in an amount not to exceed $10,000."

Ap proved April 21, 2003

CHAPTER NO. 447

[HB 676]

AN ACT CLARIFYING THE DEFINITION OF "PROJECT" UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; AMENDING SECTION 75-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7-103, MCA, is amended to read:

"75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or

(c) the board of county commissioners in a county where a district does not exist.

(4) "Person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification *that results in a change in the state* of a ~~stream in the state of Montana that results in a change in the state of the stream~~ *natural, perennial-flowing stream or river, its bed, or its immediate banks*.

(b) Project does not include:

(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102*; or*

(iii) livestock grazing activities.

(6) "Stream" means any natural, perennial-flowing stream or river, its bed, and its immediate banks except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.

(9) "Written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all notices of projects pending before a conservation district on [the effective date of this act].

Ap proved April 21, 2003

CHAPTER NO. 448

[HB 681]

AN ACT PROVIDING FOR THE LICENSURE OF MEDICATION AIDES; DEFINING "MEDICATION AIDE"; PROVIDING THE BOARD OF NURSING

AUTHORITY TO ESTABLISH QUALIFICATIONS; PROVIDING THAT MEDICATION AIDES MAY PRACTICE ONLY IN PERSONAL-CARE FACILITIES AND UNDER THE GENERAL SUPERVISION OF A LICENSED NURSE; AND AMENDING SECTIONS 37-8-101, 37-8-102, AND 37-8-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-101, MCA, is amended to read:

"37-8-101. Purpose. ~~(1)~~ In order to safeguard life and health, ~~any~~ *a* person practicing or offering to practice*:*

(1) professional nursing in this state for compensation or personal gain ~~shall be~~ *is* required to submit evidence that ~~he or she~~ *the person* is qualified to practice and ~~shall be~~ *is* licensed as ~~hereinafter~~ provided *in this chapter*~~.~~*;*

(2) ~~In order to safeguard life and health, any person practicing or offering to practice~~ practical nursing in this state for compensation or personal gain ~~shall be~~ *is* required to submit evidence that ~~he or she~~ *the person* is qualified to practice and ~~shall be~~ *is* licensed as ~~hereinafter~~ provided *in this chapter*~~.~~*;*

(3) as a medication aide in this state is required to submit evidence that the person is qualified to practice and is licensed as provided in this chapter."

Section 2. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who uses standardized procedures in the administration of drugs, as defined in 37-7-101, in a personal-care facility that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

~~(4)~~*(5)* "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

~~(5)~~*(6)* "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard

life and health, and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection ~~(5)(b)~~ *(6)(b)*:

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 3. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) The board shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

(6) The board may establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

~~(6)~~*(7)* The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

~~(7)~~*(8)* The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

~~(8)~~*(9)* The board may fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 4. Medication aide scope of practice. A medication aide may:

(1) perform services requiring basic knowledge of medications and medication administration under specific circumstances as determined by the board by administrative rule;

(2) practice only in a licensed personal-care facility, as defined in 50-5-101; and

(3) practice only under the general supervision of a licensed professional or practical nurse.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [section 4].

Section 6. Instructions to code commissioner. If House Bill No. 51 and [this act] are both passed and approved, the commissioner is instructed to change the phrase "personal-care facility" to "assisted living facility" in [section 4].

Ap proved April 21, 2003

CHAPTER NO. 449

[HB 698]

AN ACT CREATING A TRAUMATIC BRAIN INJURY ADVISORY COUNCIL; CREATING A TRAUMATIC BRAIN INJURY ACCOUNT FOR PUBLIC INFORMATION AND EDUCATION ON TRAUMATIC BRAIN INJURY; ALLOWING FOR A VOLUNTARY DONATION ON MOTOR VEHICLE REGISTRATION FOR THE TRAUMATIC BRAIN INJURY FUND; AMENDING SECTION 61-3-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Traumatic brain injury advisory council. (1) There is a traumatic brain injury advisory council attached to the department of public health and human services for administrative purposes only as prescribed in 2-15-121.

(2) The council is composed of the following members:

(a) the director of the department of public health and human services or a designee;

(b) the superintendent of public instruction or a designee;

(c) a representative of a program that provides senior and long-term care services appointed by the director of the department of public health and human services;

(d) six members of the public, appointed by the governor, who represent:

(i) survivors of traumatic brain injury or family members of survivors of traumatic brain injury;

(ii) injury control or prevention programs; and

(iii) advocates for brain-injured persons.

(3) The public members of the advisory council shall serve 3-year terms. The initial appointments may specify a shorter length of the initial term in order to stagger the terms. Vacancies must be filled for the balance of an unexpired term. A member of the council may be reappointed.

(4) The advisory council shall meet quarterly, and the director of the department of public health and human services or a designee shall serve as presiding officer.

(5) The public members of the council shall serve without compensation but may be reimbursed as provided in 2-18-501 through 2-18-503, subject to available funding.

(6) The advisory council shall:

(a) advise and make recommendations to the department of public health and human services and other state agencies on ways to improve and develop services regarding traumatic brain injury, including coordination of services between public and private entities;

(b) encourage citizen participation through the establishment of public hearings and other types of commmunity outreach and prevention activities;

(c) encourage and stimulate research, public awareness, education, and prevention activities; and

(d) advise the department of public health and human services on the expenditures of the traumatic brain injury account established in [section 2] and any grants made from that account.

Section 2. Traumatic brain injury account. (1) There is a traumatic brain injury account in the state special revenue fund for purposes of traumatic brain injury prevention, education, and support.

(2) Money in this account may be used by the department of public health and human services to fund the advisory council and to provide grants for public information and prevention education regarding traumatic brain injury.

Section 3. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; ~~and~~

(f) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote education on, support for, and awareness of traumatic brain injury; and

~~(f)~~*(g)* other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; ~~and~~

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts*; and*

(d) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department may make full and complete investigation of the status of the vehicle. An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.

(5) Revenue that accrues from the voluntary donation provided in subsection (2)(c) must be forwarded by the respective county treasurer *to the department of revenue* for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(6) Revenue that accrues from the voluntary donation provided in subsection (2)(d) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in [section 2] to support activities related to education regarding prevention of traumatic brain injury."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective January 1, 2004.

Ap proved April 21, 2003

CHAPTER NO. 450

[HB 733]

AN ACT INCREASING FROM 2 YEARS TO 4 YEARS THE MINIMUM IMPRISONMENT TERM FOR SEXUAL ASSAULT IF THE VICTIM IS LESS THAN 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM OR IF THE OFFENDER INFLICTS BODILY INJURY UPON ANYONE IN THE COURSE OF COMMITTING THE SEXUAL ASSAULT; ALLOWING A JUDGE TO IMPOSE A TERM OF LESS THAN 4 YEARS UPON A WRITTEN FINDING THAT THERE IS GOOD CAUSE TO DO SO; AND AMENDING SECTION 45-5-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than ~~2~~ *4* years*, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years,* or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if:

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or

(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Ap proved April 21, 2003

CHAPTER NO. 451

[HB 761]

AN ACT PROVIDING AUTHORITY TO EXERCISE EMINENT DOMAIN FOR THE PURPOSE OF ESTABLISHING A VETERANS' CEMETERY; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ENTER INTO NEGOTIATIONS FOR THE ACQUISITION OF PROPERTY FOR A VETERANS' CEMETERY IF THE LOCATION MEETS FEDERAL REQUIREMENTS FOR FEDERAL FUNDING; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 10-2-601 AND 70-30-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authority to exercise eminent domain for purposes of establishing veterans' cemetery. The department of military affairs may take property for public use for a veterans' cemetery or place of burial of the dead. The power of eminent domain must be exercised under the provisions of Title 70, chapter 30.

Section 2. Department of military affairs required to enter negotiations. (1) On [the effective date of this act], the department of military affairs shall initiate activities at or in the vicinity of Fort Missoula, Missoula County, Montana, in the city of Missoula, or in Missoula County, as appropriate, to complete all preapplication requirements provided in the federal department

of veterans affairs national cemetery administration's state cemetery grants program grant requirements, including but not limited to:

(a) completion of an environmental assessment and an environmental impact statement if necessary;

(b) designation of the area to be served by the preferred location of the cemetery;

(c) a design concept that describes the primary features to be included in the project and the number of grave sites to be provided; and

(d) a needs assessment that explains the need for the project to establish, expand, or improve the veterans' cemetery.

(2) If the review provided for in subsection (1) shows that the selected property meets all the federal requirements for a veterans' cemetery, the board shall enter into negotiations with the appropriate entities for the acquisition of property for the purpose of a veterans' cemetery.

Section 3. Section 10-2-601, MCA, is amended to read:

"10-2-601. State veterans' cemeteries. The department of military affairs shall establish state veterans' cemeteries. A cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, and at Miles City. *The department may establish a state veterans' cemetery in Missoula County, Montana."*

Section 4. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city, town, or school district;

(4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;

(5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;

(6) water and water supply systems as provided in Title 7, chapter 13, part 44;

(7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;

(8) acquisition of road-building material as provided in 7-14-2123;

(9) stock lanes as provided in 7-14-2621;

(10) parking areas as provided in 7-14-4501 and 7-14-4622;

(11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301, and Title 67, chapters 10 and 11;

(12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

(13) housing authority purposes as provided in Title 7, chapter 15, part 44;

(14) county recreational and cultural purposes as provided in 7-16-2105;

(15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

(16) county cemetery purposes as provided in 7-35-2201, ~~and~~ cemetery association purposes as provided in 35-20-104, *and state veterans' cemetery purposes as provided in [section 1]*;

(17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);

(18) public assistance purposes as provided in 53-2-201;

(19) highway purposes as provided in 60-4-103 and 60-4-104;

(20) common carrier pipelines as provided in 69-13-104;

(21) water supply, water transportation, and water treatment systems as provided in 75-6-313;

(22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;

(23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for

reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands."

Section 5. Appropriation. There is appropriated $150,000 from the special revenue account provided for in 10-2-603 to the department of military affairs for the purpose of completing the preapplication inspection and requirements as provided in [section 2(1)].

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, part 6, and the provisions of Title 10, chapter 2, part 6, apply to [section 1].

Section 7. Coordination instruction. If Senate Bill No. 401 is passed and approved, then all references in [this act] to the department of military affairs must be changed to the board of veterans' affairs.

Section 8. Effective date. [This act] is effective on passage and approval.

Ap proved April 21, 2003

CHAPTER NO. 452

[SB 35]

AN ACT PROVIDING THAT IF A PERSON WITH A DEVELOPMENTAL DISABILITY IS FOUND FIT TO PROCEED AND IS CONVICTED OF A

CRIME, THE COURT MAY SENTENCE THE PERSON TO AN APPROPRIATE DEVELOPMENTAL DISABILITIES FACILITY; ALLOWING EVIDENCE OF DEVELOPMENTAL DISABILITY TO PROVE STATE OF MIND; PROVIDING THAT DEVELOPMENTAL DISABILITY MAY EXCLUDE FITNESS TO PROCEED; AND AMENDING SECTIONS 46-14-102, 46-14-103, 46-14-206, 46-14-221, 46-14-311, AND 46-14-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-102, MCA, is amended to read:

"46-14-102. Evidence of mental disease or defect *or developmental disability* admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect *or developmental disability* is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense."

Section 2. Section 46-14-103, MCA, is amended to read:

"46-14-103. Mental disease or defect *or developmental disability* excluding fitness to proceed. A person who, as a result of mental disease or defect *or developmental disability*, is unable to understand the proceedings against the person or to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures."

Section 3. Section 46-14-206, MCA, is amended to read:

"46-14-206. Report of examination. (1) A report of the examination must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant suffers from a mental disorder, *as defined in 53-21-102*, and may require commitment or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or defect*or developmental disability*, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect *or developmental disability*, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of *the* mental disease or defect *or developmental disability*."

Section 4. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If

neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ *mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102,* of the department of public health and human services for so long as the unfitness endures *or until disposition of the defendant is made pursuant to this section, whichever occurs first.*

(b) The ~~institution~~ *facility* shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

~~(c)~~*(3) (a)* The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4)~~, and the~~.

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter ~~20 or~~ 21, ~~whichever is appropriate,~~ to determine the disposition of the defendant pursuant to those provisions.

~~(3)~~*(c)* If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as ~~provided~~ *defined* in 53-20-102~~(5)~~, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20*, to determine the disposition of the defendant pursuant to those provisions*.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate institution of the department of ~~corrections~~ *public health and human services*, of keeping the defendant there, and of bringing the defendant back are payable by the state as a district court expense."

Section 5. Section 46-14-311, MCA, is amended to read:

"46-14-311. Consideration of mental disease or defect *or developmental disability* in sentencing. Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect *or developmental disability* that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence ~~as~~ *that* it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206."

Section 6. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect *or developmental disability* as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply~~ and the~~. *The* court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant *and recommendations of the professionals who have evaluated the defendant*, in an appropriate ~~correctional or~~ *correctional facility*, mental health facility, *as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in 53-20-202*, for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after considering the recommendations of the professionals providing treatment to the defendant *and recommendations of the professionals who have evaluated the defendant*, subsequently transfer the defendant to another ~~correctional or mental health~~ *correctional, mental health, residential, or developmental disabilities* facility that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

(c) the defendant suffers from a mental disease or defect *or developmental disability* but is not a danger to the defendant or others; or

(d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the defendant or others, but:

(i) there is no treatment available for the mental disease or defect;

(ii) the defendant refuses to cooperate with treatment; or

(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Ap proved April 21, 2003

CHAPTER NO. 453

[SB 111]

AN ACT AMENDING THE DEFINITION OF "ELIGIBLE PERSON" AS IT RELATES TO THE COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; AUTHORIZING THE INSURANCE COMMISSIONER TO LIMIT CERTAIN ELIGIBILITY CRITERIA BY ADOPTING RULES ON WHICH TO BASE THE ELIGIBILITY ON INCOME LEVEL; DEFINING ELIGIBILITY IN TERMS OF FEDERAL TRADE ADJUSTMENT ASSISTANCE; AMENDING SECTIONS 33-22-1501, 33-22-1502, 33-22-1513, 33-22-1516, AND 33-22-1524, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1501, MCA, is amended to read:

"33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.

(7) *(a)* "Eligible person" means an individual who:

~~(a)~~*(i)* is a resident of this state and applies for coverage under the association plan;

(ii) is not eligible for any other form of health insurance coverage or health service benefits, except:

(A) for coverage consisting solely of excepted benefits, as defined in 33-22-140; or

(B) subject to eligibility limitations adopted pursuant to 33-22-1502(1)(b), if the individual has coverage comparable to the association plan but is paying a premium or has received a renewal notice to pay a premium that is more than 150% of the average premium rate used to calculate the association plan premium rate pursuant to 33-22-1512(1); and

(iii) meets one or more of the following criteria:

~~(b) unless the individual's eligibility is waived by the association,~~*(A)* has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations*, unless the association waives this requirement;* or

(B) has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, that has the effect of substantially reducing coverage from that received by a person considered a standard risk~~; and~~

~~(c) is not eligible for any other form of disability insurance or health service benefits~~.

(b) The term does not apply to an individual who is certified as eligible for federal trade adjustment assistance or for pension benefit guarantee corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002, and is eligible for the association portability plan.

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their

employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(13) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

(15) "Qualified TAA-eligible individual" means an individual and any dependent of that individual, in addition to meeting the requirements specified in subsection (17):

(a) who has 3 months of prior creditable coverage;

(b) whose application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage; and

(c) who, if eligible for COBRA, is not required to elect or exhaust continuation coverage under the COBRA continuation provision or under a similar state program.

~~(15)~~*(16)* "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

(17) "TAA-eligible individual" means an individual and any dependent of that individual enrolling in the association portability plan:

(a) who is a resident of this state on the date of application to the pool;

(b) who has been certified as eligible for federal trade adjustment assistance and a health insurance tax credit or for pension benefit guarantee corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002;

(c) who does not have other health insurance coverage; and

(d) who is not covered under a group health plan maintained by an employer, including a group health plan available through a spouse, if the employer contributes 50% or more to the total cost of coverage."

Section 2. Section 33-22-1502, MCA, is amended to read:

"33-22-1502. Duties of commissioner — rules. The commissioner shall:

(1) adopt rules to carry out the provisions and purposes of this part, including rules*:*

(a) regarding late payment penalties or rates of interest charged on unpaid assessments*; and*

(b) that limit association plan eligibility under 33-22-1501(7)(a)(ii)(B) according to income level;

(2) supervise the creation of the association within the limits described in 33-22-1503;

(3) approve the selection of the lead carrier by the association and approve the association's contract with the lead carrier, including the association plan coverage and premiums to be charged;

(4) conduct periodic audits to ensure the general accuracy of the financial data submitted by the lead carrier and the association; and

(5) undertake, directly or through contracts with other persons, studies or demonstration projects to develop awareness of the benefits of this part so that the residents of this state may best avail themselves of the health care benefits provided by this part."

Section 3. Section 33-22-1513, MCA, is amended to read:

"33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual *or a TAA-eligible individual* to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) *except as provided in subsection (3),* impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) The association may impose a preexisting condition exclusion as provided in 33-22-1516 with respect to a TAA-eligible individual's association portability plan coverage if that individual does not meet the requirements defining a qualified TAA-eligible individual.

~~(3)~~*(4)* Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

~~(4)~~*(5)* Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

~~(5)~~*(6)* (a) Each participating member of the association shall share the losses because of claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs in the following manner:

(i) Each participating member of the association must be assessed by the association on an annual basis an amount not to exceed 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection ~~(5)(a)~~ *(6)(a)* or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1%

assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans. Any appropriation to the association may be expended for the operation of the association plan or the association portability plan.

(ii) (A) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. After 30 days, the association shall charge a member:

(I) a late payment penalty of 1.5% a month or fraction of a month on the unpaid assessment, not to exceed 18% of the assessment due;

(II) interest at the rate of 12% a year on the unpaid assessment, to be accrued at 1% a month or fraction of a month; or

(III) both of the charges in subsections ~~(5)(a)(ii)(A)(I)~~ *(6)(a)(ii)(A)(I)* and ~~(5)(a)(ii)(A)(II)~~ *(6)(a)(ii)(A)(II)*.

(B) Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iii) An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $50.

(b) For purposes of this subsection ~~(5)~~ *(6)*, "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, life insurance, medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments.

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses because of claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

~~(6)~~*(7)* The proportion of the annual assessment allocated to the operation and expenses of the association plan, not to include any amount of late payment penalty or interest charged, may be offset by an association member against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual assessment is levied. The commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. The proportion of the annual assessment allocated to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member."

Section 4. Section 33-22-1516, MCA, is amended to read:

"33-22-1516. Enrollment by eligible person. (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in

the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that the person fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage under the association plan may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 3 years immediately preceding the filing of an application. The association may not apply a preexisting condition exclusion to coverage under the association portability plan if application for association portability plan coverage is made *by a federally defined eligible individual or a qualified TAA-eligible individual* within 63 days following termination of the applicant's most recent prior creditable coverage. The association shall waive any time period applicable to a preexisting condition exclusion for the period of time that any other eligible individual, *including an individual who is eligible pursuant to 33-22-1501(7)(a)(ii)(B),* was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan."

Section 5. Section 33-22-1524, MCA, is amended to read:

"33-22-1524. Association authority for borrowing. (1) If the amount of the annual assessment collected under 33-22-1513~~(5)~~*(6)* and other available funds is insufficient to meet incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association, the association may borrow from the board of investments for a period not to exceed 2 years any funds necessary for the continued operation of the association plan and the association portability plan. The loaned funds may be used only to pay incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association.

(2) Whenever the association accepts a loan from the board of investments pursuant to this section, it shall repay the loan and any interest required under the terms of the loan through assessments and premium income. In accordance

with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the association and the board of investments by repealing the assessment imposed by 33-22-1513~~(5)~~*(6)* or by reducing it below the amount necessary to make annual loan payments."

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 22, 2003

CHAPTER NO. 454

[SB 209]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PUBLISH AN ANNUAL COUNT OF GAME ANIMALS, INCLUDING THE BASIS UPON WHICH THE GAME COUNT WAS MADE; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-201, MCA, is amended to read:

"87-1-201. (Temporary) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count. (Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)

87-1-201. (Effective March 1, 2006) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 21, 2003

CHAPTER NO. 455

[SB 243]

AN ACT REVISING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN FUND AND MOVING IT FROM THE STATE SPECIAL REVENUE FUND TO THE HOUSING AUTHORITY ENTERPRISE FUND; AMENDING SECTIONS 90-6-131, 90-6-133, AND 90-6-134, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-131, MCA, is amended to read:

"90-6-131. Legislative declaration. (1) The legislature finds that current economic conditions, federal housing policies, and declining resources at the federal, state, and local levels adversely affect the ability of low-income and moderate-income persons to obtain safe, decent, and affordable housing.

(2) The legislature further finds that the state will lose substantial sums allocated to it by the federal government for affordable housing for low-income and moderate-income households unless matching funds are provided.

(3) The legislature declares that it is in the public interest to establish a continuously renewable financial resource known as an affordable housing revolving loan ~~fund~~ *account* to assist low- and moderate-income citizens in meeting their basic housing needs."

Section 2. Section 90-6-133, MCA, is amended to read:

"90-6-133. Revolving loan account — administration. (1) There is an affordable housing revolving loan account in the ~~state special revenue fund in the state treasury~~ *housing authority enterprise fund provided for in 90-6-107*. The money in the loan account is allocated to the board for the purpose of providing loans to eligible applicants.

(2) (a) Except as provided in subsection (2)(b), funds deposited in the loan account must be used for the program authorized in 90-6-134 and may not be used to pay the expenses of any other program or service administered by the board.

(b) Money transferred to the account pursuant to section 2, Chapter 502, Laws of 2001, may be used only for the purposes authorized by the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq.

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of 90-6-131 through 90-6-136.

(4) The board may accept contributions, gifts, and grants for deposit into the loan account. The money must be used in accordance with the provisions of 90-6-134.

(5) The costs incurred by the board in administering the loan ~~fund~~ *account* must be paid from the loan account.

(6) Interest and principal on loans from the ~~fund~~ *loan account* must be repaid to the loan ~~fund~~ *account*.

(7) Interest income generated by investment of the principal of the loan ~~fund~~ *account* is retained in the loan ~~fund~~ account."

Section 3. Section 90-6-134, MCA, is amended to read:

"90-6-134. Housing loan program — loan capital restricted to interest on principal — eligible applicants. (1) The money in the loan ~~fund~~ *account* must be used to provide financial assistance in the form of direct loans by the board to eligible applicants.

(2) After the initial principal is loaned to eligible applicants, the amount of loans made in a fiscal year is contingent on the repayment of loan principal and on the amount of interest income generated by the principal of the loan ~~fund~~ *account*.

(3) Money from the loan ~~fund~~ *account* must be used to provide:

(a) matching funds for public or private money available from other sources for the development of low-income and moderate-income housing;

(b) bridge financing necessary to make a low-income housing development or a moderate-income housing development financially feasible;

(c) acquisition of existing housing for the purpose of preservation of or conversion to low-income or moderate-income housing; or

(d) preconstruction technical assistance to eligible recipients in rural areas and small cities and towns.

(4) (a) Technical assistance under subsection (3)(d) may include but is not limited to:

(i) financial planning and packaging for housing developments and projects;

(ii) project design, architectural planning, and siting;

(iii) compliance with planning and permitting requirements; or

(iv) maximizing local government contributions to project development in the form of land donations, infrastructure improvements, zoning variances, or creative local planning.

(b) The board may contract with a nonprofit organization to provide this technical assistance.

(5) Money from the loan ~~fund~~ *account* may not be used to replace existing or available sources of funding for eligible activities.

(6) Organizations eligible for loans from the loan ~~fund~~ *account* are local governments, tribal governments, local housing authorities, nonprofit community- or neighborhood-based organizations, regional or statewide nonprofit housing assistance organizations, or for-profit housing developers."

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved April 22, 2003

CHAPTER NO. 456

[SB 263]

AN ACT CREATING A CHILD HEARSAY EXCEPTION IN CRIMINAL PROCEEDINGS; ALLOWING THE USE OF CHILD HEARSAY TESTIMONY REGARDING OUT-OF-COURT STATEMENTS MADE BY A CHILD VICTIM IN CRIMINAL PROCEEDINGS INVOLVING SEXUAL OFFENSES AND OTHER CRIMES OF VIOLENCE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the state has an interest in protecting the welfare of children generally; and

WHEREAS, the state has an interest in protecting the well-being of children who are victims of sexual offenses and other violent crimes; and

WHEREAS, the state has an interest in giving child witnesses a voice in criminal proceedings; and

WHEREAS, it is the Legislature's prerogative to enact laws for the protection of children; and

WHEREAS, the Legislature finds that the admission of child hearsay testimony under a residual exception to the general hearsay rules does not always serve the general purposes of the rules and the interests of justice; and

WHEREAS, Rule 802 of the Montana Rules of Evidence provides that the Legislature may by statute provide for exceptions to the general rule that hearsay is not admissible; and

WHEREAS, the Legislature acknowledges the necessity that child hearsay testimony must be examined closely for reliability.

Be it enacted by the Legislature of the State of Montana:

Section 1. Child hearsay exception — criminal proceedings. (1) Otherwise inadmissible hearsay may be admissible in evidence in a criminal proceeding, as provided in subsection (2), if:

(a) the declarant of the out-of-court statement is a child who is:

(i) an alleged victim of a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or

(ii) a witness to an alleged sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding;

(b) the court finds that the time, content, and circumstances of the statement provide circumstantial guarantees of trustworthiness;

(c) the child is unavailable as a witness;

(d) the child hearsay testimony is offered as evidence of a material fact and is more probative on the point for which it is offered than any other evidence available through reasonable efforts; and

(e) the party intending to offer the child hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

(2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the admissibility of the child's testimony.

(3) When deciding the admissibility of offered child hearsay testimony under subsections (1) and (2), a court shall consider the following:

(a) the attributes of the child hearsay declarant, including:

(i) the child's age;

(ii) the child's ability to communicate verbally;

(iii) the child's ability to comprehend the statements or questions of others;

(iv) the child's ability to tell the difference between truth and falsehood;

(v) the child's motivation to tell the truth, including whether the child understands the general obligation to speak truthfully and not fabricate stories;

(vi) whether the child possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and

(vii) whether the child possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the child's hearsay statement, including:

(i) the witness's relationship to the child;

(ii) whether the relationship between the witness and the child has an impact on the trustworthiness of the child's hearsay statement;

(iii) whether the witness has a motive to fabricate or distort the child's statement; and

(iv) the circumstances under which the witness heard the child's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the child could confide;

(c) information regarding the child's statement, including:

(i) whether the statement contains knowledge not normally attributed to a child of the declarant's age;

(ii) whether the statement was spontaneous;

(iii) the suggestiveness of statements by other persons to the child at the time that the child made the statement;

(iv) if statements were made by the child to more than one person, whether those statements were consistent; and

(v) the nearness in time of the statement to the incident at issue;

(d) the availability of corroborative evidence through physical evidence or circumstantial evidence of motive or opportunity, including:

(i) whether the alleged act can be corroborated; and

(ii) if the child's statement identifies a perpetrator, whether that identity can be corroborated; and

(e) other considerations that in the judge's opinion may bear on the admissibility of the child hearsay testimony.

(4) As used in this section, "child" means a person under 15 years of age.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. [This act] is effective July 1, 2003.

Section 6. Applicability. [This act] applies to criminal proceedings begun after June 30, 2003.

Ap proved April 22, 2003

CHAPTER NO. 457

[SB 363]

AN ACT LIMITING AWARDS OF PUNITIVE DAMAGES IN CIVIL CASES OTHER THAN CLASS ACTION LAWSUITS; AND AMENDING SECTION 27-1-220, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. Punitive damages — when allowed — *limitation*. (1) Except as otherwise expressly provided by statute *and subject to subsection (3)*, a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(i) contract; or

(ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

(3) An award for punitive damages may not exceed $10 million or 3% of a defendant's net worth, whichever is less. This subsection does not limit punitive damages that may be awarded in class action lawsuits."

Ap proved April 21, 2003

CHAPTER NO. 458

[SB 364]

AN ACT PROVIDING THAT EXPOSING A CHILD TO THE CRIMINAL DISTRIBUTION, PRODUCTION, OR MANUFACTURE OF DANGEROUS DRUGS OR TO THE OPERATION OF AN UNLAWFUL CLANDESTINE LABORATORY CONSTITUTES CHILD ABUSE OR NEGLECT FOR PURPOSES OF THE CHILD ABUSE AND NEGLECT STATUTES; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare;

(ii) substantial risk of harm to a child's health or welfare; or

(iii) abandonment.

(b) *(i)* The term includes*:*

(A) actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare*; or*

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.~~.~~

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) *(a)* "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 22, 2003

CHAPTER NO. 459

[SB 366]

AN ACT REVISING THE RECLAMATION REQUIREMENTS FOR METAL MINES; AMENDING SECTION 82-4-336, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-336, MCA, is amended to read:

"82-4-336. Reclamation plan and specific reclamation requirements. (1) Taking into account the site-specific conditions and circumstances, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without

previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents; ~~or~~

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department; ~~or~~

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas.

(b) With regard to open pits and rock faces, the reclamation plan must provide *sufficient measures* for reclamation to a condition:

~~(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;~~

~~(ii) that affords some utility to humans or the environment; and~~

~~(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands.~~

~~(c) The reclamation of open pits and rock faces does not require backfilling, in whole or in part, except and only to the extent necessary to meet the requirements of the applicable provisions of Title 75, chapters 2 and 5~~

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment;

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and

(iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas *that are to be graded, covered, or vegetated,* including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to permits and permit amendments approved by the department of environmental quality after September 30, 1995.

Ap proved April 21, 2003

CHAPTER NO. 460

[SB 383]

AN ACT PROVIDING THAT CERTAIN ACTIVITIES ARE NOT PROHIBITED ACTIVITIES WITH REGARD TO WATER QUALITY; AMENDING SECTION 75-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-605, MCA, is amended to read:

"75-5-605. Prohibited activity — *exemption*. (1) It is unlawful to:

(a) cause pollution, as defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any

state or federal agency is not a placement of wastes within the prohibition of this subsection if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

(d) cause degradation of state waters without authorization pursuant to 75-5-303;

(e) violate any order issued pursuant to this chapter; or

(f) violate any provision of this chapter.

(2) Except for the permit exclusions identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

(3) Activities associated with routine or periodic maintenance, repair, replacement, or operation of irrigation water conveyance systems, including activities associated with any constructed channel, canal, ditch, pipeline, or portion of any constructed channel, canal, ditch, or pipeline, are not prohibited activities under this chapter if the activities do not result in exceeding water quality standards for any receiving water outside the irrigation water conveyance system. The diversion of water in accordance with an existing water right or permit pursuant to Title 85, chapter 2, is not a prohibited activity under this chapter."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 22, 2003

CHAPTER NO. 461

[SB 392]

AN ACT REQUIRING THAT WHEN THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS DEVELOPS A MANAGEMENT PLAN, THAT MANAGEMENT PLAN IS SUBJECT TO THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-201, MCA, is amended to read:

"87-1-201. (Temporary) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and

the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

~~(c)~~*(d)* This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a

species that is a potential candidate for listing.(Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)

87-1-201. (Effective March 1, 2006) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

~~(c)~~*(d)* This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to all management plans that have not been finalized by the department of fish, wildlife, and parks prior to January 1, 2003.

Ap proved April 21, 2003

CHAPTER NO. 462

[SB 423]

AN ACT REVISING LIMITS ON CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR STATE AND OTHER PUBLIC OFFICES; REVISING LIMITS ON CONTRIBUTIONS THAT LEGISLATIVE CANDIDATES MAY RECEIVE FROM POLITICAL COMMITTEES; INCREASING THE AMOUNT THAT TRIGGERS REPORTS FOR AGGREGATE CONTRIBUTIONS BY EACH CONTRIBUTOR; INCREASING THE UPPER LIMIT UNDER WHICH A POLITICAL COMMITTEE MAY CLAIM TO BE IN COMPLIANCE WITH VOLUNTARY EXPENDITURE LIMITS; PROVIDING AN INFLATION FACTOR FOR CONTRIBUTION AND SPENDING LIMITS; INCREASING THE FINE FOR EXCEEDING THE EXPENDITURE LIMITS; AND AMENDING SECTIONS 13-37-216, 13-37-218, 13-37-229, AND 13-37-250, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-216, MCA, is amended to read:

"13-37-216. Limitations on contributions. (1) (a) Aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed ~~$400~~ *$500*;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~$200~~ *$250*;

(iii) for a candidate for any other public office, not to exceed ~~$100~~ *$130.*

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee ~~which~~ *that* is not specifically organized on behalf of a particular candidate or ~~which~~ *that* is not controlled either directly or indirectly by a candidate or candidate's committee and ~~which~~ *that* does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed ~~$15,000~~ *$18,000*;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed ~~$5,000~~ *$6,500*;

(c) for a candidate for public service commissioner, not to exceed ~~$2,000~~ *$2,600*;

(d) for a candidate for the state senate, not to exceed ~~$800~~ *$1,050*;

(e) for a candidate for any other public office, not to exceed ~~$500~~ *$650*.

(4) A candidate may not accept any contributions in excess of the limits in this section.

(5) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply."

Section 2. Section 13-37-218, MCA, is amended to read:

"13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than ~~$1,000~~ *$2,150* in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than ~~$600~~ *$1,300* in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by ~~the~~ *an* inflation factor ~~as defined in 15-30-101 for~~, *which is determined by dividing the consumer price index for June of* the year *prior to the year* in which ~~general elections are~~ *a general election is* held *by the consumer price index for June 2003*. The resulting figure must be rounded ~~off~~ *up or down* to the nearest $50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601."

Section 3. Section 13-37-229, MCA, is amended to read:

"13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

~~(1)~~*(1)* the amount of cash on hand at the beginning of the reporting period;

~~(2)~~*(2)* the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of ~~$35~~ *$35* or more to a candidate or political committee, ~~(~~including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events~~)~~;

~~(3)~~*(3)* for each person identified under subsection ~~(2)~~ *(2)*, the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;

~~(4)~~*(4)* the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections ~~(2) and (3) of this section~~ *(2) and (3)*;

~~(5)~~*(5)* the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;

~~(6)~~*(6)* each loan from any person during the reporting period, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

~~(7)~~*(7)* the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;

~~(8)~~*(8)* an itemized account of proceeds that total less than ~~$35~~ *$35* from a person from mass collections made at fundraising events;

~~(9)~~*(9)* each contribution, rebate, refund, or other receipt not otherwise listed under subsections ~~(2) through (8) of this section~~ *(2) through (8)* during the reporting period;

~~(10)~~*(10)* the total sum of all receipts received by or for the committee or candidate during the reporting period; and

~~(11)~~*(11)* other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues."

Section 4. Section 13-37-250, MCA, is amended to read:

"13-37-250. Voluntary spending limits. (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, ... is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101(18)(b), who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) all committee loans or expenditures made by check or cash; and

(b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed ~~$150,000~~ *$195,000*.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of ~~$5,000~~ *$6,500* to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner.

(5) After July 1, 2004, all limits on voluntary spending in this section must be multiplied by an inflation factor, which is determined by dividing the consumer price index for June of the year prior to the year in which the general election is held by the consumer price index for June 2003. The resulting figure must be rounded up or down to the nearest $50 increment."

Section 5. Coordination instruction. If Senate Bill No. 407 and [this act] are both passed and approved, then [section 42 of Senate Bill No. 407], amending 13-37-218, is void.

Ap proved April 21, 2003

CHAPTER NO. 463

[SB 447]

AN ACT ELIMINATING THE TEST FOR LIABILITY FOR DISCLOSURE OF INFORMATION ABOUT AN EMPLOYEE'S OR FORMER EMPLOYEE'S PERFORMANCE; REPEALING SECTION 27-1-737, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 27-1-737, MCA, is repealed.

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to causes of action arising on or after [the effective date of this act].

Ap proved April 21, 2003

CHAPTER NO. 464

[SB 450]

AN ACT REVISING LAWS RELATED TO WORKERS' COMPENSATION; PROVIDING FOR DISCLOSURE AND COMMUNICATION OF HEALTH CARE INFORMATION FOR WORKERS' COMPENSATION PURPOSES WITHOUT PRIOR NOTICE TO THE INJURED EMPLOYEE; BARRING ATTORNEY FEES UNDER THE COMMON FUND DOCTRINE; EXCLUDING IMPAIRMENT RATINGS BASED EXCLUSIVELY ON PAIN;

INCREASING THE PERMANENT PARTIAL DISABILITY BENEFIT MAXIMUM ENTITLEMENT FROM 350 TO 375 WEEKS; AMENDING SECTIONS 39-71-604, 39-71-611, 39-71-612, 39-71-703, AND 50-16-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation — *disclosure and communication without prior notice of health care information.* (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and ~~such~~ proof of other matters ~~as~~ *that* may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) A signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information, as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court or as otherwise provided by law.

(3) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (2), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (2) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

~~(2)~~*(4)* If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department."

Section 2. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and ~~attorneys'~~ *attorney* fees payable on denial of claim or termination of benefits later found compensable — *barring of attorney fees under common fund and other doctrines.* (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of ~~attorneys'~~ *attorney* fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(3) Attorney fees may only be awarded under the provisions of subsection (1) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity."

Section 3. Section 39-71-612, MCA, is amended to read:

"39-71-612. Costs and ~~attorneys'~~ *attorney* fees that may be assessed against insurer by workers' compensation judge — *barring of attorney fees under common fund or other doctrines.* (1) If an insurer pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, ~~a~~ reasonable ~~attorney's fee~~ *attorney fees* and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of ~~attorneys'~~ *attorney* fees under subsection (1) may ~~only~~ be made *only* if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(4) Attorney fees may only be awarded under the provisions of subsections (1) and (2) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity."

Section 4. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is not based exclusively on complaints of pain;

~~(i)~~*(ii)* is established by objective medical findings; and

~~(ii)~~*(iii)* is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) ~~The~~ *Beginning July 1, 2003, the* permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by ~~350~~ *375* weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection ~~(3)~~ *(4)* must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 5. Section 50-16-527, MCA, is amended to read:

"50-16-527. Patient authorization — retention — effective period — exception — *communication without prior notice for workers' compensation purposes.* (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, *or to the agent of a workers' compensation insurer* by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

(5) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death."

Section 6. Effective date — applicability dates. (1) [This act] is effective on passage and approval.

(2) [Sections 2, 3, 4(1), 4(2), and 4(4) through 4(9)] apply to injuries that occur on or after [the effective date of this act].

(3) [Section 4(3)] applies to claims for injuries occurring on or after July 1, 2003.

(4) [Sections 1 and 5] apply retroactively, within the meaning of 1-2-109, to injuries occurring before [the effective date of this act].

Ap proved April 21, 2003

CHAPTER NO. 465

[HB 199]

AN ACT AUTHORIZING A DRIVER TO POST A DRIVER'S LICENSE IN LIEU OF BAIL FOR TRAFFIC OFFENSES; REVISING LAW ENFORCEMENT AND DRIVER'S LICENSE LAWS TO COORDINATE WITH THE PRIVILEGE OF POSTING A LICENSE IN LIEU OF BAIL; REPLACING THE DRIVER'S LICENSE REINSTATEMENT FEE WITH AN ADMINISTRATIVE FEE; AND AMENDING SECTIONS 44-1-1101, 44-1-1102, 46-9-302, 46-9-401, 61-5-214, 61-5-215, AND 61-5-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1101, MCA, is amended to read:

"44-1-1101. Duty of patrol officer upon making ~~an~~ arrest. Upon making an arrest, a patrol officer shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions ~~thereon~~ for the offender to report to the nearest justice of the peace; or

(3) *(a)* accept bail determined pursuant to Title 46, chapter 9, part 3*; or*

(b) with the offender's permission, accept the offender's driver's license in lieu of bail if the summons describes a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, and if the offender is the holder of an unexpired driver's license."

Section 2. Section 44-1-1102, MCA, is amended to read:

"44-1-1102. Procedure when patrol officer accepts bail or driver's license in lieu of bail. *(1)* If the patrol officer accepts bail, ~~he~~ *the patrol officer* shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

(2) If the patrol officer accepts an unexpired driver's license in lieu of bail, the patrol officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the

offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The patrol officer shall deliver the driver's license to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may extend the date of the driving permit for a period up to 6 months from the defendant's initial appearance date.

(3) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant after:

(a) the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, a $25 administrative fee has been paid to the court."

Section 3. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule — acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is:

(a) any assault on a partner or family member, as partner or family member is defined in 45-5-206;

(b) stalking, as defined in 45-5-220; or

(c) violation of an order of protection, as defined in 45-5-626.

(2) A peace officer may*:*

(a) accept bail on behalf of a judge:

~~(a)~~*(i)* in accordance with the bail schedule established under subsection (1); or

~~(b)~~*(ii)* whenever the warrant of arrest specifies the amount of bail*; or*

(b) with the offender's permission, accept an unexpired driver's license in lieu of bail for a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, as provided in subsection (4).

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

(4) Whenever a peace officer accepts an unexpired driver's license in lieu of bail, the peace officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The peace officer shall deliver the driver's license to the judge before whom the offender is to appear, and the judge shall give the peace officer a receipt acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the judge shall assume jurisdiction and may extend

the date of the driving permit for a period of up to 6 months from the defendant's initial appearance date.

(5) The judge shall return a driver's license that has been accepted in lieu of bail to a defendant after:

(a) the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, a $25 administrative fee has been paid to the court."

Section 4. Section 46-9-401, MCA, is amended to read:

"46-9-401. Forms of bail. (1) Bail may be furnished in the following ways:

(a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds, certificates of deposit, or other personal property approved by the court;

(b) by pledging real estate situated within the state with an unencumbered equity, not exempt, owned by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking executed by the defendant and by two sufficient sureties; ~~or~~

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company*; or*

(e) by posting an offender's driver's license in lieu of bail if the summons describes a violation of any offense in Title 61, chapters 3 through 10, except chapter 8, part 4, and if the offender is the holder of an unexpired driver's license.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

(3) ~~Nothing in this~~ *This* chapter ~~prohibits~~ *does not prohibit* a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant.

(4) Whenever a driver's license is accepted in lieu of bail, the judge shall return the driver's license to the defendant after:

(a) the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, a $25 administrative fee has been paid to the court."

Section 5. Section 61-5-214, MCA, is amended to read:

"61-5-214. Mandatory suspension for failure to appear or pay fine — *administrative fee* — notice. (1) The department shall suspend the *driver's* license or driving privilege of a person ~~immediately~~ upon receipt of a ~~certified copy of a docket page or other sufficient evidence~~ *report* from the court*, certified under penalty of law and in a form prescribed by the department,* that the person:

(a) is charged with or convicted of a violation of chapters 3 through 10 of this title;

(b) (i) failed to post the set bond amount or appear upon *an* issued complaint, summons, or court order; ~~or~~

(ii) after posting a driver's license in lieu of bail, failed to appear upon an issued complaint, summons, or court order; or

~~(ii)~~*(iii)* when assessed a fine, costs, or restitution of $100 or more, failed to pay the fine, costs, or restitution; and

(c) received prior written notice that the driver's license or driving privileges of the person ~~will~~ *would* be suspended upon*:*

(i) ~~a~~ failure to post bond or appear on an issued complaint, summons, or court order*;*

(ii) failure to appear after posting a driver's license in lieu of bond; or

(iii) ~~upon a~~ failure to pay assessed fines, costs, or restitution.

(2) The suspension continues in effect until the court notifies the department that*:*

(a) the person has ~~paid the reinstatement fee and~~ either appeared in court or paid the assessed fines, costs, or restitution*; and*

(b) the person has paid the court an administrative fee of $25 if the court was holding the offender's driver's license in lieu of bail under 44-1-1102, 46-9-302, or 46-9-401.

(3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days.

(4) The court shall deposit any administrative fee received under subsection (2)(b) in the appropriate county or city general fund."

Section 6. Section 61-5-215, MCA, is amended to read:

"61-5-215. Provisional licenses prohibited ~~— reinstatement fee~~. ~~(1) No~~ *A* provisional, restricted, or probationary license may *not* be issued upon a suspension under 61-5-214.

~~(2) A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of $25 to the court for deposit in the state general fund.~~"

Section 7. Section 61-5-216, MCA, is amended to read:

"61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and, *if applicable,* the ~~reinstatement~~ *administrative* fee, the department shall immediately reinstate the license, unless the operator otherwise is not entitled to reinstatement."

Section 8. Coordination instruction. If House Bill No. 215 and [this act] are both passed and approved, then [section 7 of this act], amending 61-5-216, is amended to read:

"Section 7. Section 61-5-216, MCA, is amended to read:

"61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts *and has paid the administrative fee required under 61-5-214* and*, if* the reinstatement fee *required under 61-2-107 or [section 1 of House Bill No. 215] has been paid*, the department shall ~~immediately~~ reinstate the license, unless the operator otherwise is not entitled to reinstatement.""

Ap proved April 23, 2003

CHAPTER NO. 466

[HB 249]

AN ACT ALLOWING CITIES, TOWNS, AND CONSOLIDATED GOVERNMENTS TO ADOPT PLANS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS WITHIN THE BOUNDARIES OF A CITY, TOWN, OR PORTION OF A CONSOLIDATED GOVERNMENT THAT WAS ORIGINALLY A CITY OR TOWN; PROVIDING AN EXEMPTION TO THE POWERS DENIED LOCAL GOVERNMENT WITH RESPECT TO CONTROLLING, REMOVING, AND RESTRICTING GAME ANIMALS; PROVIDING AN EXEMPTION TO THE RESTRICTION THAT A CONSOLIDATED GOVERNMENT MUST ADOPT EITHER A CITY OR COUNTY PROVISION; REQUIRING APPROVAL BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS PRIOR TO DEVELOPING AND IMPLEMENTING A PROGRAM FOR THE CONTROL, REMOVAL, AND RESTRICTION OF GAME ANIMALS FROM CITIES, TOWNS, OR CONSOLIDATED GOVERNMENTS THAT HAVE ADOPTED A PLAN; AMENDING SECTIONS 7-1-111, 7-3-1105, 7-3-1222, AND 7-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Restriction of wildlife. A city or town may adopt a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the city or town shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the city or town may implement the plan as approved or as approved with conditions.

Section 2. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) *except as provided in 7-3-1105, 7-3-1222, or [section 1],* any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); and

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction."

Section 3. Section 7-3-1105, MCA, is amended to read:

"7-3-1105. Rules, ordinances, and resolutions of consolidated unit. *(1)* Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(2) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the defined boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions."

Section 4. Section 7-3-1222, MCA, is amended to read:

"7-3-1222. Procedure to enact ordinances and resolutions. (1) Ordinances and resolutions ~~shall~~ *must* be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, ~~shall~~ *must* be confined to one subject, which ~~shall~~ *must* be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations ~~shall~~ *must* be confined to the subject of appropriations. ~~No~~ *An* ordinance ~~shall~~ *may not* be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading ~~shall~~ *must* be in full unless a written or printed copy of the measure ~~shall have~~ *has* been furnished to each member of the commission prior to ~~such~~ *final* reading.

(2) The enacting clause of all ordinances passed by the commission ~~shall~~ *must* be: "Be it ordained by the city and county of ....", and the enacting clause of all ordinances submitted by the initiative ~~shall~~ *must* be: "Be it ordained by the people of the city and county of .....".

(3) ~~No~~ *An* ordinance, resolution, or section ~~thereof shall~~ *of an ordinance or resolution may not* be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section ~~thereof~~ *of the ordinance or resolution* as revised or amended.

(4) Every ordinance~~,~~ or resolution, upon its final passage, ~~shall~~ *must* be recorded in a book kept for that purpose and ~~shall~~ *must* be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution ~~shall~~ *must* be published at least once in ~~such~~ *the* manner ~~as~~ *that* the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors ~~shall~~ *must* be published and may be amended or repealed by the commission, as in the case of other ordinances.

(6) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions."

Section 5. Section 7-5-201, MCA, is amended to read:

"7-5-201. Operation of self-government consolidated units of local government. (1) ~~Whenever~~ *Except as provided in 7-3-1105(2) and 7-3-1222(6), whenever* existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those

areas where ~~such~~ *the* units are subject to state law under 7-1-111 through 7-1-114.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever ~~such~~ a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have ~~such an~~ *that* official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 31, part 41, and the provisions of Title 7, chapter 31, part 41, apply to [section 1].

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Effective date. [This act] is effective on passage and approval.

Ap proved April 23, 2003

CHAPTER NO. 467

[HB 315]

AN ACT PROVIDING AN EXCEPTION FROM THE REQUIREMENT TO PAY STANDARD PREVAILING WAGES FOR AN EMPLOYER WHO, AS A NONPROFIT ORGANIZATION PROVIDING VOCATIONAL REHABILITATION, PERFORMS A PUBLIC WORKS CONTRACT FOR NONCONSTRUCTION SERVICES AND WHO EMPLOYS AN INDIVIDUAL WHOSE EARNING CAPACITY IS IMPAIRED BY A MENTAL, EMOTIONAL, OR PHYSICAL DISABILITY IF THE EMPLOYER CONFORMS WITH THE FEDERAL FAIR LABOR STANDARDS ACT AND PAYS THE INDIVIDUAL WAGES THAT ARE EQUAL TO OR ABOVE THE STATE'S MINIMUM WAGE; AMENDING SECTIONS 18-2-403 AND 18-2-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception. (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the

project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

(4) ~~All~~ *Except as provided in subsection (5), all* public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in 39-3-404.

~~(5)~~*(6)* Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

~~(6)~~*(7)* A contract, other than a public works contract, let for a project costing more than $25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, ~~on or after July 1, 1993,~~ must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(7)~~*(8)* A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in

subsections (1) through ~~(6)~~ *(7)* in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

~~(8)~~*(9)* Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency."

Section 2. Section 18-2-407, MCA, is amended to read:

"18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) ~~Any~~ *Except as provided in 18-2-403, a* contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals."

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

Ap proved April 23, 2003

CHAPTER NO. 468

[HB 545]

AN ACT ESTABLISHING STATUTORY WATER QUALITY PERMIT FEES FOR SUCTION DREDGE OPERATIONS; AUTHORIZING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR SUCTION DREDGING SUBJECT TO THE PERMIT FEES; AMENDING SECTIONS 75-5-201, 75-5-516, AND 82-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-201, MCA, is amended to read:

"75-5-201. Board rules authorized. (1) *(a)* The board shall, subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) The board shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

Section 2. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery — process — rulemaking. (1) ~~The~~ *Except as provided in subsection (12), the* board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) ~~The~~ *Except as provided in subsection (12), the* rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to board rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a

permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) $25 if it is owned and operated by a resident of this state; or

(ii) $100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) $25 if it is owned and operated by a resident of this state; or

(ii) $100 if it is owned and operated by a nonresident of this state."

Section 3. Section 82-4-310, MCA, is amended to read:

"82-4-310. Exemption — scale and type of activity. (1) A person is exempt from this part when the person is engaging in a mining activity that does not:

(a) use motorized excavating equipment;

(b) use blasting agents;

(c) disturb more than 100 square feet or 50 cubic yards of material at any site;

(d) leave unreclaimed sites that are less than 1 mile apart;

(e) use mercury in any operations except in a contained facility that prevents the escape of any mercury into the environment; or

(f) use a cyanide ore-processing reagent or other metal leaching solvents or reagents in any operations.

(2) A person is exempt from this part when the person is engaging in a mining activity using a suction dredge if:

(a) the dredge in use has an intake of 4 inches in diameter or less;

(b) the person does not operate the dredge beyond the area of the streambed that is naturally under water at the time of operation; and

(c) the person has obtained for the activity:

(i) project approval pursuant to Title 75, chapter 7, part 1; and

(ii) a discharge permit issued pursuant to 75-5-402 *and has paid the applicable fee provided in 75-5-516(12).*

(3) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1)."

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved April 23, 2003

CHAPTER NO. 469

[HB 669]

AN ACT REVISING THE PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; PROVIDING THAT A SUBDIVIDER MAY DEDICATE LAND OUTSIDE OF A SUBDIVISION; AND AMENDING SECTION 76-3-621, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), *(6),* and ~~(6)~~ *(7)* of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); ~~or~~

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1)*; or*

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

~~(7)~~*(8)* For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(9) A land donation under this section may be inside or outside of the subdivision."

Ap proved April 23, 2003

CHAPTER NO. 470

[HB 677]

AN ACT CLARIFYING THE JURISDICTION OF JUSTICES' COURTS WITH REGARD TO VIOLATIONS OF THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975; CLARIFYING CRIMINAL FINES AND CIVIL PENALTIES; AMENDING SECTIONS 3-10-301, 3-10-601, AND 75-7-123, MCA; REPEALING SECTION 75-7-124, MCA; AND PROVIDING

AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $7,000, exclusive of court costs;

(b) in actions for damages not exceeding $7,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $7,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $7,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding $7,000~~,~~ imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding $7,000 imposed by a statute or assessed by an order of a district for violation of Title 75, chapter 7, part 1;

~~(f)~~*(g)* in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $7,000, though the penalty may exceed that sum;

~~(g)~~*(h)* to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $7,000, exclusive of court costs;

~~(h)~~*(i)* to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15*;*

(j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual cost for restoration of a stream if the restoration does not exceed $7,000.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 3-10-601, MCA, is amended to read:

"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) ~~Each~~ *Except as provided in 75-7-123, a* justice's court shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) Except as provided in *75-7-123 and* subsection (4)*of this section*, all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a

justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) Except as provided in 46-18-236(7) *and 75-7-123*, the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the department of revenue for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment."

Section 3. Section 75-7-123, MCA, is amended to read:

"75-7-123. Penalties — restoration. *(1)* A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is*:*

(a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500*;* or ~~by a civil penalty~~

(b) subject to a civil penalty not to exceed $500 for each day that person continues to ~~physically alter or modify the stream, and in~~ *be in violation*.

(2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.

(3) In addition~~, that~~ *to a fine or a civil penalty under subsection (1), the* person*:*

(a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible*; or*

(b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed $7,000. If the amount of liability for restoration exceeds $7,000, then the action must be brought in district court.

(4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601."

Section 4. Repealer. Section 75-7-124, MCA, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all notices of projects pending before a conservation district on [the effective date of this act].

Ap proved April 23, 2003

CHAPTER NO. 471

[HB 758]

AN ACT GENERALLY REVISING THE LAWS RELATED TO VIDEO GAMBLING MACHINES; IMPOSING AN ANNUAL PERMIT SURCHARGE FEE BASED ON THE NUMBER OF VIDEO GAMBLING MACHINES ON THE PREMISES; PROVIDING FOR THE PRORATION OF THE FEE; PROVIDING THAT THE FEE BE DEPOSITED IN THE STATE GENERAL FUND; EXEMPTING ESTABLISHMENTS THAT HAVE PERMITTED VIDEO GAMBLING MACHINES ON THE PREMISES FROM LOCAL GOVERNMENT ORDINANCES ON SMOKING THAT ARE MORE RESTRICTIVE THAN STATE LAWS ON SMOKING; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Premises with video gambling machines — local smoking ordinance no more restrictive than state law. An establishment that has been granted a permit under Title 23, chapter 5, part 6, for the placement of video gambling machines on the premises is exempt from any local government ordinance that is more restrictive than the provisions of Title 50, chapter 40, part 1.

Section 2. Section 23-5-612, MCA, is amended to read:

"23-5-612. Machine permits — ~~fee~~ *fees*. (1) The department, upon payment *by the operator* of the ~~fee~~ *fees* provided in ~~subsection~~ *subsections* (2) *and (4)* and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of $200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of $25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall deposit 50% of the total permit fee collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) in the state special revenue fund for purposes of administering this part and for other purposes provided by law. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the

department, as provided in 17-7-502, for deposit in the local government treasury.

(4) (a) In addition to the annual permit fee charged under subsection (2), the department shall charge a $10 annual permit surcharge fee for each video gambling machine that is on a licensed premises having fewer than 20 machines and a $20 annual permit surcharge fee for each machine that is on a licensed premises having 20 machines. The annual permit surcharge fee must be prorated as provided in subsection (2)(a).

(b) The annual permit surcharge fee charged under subsection (4)(a) must be deposited in the state general fund."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, part 1, and the provisions of Title 7, chapter 1, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to local government ordinances on smoking adopted prior to [the effective date of this act].

(2) [Section 2] applies to annual permit fees charged after June 30, 2003.

Ap proved April 23, 2003

CHAPTER NO. 472

[SB 458]

AN ACT PROVIDING PROTECTION FOR RATEPAYERS AND FOR THE SHAREHOLDERS OF INNOCENT THIRD-PARTY PURCHASERS FOR THE ERRORS OR OMISSIONS OF A PREDECESSOR UTILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Ratepayer and shareholder protection. (1) Rates established pursuant to Title 69, chapter 3, part 3, may not allow for the recovery of any portion of a civil judgment in a lawsuit arising out of litigation brought by the shareholders of a predecessor in interest against:

(a) the predecessor in interest;

(b) the officers or directors of a predecessor in interest;

(c) the legal advisers or consultants to the predecessor in interest; or

(d) any successor of the predecessor in interest, including a successor in interest.

(2) (a) Subject to subsection (3), an entity subject to regulation under Title 69, including the entity's subsidiaries and affiliates, may not be made a party to litigation brought by the shareholders of a predecessor in interest against:

(i) the predecessor in interest;

(ii) the officers or directors of a predecessor in interest;

(iii) the legal advisers or consultants to the predecessor in interest; or

(iv) any successor of the predecessor in interest that is not a successor in interest.

(b) Except as provided in subsection (3), an entity subject to regulation under Title 69 may not be held liable for a civil judgment entered against:

(i) a predecessor in interest;

(ii) the officers or directors of a predecessor in interest;

(iii) the legal advisers or consultants to the predecessor in interest; or

(iv) any successor of the predecessor in interest that is not a successor in interest.

(3) Subsection (2) does not apply:

(a) to a successor of a public utility regulated by the public service commission pursuant to Title 69, chapter 3, on May 2, 1997, whose shareholders received stock as a result of the sale of a public utility; or

(b) if the liabilities resulting from, related to, or arising out of a reorganization, restructuring, or plan of merger were explicitly assumed by written contract to be the liabilities of the successor to the predecessor in interest.

(4) For the purposes of this section:

(a) "predecessor in interest" means a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, in which an interest was purchased through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption; and

(b) "successor in interest" means the purchaser of all or a portion of a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 8, part 2, and the provisions of Title 69, chapter 8, part 2, apply to [section 1].

Section 3. Nonseverability. It is the intent of the legislature that each part of [section 1] is essentially dependent upon every other part of [section 1], and if one part of [section 1] is held unconstitutional or invalid, all other parts are invalid.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to cases filed but in which a judgment has not been entered on [the effective date of this act].

Ap proved April 23, 2003

CHAPTER NO. 473

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED

PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 419, LAWS OF 1999, AND SECTION 2, CHAPTER 232, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants. (1) The amount of $2,400,000 is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for appropriation from the interest income of the resource indemnity trust fund as set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. Approved grant projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 58th legislature for the 2005 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Big Horn Conservation District	
(Ground Water Monitoring—Tongue & Powder River Watersheds)	300,000
Sunburst, Town of	
(Sunburst Water Supply Renovation)	185,249
Governor's Office	
(Growing Carbon)	300,000
Board of Oil and Gas Conservation	
(Oil and Gas Plug and Abandonment)	200,000
Toole County	
(2003 Plugging and Abandonment)	240,000
Board of Oil and Gas Conservation	
(2003 Northern District Plug and Abandonment)	300,000
Board of Oil and Gas Conservation	
(2003 Southern District Plug and Abandonment)	100,000
Department of Environmental Quality	
(Washington Mine and Millsite Reclamation)	300,000

Powell County*	
(CMC Roundhouse Site Cleanup)	76,400
Department of Environmental Quality	
(Drumlummon Tailings, Goldsil Mine Waste Reclamation)	300,000
Sheridan County Conservation District	
(Reclaiming Oilfield Brine Contaminated Soils)	150,000
Department of Natural Resources and Conservation	
(Planning Grants)	50,000
Fergus County Conservation District	
(Central Montana Aquifer Project)	150,000
Judith Basin Conservation District	
(Judith Basin Aquifer Restoration and Conservation)	70,000

The project grant identified with an asterisk (*) is contingent on the transfer of the site that is 14.5 acres located south of Milwaukee avenue to Powell County without compensation to the current owner.

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2005 biennium pursuant to 17-7-302.

Section 3. Coordination of fund sources for grants program projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 4. Condition of grants. Disbursement of grant funds under [sections 1 through 5] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2005 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 4] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Section 2, Chapter 419, Laws of 1999, is amended to read:

"**Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 56th legislature for the 2001 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 "A" Orphaned Well Plug and Abandonment and Site Restoration	$300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 "B" Orphaned Well Plug and Abandonment and Site Restoration	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Toston Smelter Reclamation Project	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Frohner Mine Reclamation Project	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Great Republic Smelter Reclamation Project	300,000
PARK CONSERVATION DISTRICT*	
Upper Yellowstone River Cumulative Effects Investigation	299,940
TOOLE COUNTY*	
Toole County Plugging and Abandonment, Aid to Independent Small Oil Operators	300,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Upper Clark Fork Basin: Superfund Technical Assistance	95,236
FERGUS COUNTY CONSERVATION DISTRICT*	
Central Montana Artesian Basin Ground Water Project	150,000
TOOLE COUNTY	
North Toole County Reclamation Project	150,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Mining City Mineyard Preservation and Enhancement	297,104
~~TOWNSEND, CITY OF~~	
~~East Pacific Mine Reclamation~~	~~202,500~~

MONTANA TECH OF THE UNIVERSITY OF MONTANA	
Champion International Gravel Pit Reclamation Project	57,494
LEWISTOWN, CITY OF	
Source Location of Hazardous Organic Contaminants Spring Creek Drainage	50,000
GLASGOW IRRIGATION DISTRICT	
St. Mary Diversion Repairs	110,818
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Oil Well Abandonment	20,105

The board of oil and gas conservation is authorized to expend remaining funds from grants to the board in this subsection (2) and remaining funds from grants previously awarded to the board to pay for the proper plugging of additional abandoned oil and gas wells. In determining which wells to plug, abandoned wells that represent the greatest threat to the environment and public health and safety should be given priority over all others.

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2001 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality."

Section 7. Section 2, Chapter 232, Laws of 2001, is amended to read:

"**Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 57th legislature for the 2003 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
BOARD OF OIL AND GAS CONSERVATION*	$300,000
2001 Eastern District Orphaned Well Plug & Abandonment & Site Restoration	
BOARD OF OIL AND GAS CONSERVATION*	300,000
2001 Northern District Orphaned Well Plug & Abandonment & Site Restoration	
DEPARTMENT OF ENVIRONMENTAL QUALITY	300,000
Development of Trust Fund to Ensure Long-Term Water Treatment at Zortman-Landusky	

~~POWELL COUNTY* 300,000~~

~~Ontario Wet Tailings Reclamation~~

CITY OF LEWISTOWN* 297,740

Reclamation of Brewery Flats on Big Spring Creek

DEPARTMENT OF ENVIRONMENTAL QUALITY* 291,191

CMC Pony Mill Site Reclamation Project (completion phase)

BROADWATER CONSERVATION DISTRICT* 145,380

Big Belt Mine Reclamation Projects

CITY OF DEER LODGE* 140,000

Former Chicago Milwaukee Railroad Passenger Fueling Area, Deer Lodge, Montana

BUTTE-SILVER BOW COUNTY 49,272

Upper Clark Fork Basin; Superfund Technical Assistance

BOARD OF OIL AND GAS CONSERVATION 250,000

2001 Southern District Orphaned Well Plug & Abandonment & Site Restoration

CUSTER COUNTY CONSERVATION DISTRICT* 299,977

Yellowstone River Resource Conservation Project

CASCADE COUNTY / WEED AND MOSQUITO MANAGEMENT 218,466

Fort Shaw Weed Shop Soil Contamination Remediation

DEPARTMENT OF ENVIRONMENTAL QUALITY* 300,000

Organic Soil Amendments

DEPARTMENT OF ENVIRONMENTAL QUALITY* 300,000

Zortman Mine - Ruby Gulch Tailings Removal

The state grant is subject to receipt of federal funds to complete tailings removal and stream channel restoration above, within, and below the Zortman townsite.

DEPARTMENT OF ENVIRONMENTAL QUALITY 250,000

Coal Bed Methane Gas EIS

GLACIER COUNTY* 150,000

2000 Glacier County Plugging & Abandonment

PONDERA COUNTY* 100,000

Pondera County Oil & Gas Well Plug & Abandonment Project

LIBERTY COUNTY* 50,000

Abandonment Aid Program for Small Independent Operators in Liberty, Hill, Blaine, & Chouteau Counties

DEPARTMENT OF ENVIRONMENTAL QUALITY* 300,000

Gregory Mine Reclamation Project

SHERIDAN COUNTY CONSERVATION DISTRICT 299,950

Protecting Natural Resources by Reclaiming Oilfield Brine Contaminated Soils

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	272,500
DNRC Environmental Hazard Sites on State Land	
FLATHEAD COUNTY	167,821
Assessment of Aggregate Resources for Long-Term Planning in Flathead & Missoula Counties	

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2003 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality."

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2003.

Ap proved April 24, 2003

CHAPTER NO. 474

[HB 159]

AN ACT GENERALLY REVISING FOOD ESTABLISHMENT AND NONPRESCRIPTION DRUG MANUFACTURING LAWS; CREATING A STATUTORY SCHEME FOR THE LICENSURE AND REGULATION OF WHOLESALE FOOD ESTABLISHMENTS AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT; PROVIDING FOR INJUNCTIONS, CIVIL ACTIONS, PROSECUTION, AND CIVIL PENALTIES AND CRIMINAL PENALTIES FOR VIOLATIONS OF WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS; PROVIDING FOR VALIDATION OF LICENSES BY LOCAL HEALTH OFFICERS; PROVIDING FOR THE DENIAL OR CANCELLATION OF LICENSES; PROVIDING FOR INSPECTIONS AND INVESTIGATIONS BY STATE AND LOCAL HEALTH OFFICERS, SANITARIANS-IN-TRAINING, AND REGISTERED SANITARIANS; CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPARTMENT TO BE USED IN ADMINISTERING WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL DRUG MANUFACTURING LAWS; REQUIRING THE DEPARTMENT TO PAY LOCAL BOARDS OF HEALTH FOR INSPECTIONS AND ENFORCEMENT; CLARIFYING THE DUTIES OF LOCAL HEALTH OFFICERS; GENERALLY REVISING LAWS GOVERNING FOOD ESTABLISHMENTS TO PROVIDE CONSISTENCY WITH THE WHOLESALE FOOD ESTABLISHMENT AND WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURING LAWS AND TO CLARIFY THE LAWS THAT PERTAIN

TO RETAIL FOOD ESTABLISHMENTS; AMENDING SECTIONS 30-16-301, 50-2-118, 50-50-102, 50-50-106, 50-50-107, 50-50-108, AND 50-50-110, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. [Sections 1 through 25] provide for the licensure and regulation of wholesale food establishments and wholesale and retail nonprescription drug manufacturers to prevent and eliminate conditions and practices that endanger public health.

Section 2. Definitions. Unless the context clearly requires otherwise, in [sections 1 through 25], the following definitions apply:

(1) "Consumer" means a person who:

(a) is a member of the public;

(b) takes possession of food or nonprescription drugs;

(c) is not functioning in the capacity of an operator of an establishment; and

(d) does not offer the food or nonprescription drugs for resale.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and:

(a) is advertised only as a food supplement; and

(b) bears or contains one or more of the following ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical substance;

(iv) an amino acid; or

(v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or a combination of any ingredients described in subsections (3)(b)(i) through (3)(b)(iv).

(4) "Establishment" means a wholesale food manufacturing establishment, wholesale food salvage establishment, wholesale food warehouse, wholesale ice manufacturer, wholesale water bottler, wholesale nonprescription drug manufacturer, or retail nonprescription drug manufacturer.

(5) (a) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption. The term includes dietary supplements.

(b) The term does not include nonprescription drugs.

(6) "Local board of health" means a county, city, city-county, or district board of health.

(7) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board of health or the health officer's authorized representative.

(8) (a) "Nonprescription drug" means an article, other than food, that is available without a prescription from a health practitioner licensed by the department of labor and industry, and that is:

(i) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease in humans or animals;

(ii) intended to affect the structure or function of the body of humans or animals; or

(iii) intended for use as a component of any article specified in subsections (8)(a)(i) and (8)(a)(ii).

(b) The term does not include devices, as defined in 50-31-103.

(9) "Nonprescription drug manufacturer" means an entity engaged in the manufacturing, processing, preparing, or packaging of nonprescription drugs for sale or human consumption at retail or wholesale.

(10) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(11) "Retail" means the provision of food or nonprescription drugs directly to the consumer.

(12) "Retail food establishment" means an establishment, as defined in 50-50-102, that provides food directly to the consumer.

(13) (a) "Wholesale" means the sale or provision of food or nonprescription drugs to a retail food establishment or other person engaged in retail sales who sells or provides the items directly to the consumer.

(b) The term does not include the sale or provision of food or nonprescription drugs at retail.

(14) (a) "Wholesale food manufacturing establishment" means a facility and the facility's buildings or structures used to manufacture or prepare food for human consumption at wholesale.

(b) The term does not include:

(i) milk producer's facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

(15) "Wholesale food salvage establishment" means an entity that is engaged in reconditioning or by other means salvaging distressed food or that sells, buys, or distributes for human consumption any salvaged food. The term includes a salvage broker, a salvage operator, and a salvage warehouse.

(16) (a) "Wholesale food warehouse" means a facility used to store food or cosmetics for distribution to retailers.

(b) The term includes a frozen food plant that is used to freeze, process, or store food, including any facility used in conjunction with the frozen food plant.

(c) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing or drink manufacturing occurs.

(17) (a) "Wholesale ice manufacturer" means an entity that produces ice for human consumption that is sold at wholesale in packaged form or in bulk form for food, drink, or culinary purposes.

(b) The term does not include:

(i) persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture or furnish ice solely for their customers in a manner

that is incidental to the production, sale, or dispensing of other goods and services; or

(ii) a retail food establishment that manufactures ice in packaged form for onsite retail sales to the consumer.

(18) (a) "Wholesale water bottler" means an entity that is engaged in the production, packaging, manufacturing, or processing of drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption that is sold at wholesale.

(b) The term does not include a facility that produces, packages, manufactures, or processes drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption that is done onsite for retail sale.

Section 3. Department authorized to adopt rules. (1) The department shall adopt rules relating to the operation of establishments, including rules:

(a) setting standards to ensure sanitation and safety in establishments to protect public health and safety;

(b) relating to the licensing of establishments;

(c) providing procedures for enforcement of the laws and rules relating to establishments;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to [section 25].

(2) To the extent feasible, the rules must be consistent with rules adopted to implement chapter 50.

Section 4. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of [sections 1 through 25].

Section 5. Diseased person not to handle food or nonprescription drugs. A person who has a communicable disease, as defined in 50-1-101, may not work in any establishment or in the handling or processing of food or nonprescription drugs.

Section 6. Injunctions. The regulatory authority may bring an action for an injunction against the continuation of an alleged violation of [sections 1 through 25] or a rule adopted by the department under [sections 1 through 25].

Section 7. County attorney to prosecute violations. When the regulatory authority furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating [sections 1 through 25] or a rule adopted by the department under [sections 1 through 25].

Section 8. Violation — misdemeanor. A person who purposefully or knowingly violates provisions of [sections 1 through 25] or rules adopted by the department under [sections 1 through 25] is guilty of a misdemeanor. Upon conviction, the person shall be:

(1) fined an amount of not less than $50 or more than $100 for the first offense;

(2) fined an amount of not less than $75 or more than $200 for the second offense;

(3) fined an amount of not less than $200 and imprisoned in the county jail for not more than 90 days for the third offense and subsequent offenses.

Section 9. Civil penalties — injunctions not barred. (1) An establishment that violates [sections 1 through 25] or rules adopted by the department under [sections 1 through 25] is subject to a civil penalty not to exceed $500.

(2) A civil action to impose penalties, as provided under this section, does not bar a prosecution under [sections 7 and 8] or injunctions to enforce compliance with [sections 1 through 25] or to enforce compliance with a rule adopted by the department under [sections 1 through 25].

Section 10. Costs and expenses — recovery by department or county. In a civil action initiated by the regulatory authority under [sections 1 through 25], the court may, by petition of the regulatory authority, order an establishment that is found to be in willful violation of [sections 1 through 25] or rules adopted under [sections 1 through 25] to pay the costs of investigations and any other expenses incurred in enforcing the provisions of [sections 1 through 25]. These costs are limited to the direct costs of investigations and other expenses.

Section 11. License required. (1) A person operating an establishment shall procure an annual license from the department.

(2) Except as provided in subsection (3), a separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) A person operating an establishment and a retail food establishment is required to obtain a separate license for the establishment under [sections 1 through 25] and for the retail food establishment under Title 50, chapter 50.

Section 12. Application for license. An application for a license must be made to the department on forms containing information required by the department, or the application must be made in compliance with the rules established by the board of review established in 30-16-302.

Section 13. License fee — late renewal fee — allocation of fees. (1) For each annual license issued, the department shall collect a fee of $75. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of $75 for each license.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section 15] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) 88% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 6% into the general fund; and

(c) 6% into the account, created in [section 22], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section 22], in the state special revenue fund.

Section 14. License fee — late renewal fee — allocation of fees. (1) For each annual license issued, the department shall collect a fee of $90. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of $90 for each license.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section 15] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) 90% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 5% into the general fund; and

(c) 5% into the account, created in [section 22], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section 22], in the state special revenue fund.

Section 15. License expiration — non-transferability. (1) Except as provided in subsection (2), licenses expire on December 31 of the year in which they are issued unless canceled for cause.

(2) If the board of review adopts a renewal date for licenses under [sections 1 through 25], the licenses expire on the anniversary date established by rule by the board of review.

(3) Licenses are not transferable.

Section 16. Right to renewal. (1) License renewal may be obtained annually by paying the required annual license fee provided for in [section 13].

(2) The department shall renew licenses as a matter of right, unless conditions exist that are grounds for cancellation or denial of a license.

Section 17. Validation by local health officer. (1) A license issued by the department is not valid until it is signed by the local health officer of the local board of health with jurisdiction where the establishment is located.

(2) The local health officer shall validate or refuse to validate the license within 15 days of the receipt of the license.

(3) The failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

Section 18. Refusal of local health officer to validate — appeal to board. (1) A local health officer may refuse to validate a license issued by the department only if the local health officer determines that the applicant has not met the requirements for the issuance of the license under [sections 1 through

25] or rules adopted by the department under [sections 1 through 25]. The local health officer shall notify the applicant and the department of the refusal within 5 days of the decision not to validate. The notice must state the grounds for the refusal.

(2) The applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the local health officer and the local board of health within 30 days of the local health officer's refusal to validate a license or within 30 days of the expiration of the period for the local health officer's decision under [section 17], whichever is first.

(3) Upon the filing of the notice of appeal, the applicant is entitled to a hearing before the local board of health to determine the applicant's eligibility for a license under [sections 1 through 25] and department rules adopted under [sections 1 through 25]. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the local board of health finds that the applicant is entitled to a validated license, the presiding officer of the local board of health shall validate the license by signing the license.

Section 19. Cancellation of license — multiple establishments. (1) The department may deny or cancel a license if it finds, after proper investigation, that the applicant or licensee has violated or is not in compliance with [sections 1 through 25] or a rule adopted under [sections 1 through 25] and that the applicant or licensee has failed or refused to remedy or correct the noncompliance or violation.

(2) When more than one type of establishment is authorized by one license, as provided in [section 11(2)], the denial or cancellation may affect one, some, or all of the types of establishments as determined by the department.

Section 20. Submission and execution of plan of correction as bar to cancellation. An applicant or licensee may submit to the department a written plan of correction within 10 days after receipt from the department of a written notice of violation. The department shall determine if the plan of correction is acceptable. The submission and execution of an acceptable plan of correction within the time prescribed in the plan are a bar to license cancellation.

Section 21. Notice and hearing required. (1) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation and an opportunity for a hearing before the department to show cause, if any, why the license should not be denied or canceled.

(2) The applicant or licensee shall make a written request to the department for a hearing within 10 days after notice of the grounds for denial or cancellation has been received.

(3) The hearing must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. After a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing.

Section 22. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of [sections 1 through 25] and the rules adopted under [sections 1 through 25].

Section 23. Health officers and sanitarians to make investigations and inspections. State and local health officers, sanitarians-in-training, and

registered sanitarians shall conduct investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

Section 24. Health officers and sanitarians to have free access. State and local health officers, sanitarians-in-training, and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under [sections 1 through 25].

Section 25. Department to pay local health board for inspections and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health an amount from the local board inspection fund account, created in 50-2-108, that may be used only for the purpose of inspecting establishments under [sections 1 through 25] and enforcing the provisions of [sections 1 through 25]. However, a payment may be made only if:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of [sections 1 through 25] and rules adopted under [sections 1 through 25]; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health, as provided in subsection (1), may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of [sections 1 through 25] and rules adopted under [section 1 through 25].

Section 26. Section 30-16-301, MCA, is amended to read:

"30-16-301. Business registration and licensing plan — administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, *[sections 11 through 15], [section 17],* 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, *[sections 11 through 15], [section 17],* 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

(a) an anniversary date for license renewal that is set by the board of review;

(b) an electronic means of verifying the information required in the license application; and

(c) credit card discounts in relation to fees required for licensure.

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review."

Section 27. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth ~~which~~ *that* might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of ~~his~~ activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) ~~of this section~~ to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of ~~his~~ appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title *and [sections 1 through 25]*.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician ~~shall~~ *may* not act as a physician to anyone."

Section 28. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

~~(2) (a) "Commercial establishment" means an establishment operated primarily for profit.~~

~~(b) The term does not include a farmer's market.~~

(2) "Consumer" means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a *retail* food manufacturing establishment, meat market, food service establishment, ~~food warehouse, frozen food plant, commercial food processor,~~ perishable food dealer, or water hauler ~~not regulated as a public water supply system as provided in Title 75, chapter 6~~.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

~~(7) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.~~

~~(8)~~*(7)* (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public *at retail,* with or without charge.

(b) The term does not include*:*

(i) ~~establishments~~ *operations*, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers*;* ~~or~~

(ii) a private organization serving food only to its members~~.~~*;*

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; or

~~(c)~~*(iv)* ~~The term does not include~~ an establishment, as defined in 50-51-102, that serves food only to its registered guests.

~~(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.~~

~~(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.~~

~~(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.~~

(8) "Local board of health" means a county, city, city-county, or district board of health.

(9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

~~(11)~~*(10)* "Meat market" means ~~a commercial establishment~~ *an operation* and buildings or structures in connection with it used to process, store, or display meat or meat products for *retail* sale to the public or for human consumption.

~~(12)~~*(11)* "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

~~(13)~~*(12)* "Perishable food dealer" means ~~a person or commercial establishment~~ *an operation* that is in the business of purchasing and selling perishable food to the public *at retail*.

~~(14)~~*(13)* "Person" means a person, partnership, corporation, association, cooperative group, or other entity ~~engaged in operating, owning, or offering services of an establishment~~.

~~(15)~~*(14)* (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

~~(16)~~*(15)* (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection ~~(16)(a)~~ *(15)(a)*.

~~(17)~~*(16)* "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(18) "Retail" means the provision of food directly to the consumer.

(19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

~~(18)~~*(20) (a)* "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

Section 29. Section 50-50-106, MCA, is amended to read:

"50-50-106. Injunctions. ~~Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian~~ *The regulatory authority* may bring an action for an injunction against ~~the continuation of an alleged~~ *any continued* violation of this chapter *or rule adopted by the department under this chapter*."

Section 30. Section 50-50-107, MCA, is amended to read:

"50-50-107. County attorney to prosecute violations. When the ~~department~~ *regulatory authority* furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter."

Section 31. Section 50-50-108, MCA, is amended to read:

"50-50-108. Violation ~~of chapter a~~ — misdemeanor. A person who *purposefully or knowingly* violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, ~~he~~ *the person* shall be:

(1) fined not less than $50 or more than $100 for the first offense;

(2) fined not less than $75 or more than $200 for the second offense;

(3) fined not less than $200 and imprisoned in the county jail for not more than 90 days for the third *offense* and subsequent offenses."

Section 32. Section 50-50-110, MCA, is amended to read:

"50-50-110. Costs and expenses — recovery by department or county. In a civil action initiated by the ~~department or county~~ *regulatory*

authority under this chapter, the court may, by petition of the ~~department or county~~ *regulatory authority*, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses."

Section 33. Codification instruction. [Sections 1 through 25] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 25].

Section 34. Coordination instruction. If Senate Bill No. 464 is not passed and approved, then [sections 14, 35(2), and 36 of this act] are void and [section 13 of this act] must read as follows:

"NEW SECTION. **Section 13. License fee — late renewal fee — allocation of fees.** (1) For each annual license issued, the department shall collect a fee of $60. For an operation containing an establishment and a retail food establishment, as provided in [section 11(3)], the department shall collect one fee of $60 for each license.

(2) A person operating an establishment who fails to renew a license by the expiration date provided in [section 14] and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the annual renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

(3) The department shall deposit the annual fees collected under subsection (1) as follows:

(a) 85% into the state special revenue fund to the credit of the local board inspection fund account, created in 50-2-108;

(b) 7.5% into the general fund; and

(c) 7.5% into the account, created in [section 21], in the state special revenue fund.

(4) The department shall deposit all of the fees collected under subsection (2) into the account, created by [section 21], in the state special revenue fund."

Section 35. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2004.

(2) [Section 14] is effective January 1, 2005.

Section 36. Termination. [Section 13] terminates December 31, 2004.

Ap proved April 24, 2003

CHAPTER NO. 475

[HB 190]

AN ACT GENERALLY REVISING ELECTION LAWS; CLARIFYING THE TIMES FOR HOLDING SPECIAL ELECTIONS; IMPLEMENTING THE PROVISIONS OF THE HELP AMERICA VOTE ACT CONCERNING A STATEWIDE VOTER REGISTRATION LIST, INFORMATION SHARING, AND PROVISIONAL VOTING; PROVIDING THAT ALL ELECTORS MUST PRESENT IDENTIFICATION BEFORE VOTING; PROVIDING THAT A

CANDIDATE MAY NOT FILE FOR MORE THAN ONE OFFICE; REQUIRING THAT A DECLARATION OF INTENT FILED BY A WRITE-IN CANDIDATE IS NOT VALID UNTIL THE FILING FEE IS PAID; REVISING PROVISIONS REGARDING VOTER INSTRUCTIONS THAT MUST BE DISPLAYED; REVISING WHEN ABSENTEE BALLOTS MUST BE AVAILABLE; REQUIRING THAT AN APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; CLARIFYING HOW ABSENTEE BALLOT APPLICATIONS MUST BE PROVIDED TO THE ELECTION ADMINISTRATOR; PROVIDING THAT VOTING INSTRUCTIONS BE ENCLOSED WITH ABSENTEE BALLOT MAILINGS IRRESPECTIVE OF WHETHER THE ELECTOR IS OUT OF THE STATE; PROVIDING THAT STATE EMPLOYEE TIME MAY BE SPENT ON THE YOUTH VOTING PROGRAM; REVISING THE TIME WITHIN WHICH A CANVASSING BOARD IS REQUIRED TO MEET TO CANVASS THE RETURNS; PROVIDING THAT THE VOTER INFORMATION PAMPHLET MAY BE ADDRESSED TO THE CURRENT RESIDENT AT AN ADDRESS; REVISING THE TIME BY WHICH THE VOTER INFORMATION PAMPHLET MUST BE MAILED; ELIMINATING CERTAIN CHALLENGES TO AN ELECTOR'S ELIGIBILITY TO VOTE; AMENDING SECTIONS 13-1-101, 13-1-104, 13-1-301, 13-2-115, 13-2-116, 13-2-122, 13-2-123, 13-2-205, 13-2-220, 13-2-402, 13-2-513, 13-2-514, 13-2-601, 13-10-201, 13-10-211, 13-13-112, 13-13-114, 13-13-201, 13-13-204, 13-13-205, 13-13-212, 13-13-213, 13-13-214, 13-13-232, 13-13-241, 13-13-301, 13-14-112, 13-14-113, 13-15-111, 13-15-401, 13-15-402, 13-19-313, 13-22-107, 13-27-410, AND 13-37-250, MCA; REPEALING SECTIONS 13-2-114, 13-2-202, 13-2-203, 13-2-219, 13-2-403, 13-2-404, 13-2-515, 13-2-603, 13-13-304, 13-13-305, 13-13-306, 13-13-307, 13-13-309, 13-13-310, AND 13-13-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means ~~a qualified~~ *an* elector *who voted in the previous federal general election and* whose name is on the active list.

(2) "Active list" means a list of active electors maintained ~~by an election administrator~~ pursuant to ~~13-2-219~~ *13-2-220*.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a ~~completed~~ voter registration ~~card~~ *form prescribed by the secretary of state that is completed and signed by an elector,* submitted to the election administrator, and *contains voter registration information* subject to ~~confirmation,~~ *verification* as provided ~~in 13-2-207~~ *by law*.

(5) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and

retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(6) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private ~~residence~~ *residences* for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(7) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(8) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(9) "Elector" means an individual qualified ~~and registered~~ to vote under state law.

(10) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (6);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(11) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(12) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(13) "Inactive elector" means an individual *who failed to vote in the preceding federal general election and* whose name ~~is~~ *was* placed on an inactive list *pursuant to 13-2-220*.

(14) "Inactive list" means a list of inactive electors maintained ~~by an election administrator~~ pursuant to ~~13-2-219~~ *13-2-220*.

(15) "Individual" means a human being.

(16) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

(17) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(17)~~*(18)* "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (5).

~~(18)~~*(19)* "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

~~(19)~~*(20)* "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(20)~~*(21)* "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(22) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(23) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

~~(21)~~*(24)* "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(22)~~*(25)* "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

~~(23)~~*(26)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(27) "Statewide voter registration list" means the voter registration list established and maintained pursuant to [sections 4 and 5].

(28) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

~~(24)~~*(29)* "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 2. Section 13-1-104, MCA, is amended to read:

"13-1-104. Times for holding general elections. (1) *(a)* ~~A~~ *Except as provided in subsection (1)(b), a* general election must be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election~~, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6,~~ and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(b) A special election may be held on an earlier date provided in a law authorizing a special statewide election on an initiative or referendum pursuant to Article III, section 6, of the Montana constitution.

(2) A general election must be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually ~~shall~~ *must* be held on school election day, the first Tuesday after the first Monday of May of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day, as provided in subsection (3), or on the first Tuesday after the first Monday in November, at the discretion of the governing body."

Section 3. Section 13-1-301, MCA, is amended to read:

"13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections, ~~and~~ shall keep all *county* records relating to elector registration and elections, *and is the primary point of contact for the county with respect to the statewide voter registration list and implementation of other provisions of applicable federal law governing elections*.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of ~~such~~ *the* political subdivision, as provided by 13-1-401."

Section 4. Statewide voter registration database — information-sharing agreements. (1) The secretary of state shall establish, in a uniform and nondiscriminatory manner, a single official, centralized, and interactive computerized statewide voter registration database that meets the requirements of 42 U.S.C. 15483.

(2) (a) The statewide voter registration database must be used as the official list of registered electors for the conduct of all elections subject to this title.

(b) The database must contain the name and registration information of each registered elector.

(c) Each election administrator must be provided with immediate electronic access to the database.

(d) The secretary of state shall provide the technical support required to assist election administrators to enter, maintain, and access information in the statewide voter registration database.

(3) As provided in 42 U.S.C. 15483:

(a) the secretary of state and the attorney general shall enter into an agreement to match information in the statewide voter registration list with information in the motor vehicle licensing database to the extent required to verify voter registration information; and

(b) the attorney general shall enter into an agreement with the United States commissioner of social security for the purpose of verifying voter registration information.

Section 5. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;

(e) technical security of the statewide voter registration database;

(f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

(g) quality control measures for the system and system users.

Section 6. Rulemaking on sufficiency and verification of voter registration information. (1) The secretary of state shall adopt rules:

(a) to implement the provisions of [section 7] and this section concerning how election administrators determine whether the information provided by an elector on an application for voter registration is:

(i) sufficient to be accepted and processed; or

(ii) insufficient to be accepted and processed;

(b) establishing procedures for verifying the accuracy of voter registration information;

(c) establishing standards for determining whether an elector may be legally registered or provisionally registered and the effect of that registration on identification requirements; and

(d) establishing procedures for notifying electors about the status of their applications and registration.

(2) The rules may not conflict with 42 U.S.C. 15301, et seq., or 13-2-208.

Section 7. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes. (1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides before the close of registration as provided in 13-2-301.

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed. An application for voter registration properly executed and postmarked on or before the day registration is closed must be accepted for 3 days after the close of registration.

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under [section 6].

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) If an applicant does not have a driver's license or social security number:

(a) an applicant appearing in person before the election administrator shall provide:

(i) current and valid photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) an applicant applying to register by mail shall also enclose a copy of:

(i) a current and valid photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under [section 6], the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under [section 6].

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-212, 13-2-215, 13-2-221, and 61-5-107 and as provided for in federal law.

Section 8. Section 13-2-115, MCA, is amended to read:

***"*13-2-115. ~~Registration~~ *Certification of statewide voter registration list — local* lists to be prepared.** (1) ~~Except as provided in subsections (6) and (7), immediately~~ *Immediately* after registration is closed, the *secretary of state shall certify the official statewide voter registration list.*

(2) Each election administrator shall ~~prepare and~~ have printed *from the certified statewide voter registration database* lists of all registered electors in each precinct *in the county*. ~~Names~~ *Except as provided in subsections (5) and (6), names* of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used. ~~A preliminary list of registered electors may be printed before the close of~~

~~registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.~~

~~(2)~~*(3)* A copy of the list of registered ~~voters~~ *electors in a precinct* must be displayed at the *precinct's* polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

~~(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.~~

(4) Lists of registered ~~voters~~ *electors* need not be printed if the election will not be held.

~~(5) The election administrator shall forward a list of all registered electors in the county to the secretary of state, as provided in 13-2-123. The secretary of state shall use the lists submitted by election administrators to compile and maintain a list of all registered electors in the state. Upon written request, the secretary of state shall furnish to any elector, for noncommercial use, a current list of registered electors. Upon delivery of the list to the elector, the secretary of state shall charge and collect a fee, which must be set and deposited in accordance with 2-15-405.~~

~~(6)~~*(5)* If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the ~~registrar~~ *secretary of state or an election administrator* may not include the address on any *generally available* list of registered ~~voters~~ *electors* but may list only the ~~name or~~ *electors'* names.

~~(7)~~*(6)* (a) Upon the request of an individual, *the secretary of state or* an election administrator may not include the individual's residential address on any *generally available* list of registered ~~voters~~ *electors* but may list only the *elector's* name ~~or names~~ if the individual:

(i) proves to the election administrator*, as provided in subsection (6)(b),* that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, *as provided in subsection (6)(c),* that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

Section 9. Section 13-2-116, MCA, is amended to read:

"13-2-116. Precinct register. (1) Before each election, the election administrator shall prepare *from the certified statewide voter registration list* a precinct register for each precinct *in the county* for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of

the *legally registered electors and provisionally* registered electors, a space for the signature of the elector, and ~~such~~ other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held."

Section 10. Section 13-2-122, MCA, is amended to read:

"13-2-122. Charges for registers, elector lists, and mailing labels made available to public. (1) Except as provided in ~~subsections~~ *subsection* (2) ~~and (3)~~, upon written request, the ~~registrar~~ *secretary of state or a local election administrator* shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of *legally* registered electors, or mailing labels for registered electors. Upon delivery, the ~~registrar~~ *secretary of state or the local election administrator* may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

~~(2) If the registrar receives in writing from a law enforcement officer or reserve officer, as defined in 7-32-201, a request that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any register, list, or mailing labels disseminated pursuant to subsection (1).~~

~~(3)~~*(2)* ~~An~~ *For an elector whose address information is protected from general distribution under 13-2-115(5) or (6), the secretary of state or a local* election administrator may not include ~~an individual's~~ *the elector's* residential address on any register, list, or mailing labels but ~~shall~~ *may* list only the *elector's* name ~~or names if the individual requests that the individual's address not be used and the individual proves to the election administrator those matters described in 13-2-115(7)(a)(i) or (7)(a)(ii)~~."

Section 11. Section 13-2-123, MCA, is amended to read:

"13-2-123. Election administrator to provide list of electors to secretary of state. (1) The election administrator in each county shall provide to the secretary of state ~~a list by precinct of all registered electors in the county. The list must include~~ the following information, when possible, for each elector:

(a) name;

(b) mailing address;

(c) precinct number;

~~(d) registration number assigned by the county election administrator pursuant to 13-2-114;~~

~~(e)~~*(d)* residence address;

~~(f)~~*(e)* telephone number;

(f) driver's license number or last four digits of the elector's social security number;

(g) date of birth;

(h) gender;

(i) legislative house district;

(j) date of registration; ~~and~~

(k) whether the elector's name is on the active or inactive list of electors*; and*

(l) whether the elector is a legally registered elector or a provisionally registered elector.

(2) The information must be provided in accordance with rules adopted under [section 5].

~~(2) (a) Except as provided in subsection (2)(b), the list provided pursuant to subsection (1) must be a paper copy.~~

~~(b) If the county election administrator also maintains the information in other media, such as on a computer disk or tape, and the secretary of state requests the information in that media, the county election administrator shall also provide the list in that media.~~

~~(3) In odd-numbered years, the list of electors required by subsection (1) must be delivered to the secretary of state by December 15.~~

~~(4) In even-numbered years, the list of electors required by subsection (1) must be delivered to the secretary of state:~~

~~(a) for a primary election, no later than July 1, and the list must indicate any changes made up to and including the date of the June primary; and~~

~~(b) for a general or special election, 30 days prior to the close of registration before the election.~~

~~(5) Each election administrator may provide the secretary of state with a supplemental list of electors in even-numbered years, giving the additions, deletions, and changes made between the time that the previous list was compiled and the close of registration.~~"

Section 12. Section 13-2-205, MCA, is amended to read:

"13-2-205. Procedure when prospective elector not qualified at time of registration. An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may ~~register if it appears that he will become qualified to vote by election day~~ *apply for voter registration pursuant to [section 7] and be registered subject to verification procedures established pursuant to [section 6].*"

Section 13. Section 13-2-220, MCA, is amended to read:

"13-2-220. Maintenance of *active and inactive* voter registration ~~rolls~~ *lists* for elections — rules by secretary of state. (1) The *rules adopted by the* secretary of state ~~shall adopt rules specifying a list of procedures from which an election administrator shall choose at least one procedure for the maintenance of accurate voter registration rolls for use in elections.~~

~~(2) The procedures specified by the secretary of state~~ *under [section 5]* must include the following procedures, which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who ~~have~~ failed to vote *in the preceding federal general election* by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

~~(3)~~*(2)* Any notices returned to the election administrator after using the procedures provided in subsection ~~(2)~~ *(1)* must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

~~(4)~~*(3)* A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office."

Section 14. Section 13-2-402, MCA, is amended to read:

"13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of the elector is filed or if the elector is reported as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge;

(7) if a notice is received from *the secretary of state or from* another county or state that the elector has registered in ~~that~~ *another* county or state; or

(8) if the elector fails to respond to certain confirmation mailings and fails to vote in two consecutive federal general elections."

Section 15. Section 13-2-513, MCA, is amended to read:

"13-2-513. Procedure for transferring registration. ~~The~~ *Subject to the rules adopted under [section 5], the* election administrator shall make the necessary corrections in the registration records ~~in his office~~ when ~~he~~ *the election administrator* receives a transfer form or corrected registration form ~~if~~

~~he is satisfied the form is valid. The original registration form may be fastened to the back of the new form, in which case the original and current forms must be retained, or the original registration form may be marked "canceled" and filed in a canceled file.~~"

Section 16. Section 13-2-514, MCA, is amended to read:

"13-2-514. Change of residence to another county. (1) An elector who changes ~~his~~ residence to a different county within this state ~~must~~ *shall* register in ~~his~~ *the* new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.

(2) An elector who changes ~~his~~ residence to a different county 45 days or less before an election may vote in person or by absentee ballot in the precinct and county where previously registered.

~~(3) The elector must state his correct name and residence address and date of residence change when offering to vote or when applying for an absentee ballot. The election administrator shall note the information on the elector's registration form if an absentee ballot application is received. The election judges shall note the change of address and date of residence change in the precinct register if the elector votes in person.~~

~~(4)~~*(3)* The registration *information* of an elector who votes under the provisions of subsection (2) ~~of this section shall be canceled~~ *must be updated in the statewide voter registration list* after the election *pursuant to rules adopted under [section 5]*."

Section 17. Section 13-2-601, MCA, is amended to read:

"13-2-601. ~~Name on~~ *Special addendum to* precinct register ~~prima facie evidence of right to vote~~. ~~(1) An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.~~

~~(2)~~ The name of an elector who has been assigned to vote in a precinct other than the precinct in which ~~he~~ *the person* is registered, as provided in 13-3-213, must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state. ~~The fact that an elector's name appears on a special addendum to the precinct register is prima facie evidence of his right to vote in the precinct.~~"

Section 18. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. *A candidate may not file for more than one office.* Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 19. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (5), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) A person seeking to become a write-in candidate for a trustee position on a school board shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) The requirements in subsection (1) do not apply to a write-in candidate seeking election to an office for which a candidate has not filed a declaration or petition for nomination or a declaration of intent.

(6) A declaration of intent may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(7) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator."

Section 20. Section 13-13-112, MCA, is amended to read:

"13-13-112. Display of instructions for electors. (1) Instructions for electors on how to prepare their ballots or use machines or devices must be posted in each compartment provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain ~~how to~~:

(a) *how to* obtain ballots for voting;

(b) *how to* prepare ballots for deposit in the ballot box; ~~and~~

(c) *how to* obtain a new ballot in place of one spoiled by accident*;*

(d) how to vote provisionally pursuant to [section 22];

(e) the election date and the hours the polls are open; and

(f) instructions for first-time voters who registered by mail.

(3) If the instructions for use of the machine or device are printed on the machine or device or are part of a ballot package given *to* each elector, separate instructions need not be posted in the compartment.

(4) Official ballots for the precinct, clearly marked "sample" across the face, ~~shall~~ *must* be posted in each booth or compartment and in conspicuous places about the polling place in all precincts where paper ballots are used. Diagrams showing the arrangement of the ballot for that precinct ~~shall~~ *must* be posted in

conspicuous places ~~about~~ *in* the polling place in all precincts using machines or devices."

Section 21. Section 13-13-114, MCA, is amended to read:

"13-13-114. ~~Marking~~ *Voter identification and marking* precinct register book before elector votes — *provisional voting.* (1) *(a)* Before an elector is permitted to receive a ballot or vote, ~~he shall sign his name on the place designated in the precinct register. Before signing the register, the elector shall state his~~ *the elector shall present to an election judge a current photo identification showing the elector's* name ~~and current address~~. If *the elector does not present photo identification* ~~the name or address is not as listed in the precinct register~~, *including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.*

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines the information provided is sufficient to verify the voter's identity and eligibility to vote pursuant to 13-2-512, the elector ~~must~~ *may sign the precinct register,* complete a transfer form or new registration form to correct the *elector's voter registration* information*, and vote.*

(d) ~~The~~ *An* election ~~judges~~ *judge* shall write "transfer form" or "registration form" beside the name of any elector submitting a form. ~~No elector may sign the precinct register unless his name and address are the same as shown in the register or the proper corrections have been made.~~

(2) If the information presented under subsection (1) is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot as provided in [section 22].

~~(2)~~*(3)* If the elector is not able to sign ~~his~~ *the elector's* name to the precinct register, a fingerprint or other identifying mark may be used.

~~(3)~~*(4)* If the elector fails or refuses to sign ~~his~~ *the elector's* name or, if unable to write, fails to provide a fingerprint or other identifying mark, ~~he~~ *the elector* may ~~not vote~~ *cast a provisional ballot as provided in [section 22].*"

Section 22. Provisional voting in person. (1) Before being given a ballot, an elector casting a provisional ballot:

(a) must be given information, in a form prescribed by the secretary of state, explaining how to vote provisionally, what information must be provided by the elector to verify the elector's eligibility, and how to determine whether the elector's provisional ballot is or is not counted and, if not, the reasons why;

(b) shall sign an affirmation in a form prescribed by the secretary of state swearing that, to the best of the elector's knowledge, the elector is eligible to vote in the election and precinct and is aware of the penalty for false swearing; and

(c) shall cast and return the provisional ballot to an election judge, who shall place the ballot into an envelope prescribed by the secretary of state for provisional ballots.

(2) A provisional ballot must be handled as provided in [section 36].

(3) An elector making a false affirmation under this section is subject to the penalty for false swearing provided in 45-7-202.

Section 23. Fail-safe and provisional voting by mail.(1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(2) If a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1), if the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility, or if the elector's name does not appear on the precinct register, the elector's ballot must be handled as a provisional ballot under [section 36].

Section 24. Rulemaking on provisional voting, absentee ballots, and challenged ballots. (1) The secretary of state shall adopt rules to:

(a) implement the provisions of 13-13-114 and [sections 22 through 24] concerning verification of voter identification and eligibility;

(b) establish standards for determining the sufficiency of information provided on absentee ballot return envelopes pursuant to 13-13-241;

(c) implement the provisions of [section 36] on the handling and counting of provisional and challenged ballots, including the establishment of procedures for verifying voter registration and eligibility information with respect to the ballots.

(2) The rules may not conflict with rules established under [section 6].

Section 25. Section 13-13-201, MCA, is amended to read:

"13-13-201. Voting by absentee ballot — procedures. (1) A ~~qualified~~ *legally registered elector or provisionally* registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote the absentee ballot by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return and verification envelope;

(d) executing the affidavit printed on the return and verification envelope; and

(e) returning the return and verification envelope with the secrecy envelope containing the ballot or ballots enclosed, as provided in 13-13-221.

(3) (a) The elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the elector does not enclose a photo identification, the elector shall enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued

pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) If the elector fails to provide the information required under subsection (3)(a) or the information provided is insufficient to verify the elector's identity and eligibility, the elector's ballot must be handled as a provisional ballot."

Section 26. Section 13-13-204, MCA, is amended to read:

"13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death. (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may vote in person in any manner at the elector's polling place.

(2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. ~~Before the ballot is given to the elector, the election judge shall write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the court to have been wrongfully or illegally voted.~~ *The ballot must be handled as a provisional ballot under [section 36].*

(3) If an elector votes by absentee ballot and dies between the time of balloting and election day, the deceased elector's ballot does not count."

Section 27. Section 13-13-205, MCA, is amended to read:

"13-13-205. When ballots to be available. (1) The election administrator shall ensure that ballots are printed and available for absentee voting at least ~~45~~ *30* days prior to an election for those elections held in compliance with 13-1-104(1) and 13-1-107(1).

(2) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that ballots are printed and available for absentee voting at least 20 days prior to an election.

(3) If ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to 13-27-410."

Section 28. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) An elector may apply for an absentee ballot, *using only a standardized form provided by rule by the secretary of state,* by making a written request, *which must include the applicant's birth date and must be* signed by the applicant~~.~~*. The request must be submitted* to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:

(a) as provided in subsection (1);

(b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or

(c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).

(3) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (3) must be received by the election administrator by noon on election day.

(4) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

Section 29. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection ~~(2)~~ *(3)*, the elector shall:

(a) ~~forward the application by~~ mail *the application directly to the election administrator;* ~~or~~

(b) deliver ~~it~~ *the application* in person to the election administrator~~.~~*; or*

(c) hand the application to a third party for delivery to the election administrator, if the person receiving the ballot application provides to the elector a receipt in a form designated by the secretary of state.

(2) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

~~(2)~~*(3)* In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212(3) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector."

Section 30. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing ballot to elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each *legally registered elector and provisionally registered* elector from whom the election administrator has received a valid *absentee ballot* application whatever official ballots are necessary. Ballots must be sent immediately ~~to electors submitting valid requests~~ after the official ballots are printed.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots provided to an absentee elector, as provided in 13-13-116, and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return and verification envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; *and*

(b) ~~the elector is out of the state or will be out of the state at the time of the election; and~~

~~(c)~~ the elector requests a voter information pamphlet.

(7) The return envelope must be self-addressed to the election administrator."

Section 31. Section 13-13-232, MCA, is amended to read:

"13-13-232. Delivery of ballots, secrecy envelopes, and return envelopes to election judges — ballots to be rejected. (1) If ~~the~~ *an* absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall *process it according to 13-13-241 and then* deliver the unopened ~~return~~ *secrecy* envelope to the judges at the same time that the ballots are delivered. ~~The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.~~

(2) If *an* absentee ~~ballots are~~ *ballot is* received after the *official* ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall *process it according to 13-13-241 and shall then* immediately deliver the unopened ~~return envelopes~~ *secrecy envelope* to the judges. ~~The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.~~

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be ~~retained by the election administrator and placed with the proper records when they are returned to the election administrator~~ *handled in the same manner as provided in 13-13-243*."

Section 32. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes and affirmations ~~while polls open~~ — deposit of absentee and unvoted ballots. (1) *(a)* ~~While the polls are open, the election judges may~~ *As soon as an absentee ballot is received, an election administrator shall* compare the signature of the elector on the absentee ballot request ~~and affirmation~~ *with the signature on the absentee ballot return envelope*. ~~If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot return envelope~~ *Except as provided in subsection (2), after comparing the signatures, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification information enclosed pursuant to 13-13-201 is sufficient pursuant to rules adopted under [section 6]. If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.*

(b) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(c) A ballot cast by an elector who provided sufficient information must be handled as provided in subsection (3). A ballot cast by an elector whose voter information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under [section 36]. The election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(2) If the ~~absentee ballot does not meet the requirements specified in subsection (1)~~ *signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, it the absentee ballot* must be rejected. ~~The~~ *The* election ~~judges~~ *administrator*, without opening the absentee ballot ~~return~~ *return* envelope, shall mark across it the reason for rejection ~~and a majority of the judges shall sign their initials~~. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

(3) After ~~opening the~~ *receiving an* absentee ballot ~~return~~ *secrecy* envelope ~~and~~, without opening the secrecy envelope, ~~they~~ *the election judges* shall *on election day* place the secrecy envelope in the proper ballot box. ~~In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelopes.~~

~~(4) After opening the absentee ballot return envelope and if the ballot has not been placed in the secrecy envelope, without unfolding the ballot or permitting it to be examined, the election judges shall place the ballot in the secrecy envelope and place the secrecy envelope in the proper ballot box.~~"

Section 33. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges on election day. (1) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(2) An individual offering to vote may be orally challenged by any elector of the county upon the following grounds:

(a) ~~that he is not the individual whose name appears on the register;~~

~~(b) that he does not reside at the residence listed unless the elector is voting under the provisions of 13-2-512 and 13-2-514;~~

~~(c)~~ that ~~he~~ *the elector* is of unsound mind, as determined by a court;

~~(d)~~*(b)* that ~~he~~ *the elector* has voted before in that election; or

~~(e)~~*(c)* that ~~he~~ *the elector* has been convicted of a felony and is serving a sentence in a penal institution.

(3) An elector challenged under this section may cast a provisional ballot, which must be handled as a provisional ballot under [section 36]."

Section 34. Section 13-14-112, MCA, is amended to read:

"13-14-112. Declarations for nomination — fee. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. *A candidate may not file for more than one office.*

(2) Declarations may not indicate political affiliation. The candidate may not state in ~~his~~ *the* declaration any principles or measures ~~he~~ *that the candidate* advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position ~~he~~ *that the individual* seeks.

(4) Declarations ~~shall~~ *must* be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing ~~shall~~ *must* be the same as provided in 13-10-201."

Section 35. Section 13-14-113, MCA, is amended to read:

"13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which ~~no~~ *a* salary or fees are *not* paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate

for that office at the last general election, but ~~in no case~~ may ~~it~~ *not* be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election ~~shall~~ *must* be determined by the secretary of state.

(4) Petitions for nomination ~~shall~~ *must* be filed at the same time provided in 13-10-201 for other candidates and offices.

(5) A candidate may not file for more than one office."

Section 36. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, an elector who casts a provisional ballot in person shall provide information to the election administrator as listed below:

(a) present in person at the office of the election administrator by 5 p.m. on the day after the election a photo identification or other identifying document as described in 13-13-114(1)(a);

(b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned document that meets the identification requirements of 13-13-114(1)(a); or

(c) mail a copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.

(2) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election.

(3) A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under [section 24]. However, a provisional ballot may not be counted if the election administrator cannot verify the elector's eligibility under the rules.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot.

Section 37. Section 13-15-111, MCA, is amended to read:

"13-15-111. Write-in elections — general election. (1) An individual elected by having ~~his~~ *the individual's* name written in at the general election and receiving the largest number of votes shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating ~~his~~ *the individual's* acceptance of the position for which ~~he was~~ elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to ~~file the declaration as required under~~ *comply with the requirements in* subsection (1)~~(a)~~, ~~he~~ *the individual* may not assume the position for which ~~he was~~ elected."

Section 38. Section 13-15-401, MCA, is amended to read:

"13-15-401. Governing body as board of county canvassers. (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 *to 7* days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office."

Section 39. Section 13-15-402, MCA, is amended to read:

"13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 *to 7* days after an election, ~~he~~ *the election administrator* shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404."

Section 40. Section 13-19-313, MCA, is amended to read:

"13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election administrator:

(a) is unable to verify the elector's signature under 13-19-310; or

(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311.

(2) The election administrator shall inform the elector that the elector may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.

(3) Any elector appearing pursuant to subsection (2) must be permitted to:

(a) verify the elector's signature, after proof of identification, by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature;

(b) correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at that time.

(4) If a mail ballot is returned, the election administrator shall *investigate the reason for the return and* mail a confirmation notice ~~provided for in 13-2-207~~. ~~However, the~~ *The* notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice. If the confirmation notice is returned to the election administrator, the elector must be placed on an inactive list until that elector becomes a qualified elector."

Section 41. Section 13-22-107, MCA, is amended to read:

"13-22-107. Funding. (1) ~~Public~~ *Except for compensation for time spent by employees of the secretary of state and the superintendent of public instruction, public* money may not be used to support or fund the youth voting program established in this chapter.

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program."

Section 42. Section 13-27-410, MCA, is amended to read:

"13-27-410. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 110 days before the election at which they will be submitted. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county who is on the active voter list, except that two or more voters with the same mailing address and the same last name may be counted as one voter. *The*

mailing label may include an address line that addresses the voter or the current resident. The mailing must take place no later than ~~2 weeks~~ *30 days* before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues."

Section 43. Section 13-37-250, MCA, is amended to read:

"13-37-250. Voluntary spending limits. (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, ... is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101~~(18)(b)~~*(19)(b)*, who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) all committee loans or expenditures made by check or cash; and

(b) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed $150,000.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of $5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner."

Section 44. Repealer. Sections 13-2-114, 13-2-202, 13-2-203, 13-2-219, 13-2-403, 13-2-404, 13-2-515, 13-2-603, 13-13-304, 13-13-305, 13-13-306, 13-13-307, 13-13-309, 13-13-310, and 13-13-311, MCA, are repealed.

Section 45. Codification instruction. (1) [Sections 4 through 7] are intended to be codified as an integral part of Title 13, chapter 2, part 1, and the provisions of Title 13, chapter 2, part 1, apply to [sections 4 through 7].

(2) [Sections 22 through 24] are intended to be codified as an integral part of Title 13, chapter 13, and the provisions of Title 13, chapter 13, apply to [sections 22 through 24].

(3) [Section 36] is intended to be codified as an integral part of Title 13, chapter 15, part 1, and the provisions of Title 13, chapter 15, part 1, apply to [section 36].

Section 46. Effective date. [This act] is effective January 1, 2004.

Ap proved April 24, 2003

CHAPTER NO. 476

[HB 517]

AN ACT CLARIFYING THAT A CITY OR COUNTY MAY IMPOSE MILL LEVIES FOR AIRPORTS EVEN IF THE AIRPORT OR AIRPORT AUTHORITY HAS NOT MADE A LEVY REQUEST IN THE PRIOR 2 YEARS; AMENDING SECTION 15-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property; and

(e) transfer of property from tax-exempt to taxable status.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) For the purpose of subsection (3)(d), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonagricultural land as described in 15-6-133(1)(c).

(c) For the purposes of this section, newly taxable property does not include an increase in appraised value of land that was previously valued at 75% of the value of improvements on the land, as provided in 15-7-111(4) and (5), as those subsections applied on December 31, 2001.

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316 or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

~~(10)~~*(11)* The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 24, 2003

CHAPTER NO. 477

[HB 538]

AN ACT GENERALLY REVISING THE LAWS GOVERNING CERTIFICATES OF TITLE AND REGISTRATION OF CERTAIN MOTOR VEHICLES; IMPLEMENTING BUSINESS PRACTICES RECOMMENDED AS PART OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY PROJECT AUTHORIZED BY THE 57TH LEGISLATURE; ENABLING A GRADUAL TRANSITION FROM PAPER-BASED TO ELECTRONIC TRANSACTIONS FOR VEHICLE TITLING; REMOVING STATUTORY IMPEDIMENTS TO THE USE OF ELECTRONIC TRANSACTIONS FOR ISSUING TITLES FOR AND THE REGISTRATION OF CERTAIN VEHICLES; DEFINING CERTAIN TERMS RELATED TO THE ISSUING OF A TITLE AND THE REGISTRATION OF CERTAIN VEHICLES; CLARIFYING THE REQUIREMENTS FOR APPLYING FOR, ISSUING, AND TRANSFERRING A CERTIFICATE OF TITLE; REVISING AND CLARIFYING DUTIES OF THE DEPARTMENT OF JUSTICE AND COUNTY TREASURERS CONCERNING THE ISSUING OF TITLES AND REGISTRATION PROCESSES; REQUIRING ISSUANCE OF A CERTIFICATE OF TITLE ONLY IF REQUESTED BY THE VEHICLE OWNER; ALLOWING FOR DELAYED TITLE ISSUANCE; AUTHORIZING THE DEPARTMENT TO REFUSE ISSUANCE OF A CERTIFICATE OF TITLE IN CERTAIN CIRCUMSTANCES; CLARIFYING THE REQUIREMENTS FOR VOLUNTARY AND INVOLUNTARY TRANSFER OF VEHICLE INTERESTS; CLARIFYING THE REQUIREMENTS FOR ISSUANCE OF A CERTIFICATE OF TITLE FOR A SALVAGE VEHICLE; AUTHORIZING AND STANDARDIZING ISSUANCE OF TEMPORARY REGISTRATION PERMITS TO ALLOW THE OPERATION OF A VEHICLE PRIOR TO COMPLETION OF THE ISSUANCE OF TITLE PROCESS; REPLACING THE TERM "CERTIFICATE OF OWNERSHIP" WITH "CERTIFICATE OF TITLE" FOR CERTAIN MOTOR VEHICLES; APPLYING THE CERTIFICATE OF TITLE REQUIREMENTS FOR PASSENGER VEHICLES TO MOTORBOATS, SAILBOATS 12 FEET IN LENGTH OR LONGER, AND SNOWMOBILES; REVISING THE AUTHORITY OF CERTAIN VEHICLE DEALERS TO ISSUE TEMPORARY REGISTRATION PERMITS; CLARIFYING THE DEFINITION OF "OFF-HIGHWAY VEHICLE"; CLARIFYING THE REQUIREMENTS FOR OFF-HIGHWAY VEHICLE DECAL REGISTRATION; AUTHORIZING THE USE OF AN ELECTRONIC RECORD OF TITLE AND AN ELECTRONIC RECORD OF REGISTRATION FOR VEHICLE CERTIFICATE OF TITLE AND REGISTRATION TRANSACTIONS; CLARIFYING THE RECORDKEEPING DUTIES OF THE DEPARTMENT CONCERNING VEHICLES; CLARIFYING AND STANDARDIZING THE PROCESSES FOR THE FILING AND PERFECTION OF CERTAIN SECURITY INTERESTS IN A MOTOR VEHICLE; CLARIFYING THAT A CERTIFICATE OF TITLE IS PRIMA FACIE EVIDENCE OF FACTS IN THE TITLE; CLARIFYING REPORTING REQUIREMENTS FOR STOLEN VEHICLES; REVISING THE DEPARTMENT'S AUTHORITY TO DEVELOP AND IMPLEMENT A PILOT

PROGRAM FOR ELECTRONIC CERTIFICATE OF TITLE AND REGISTRATION TRANSACTIONS; CLARIFYING THE REQUIREMENTS TO OBTAIN A TITLE FOR A VEHICLE AND THE EXEMPTIONS FROM TITLING FOR CERTAIN VEHICLES; CLARIFYING WHEN A CERTIFICATE OF TITLE MUST BE CANCELED; INCREASING CERTAIN FEES RELATED TO THE ISSUING OF A TITLE OR THE REGISTRATION OF CERTAIN MOTOR VEHICLES; REVISING THE REQUIREMENTS FOR FURNISHING A BOND IN LIEU OF AN ASSIGNED CERTIFICATE OF TITLE; ALLOWING ISSUANCE OF A CERTIFICATE OF TITLE UNDER CERTAIN CONDITIONS; REVISING THE REQUIREMENTS FOR THE INITIAL REGISTRATION OF AND ANNUAL RENEWAL OF REGISTRATION FOR CERTAIN MOTOR VEHICLES; CLARIFYING THE REGISTRATION REQUIREMENTS FOR VEHICLES ISSUED A CERTIFICATE OF TITLE AND REGISTERED IN ANOTHER JURISDICTION AND USED FOR GAINFUL OCCUPATION IN MONTANA; CLARIFYING THE GRACE PERIOD FOR A CERTIFICATE OF TITLE AND REGISTRATION OF A VEHICLE FOLLOWING A TRANSFER OF OWNERSHIP; CLARIFYING THE REQUIREMENTS FOR A NEW OR USED MOTOR VEHICLE DEALER TO ISSUE A TEMPORARY REGISTRATION PERMIT; CLARIFYING THE LIMITATIONS ON THE TRANSFER OF TEMPORARY REGISTRATION PERMITS FROM DEALER TO DEALER; AMENDING SECTIONS 15-1-116, 15-1-117, 15-1-121, 15-1-122, 23-2-502, 23-2-508, 23-2-513, 23-2-601, 23-2-611, 23-2-614, 23-2-615, 23-2-616, 23-2-619, 23-2-622, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 23-2-801, 23-2-804, 23-2-814, 23-2-817, 23-2-818, 30-9A-311, 31-1-816, 40-5-248, 61-1-102, 61-1-509, 61-3-101, 61-3-103, 61-3-106, 61-3-107, 61-3-109, 61-3-201, 61-3-202, 61-3-203, 61-3-204, 61-3-205, 61-3-206, 61-3-207, 61-3-208, 61-3-210, 61-3-211, 61-3-212, 61-3-303, 61-3-311, 61-3-312, 61-3-317, 61-3-322, 61-3-342, 61-3-411, 61-3-412, 61-3-456, 61-3-519, 61-3-562, 61-3-603, 61-3-701, 61-4-104, 61-4-111, 61-4-112, 61-4-120, 61-4-121, 61-12-406, 75-10-512, AND 75-10-513, MCA; REPEALING SECTIONS 23-2-509, 23-2-510, 23-2-520, 23-2-612, 23-2-613, 23-2-620, 23-2-810, 23-2-811, 23-2-812, 23-2-813, 61-3-105, 61-3-305, AND 61-3-518, MCA, AND SECTION 4, CHAPTER 90, LAWS OF 1997, SECTION 2, CHAPTER 260, LAWS OF 1999, AND SECTION 9, CHAPTER 394, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Manufacturer's certificate of origin. "Manufacturer's certificate of origin" means the original paper record produced and issued by or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

Section 2. Registration receipt. "Registration receipt" means a paper record produced and issued or, if authorized by the department, an electronic record transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

Section 3. Temporary registration permit. "Temporary registration permit" means:

(1) a paper record produced and issued by the department, its authorized agent, a county treasurer, or a law enforcement officer to a person to whom ownership of a vehicle was transferred that, when mounted in the left-hand corner of a rear window of a motor vehicle or affixed as prescribed on a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle, authorizes the operation of the vehicle for a specified time period prior to registration under 23-2-512, 23-2-616, 23-2-804, or 61-3-303; or

(2) a durable license plate-style placard approved by the department and issued by an authorized agent of the department or a county treasurer to a person to whom ownership of a vehicle has been transferred that, when attached to the rear of the vehicle in a manner prescribed by the department, authorizes the operation of a motor vehicle for a specified time period prior to registration under 61-3-303.

Section 4. Transaction summary receipt. "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

Section 5. Certificates of title — application — contents — issuance. (1) The owner of a vehicle shall apply for a certificate of title on a form prescribed by the department or, if authorized by the department, in an electronic record provided by the department and made available to an authorized agent of the department or a county treasurer.

(2) The application for a certificate of title, upon completion, must include:

(a) the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or a motor vehicle agency of another jurisdiction, the owner's driver's license number or identification card number and the name of the jurisdiction issuing the license or card; or

(ii) if the owner is a corporation, the name of the corporation's registered agent's and, if the agent is the holder of a driver's license or identification card, the agent's driver's license number or identification card number and the name of the jurisdiction issuing the license or card;

(b) a description of the vehicle, including, as available and pertinent to the vehicle:

(i) the vehicle make, model, manufacturer's designated model year of manufacture, vehicle identification number, and type of body and a description of motive power;

(ii) the odometer reading at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, as determined by the manufacturer;

(iv) whether the vehicle was new or used at the time of transfer; and

(v) if the vehicle is a trailer operating intrastate, its declared weight;

(c) the date on which the vehicle was purchased by or was transferred to the applicant, the name and address of the person from whom the vehicle was acquired, and the names and addresses of any secured parties or lienholders for whom the applicant is acknowledging a voluntary security interest;

(d) any other information that the department requires to identify the vehicle and to enable the department to determine whether the owner is entitled to a certificate of title and to determine the existence of security interests in the vehicle;

(e) if applicable, an odometer statement containing the information required in 61-3-206 or, if the title does not contain a space for the information, a separate document approved by the department that provides the same information that is required in 61-3-206; and

(f) a section that gives the applicant the option to direct the department, upon examination and review of the records and completion of the application process, to:

(i) issue a certificate of title as soon as possible; or

(ii) update the electronic record of title for the vehicle, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the vehicle owner submits a separate request for issuance of the certificate of title.

(3) If the application is for a certificate of title to a new motor vehicle, the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant.

(4) Except as provided in 61-3-208 or subsection (4)(b) of this section, if the application is for a certificate of title to a used motor vehicle, the application must be:

(a) accompanied by a certificate of title that is properly assigned by the prior owner to the applicant; or

(b) acknowledged by the prior owner if the prior owner's interest in the vehicle was assigned to the applicant by means of a transfer on the electronic record of title entered by an authorized agent of the department or a county treasurer.

(5) If the application is for a certificate of title to a camper and if a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale or a conditional sales contract.

(6) If the application is for a certificate of title to a motorboat, a personal watercraft, a sailboat that is 12 feet in length or longer, or a snowmobile and a certificate of title properly assigned by the prior owner is not available, the application must be accompanied by a notarized bill of sale, an invoice, the vehicle's current registration receipt, or a certificate of number showing the transfer of ownership, which may be used to show the transfer of ownership for a motorboat, personal watercraft, or sailboat from the immediate prior owner to the applicant.

Section 6. Certificate of title — duties — examination of application — records check — incomplete application. (1) (a) Upon receipt of an application for a certificate of title and any supporting documents, an authorized agent of the department or a county treasurer shall:

(i) review the application and documents;

(ii) complete the records check required in subsection (2); and

(iii) if an authorized agent of the department or the county treasurer is satisfied as to the genuineness and regularity of the application and satisfied that the applicant is entitled to the issuance of a certificate of title, enter the transfer of interest on the electronic record of title.

(b) If an authorized agent of the department or the county treasurer is not satisfied as to the genuineness and regularity of the application or is not satisfied that the applicant is entitled to the issuance of a certificate of title, the authorized agent or the county treasurer may not enter the transfer of interest on the electronic record of title.

(c) If an authorized agent of the department or the county treasurer enters the transfer of interest on the electronic record of title, an authorized agent or the county treasurer shall:

(i) issue a transaction summary receipt to the applicant and, if requested, to any secured party or lienholder with a perfected security interest; and

(ii) as prescribed by the department, forward to the department the application, the assigned certificate of title, and any other documents provided in support of the application.

(2) The department, its authorized agent, or a county treasurer who first receives an application for a certificate of title shall check the vehicle identification number shown on the application against:

(a) the records of vehicles maintained by the department under 61-3-101;

(b) the reported stolen vehicle databases maintained on the state's criminal justice information network and by the national crime information center; and

(c) any other records or databases prescribed by the department.

(3) (a) Upon receipt of an application for a certificate of title and supporting documents that have been processed by an authorized agent of the department or a county treasurer, the department shall review the documents to determine if the application is complete. If the department determines that the application is incomplete, the department shall enter the incomplete status of the application on the electric record of title for the vehicle and return to the applicant, by first-class mail, the application and all supporting documents. The department shall provide a statement with a specific description of the additional information or documents that must be supplied by the applicant to complete the application process.

(b) Except as provided in 61-3-342, the department may not complete the application process, remove the incomplete status notation on the electronic record of title, or issue a certificate of title until the applicant returns the completed application, including any supporting additional information or documents, to the department.

Section 7. Certificate of title — issuance — delivery. (1) Except as provided in subsection (2), if a person who applied for a certificate of title also requested the issuance of the certificate of title as provided in [section 5(2)(f)(i)], upon receipt of the application and all supporting documents and after an examination and determination that the application is complete and regular, the department shall issue a certificate of title of the vehicle and shall mail the certificate of title to the owner.

(2) If a person to whom a vehicle was transferred has not satisfied the titling and registration provisions of this chapter or, if applicable, the registration provisions of Title 23, chapter 2, part 5 or 6, within the 20-day period provided in

[section 9(3)] and the secured party or lienholder pays the title fee required in 61-3-203, the department may mail a certificate of title to the secured party or lienholder upon request of the secured party or lienholder.

(3) (a) A vehicle owner who requested the delayed issuance of a certificate of title under [section 5(2)(f)(ii)], in the initial application for a certificate of title, may submit a request for the issuance of the certificate of title to the department, its authorized agent, or a county treasurer in a manner prescribed by the department. Upon receipt, the department shall issue a certificate of title for the vehicle and mail the certificate of title to the owner.

(b) A title fee may not be demanded from the owner or collected by the department, its authorized agent, or a county treasurer for a certificate of title requested or issued under subsection (3)(a).

Section 8. Refusal to issue certificate of title. The department may refuse to issue a certificate of title if any required fee is not paid or if the department has reasonable grounds to believe that:

(1) the applicant is not the owner of the vehicle;

(2) the application contains a false or fraudulent statement;

(3) the applicant failed to furnish any information or document required by the department; or

(4) based on the check performed under [section 6(2)], the vehicle has been reported as stolen.

Section 9. Certificate of title — voluntary transfer — timeliness — penalty. (1) Upon the voluntary transfer of any interest in a motor vehicle for which a certificate of title was issued under the provisions of this chapter, the owner whose interest is to be transferred shall:

(a) authorize, in writing and on a form prescribed by the department, its authorized agent, or a county treasurer, to enter the transfer of the owner's interest in the vehicle to the transferee on the electronic record of title maintained under 61-3-101; or

(b) execute a transfer in the appropriate space provided on the certificate of title issued to the owner and deliver the assigned certificate of title to:

(i) the transferee at the time of delivery of the vehicle; or

(ii) the department, its authorized agent, or a county treasurer if an application for a certificate of title has been completed by the transferee and accompanies the assigned certificate of title.

(2) The transferor's signature on the certificate of title, or the form authorizing transfer of interest upon the electronic record of title, must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee or authorized agent of the department, or a notary public.

(3) Except as provided in sections 23-2-513, 23-2-619, 23-2-818, or 61-4-111, the person to whom an interest in a motor vehicle has been transferred shall:

(a) execute an application for a certificate of title in the space provided on the assigned certificate of title or as prescribed by the department; and

(b) within 20 days after the interest in the vehicle was transferred to the person, mail or deliver the assigned certificate of title or application to the

county treasurer of the person's county of residence or, as permitted by the department, its authorized agent.

(4) If the person to whom an interest in a motor vehicle has been transferred fails to submit the application for a certificate of title to the department's authorized agent or a county treasurer within the 20-day grace period described in subsection (3), a late penalty of $10 must be imposed against the transferee. The penalty must be paid by the transferee to the county treasurer when the application for a certificate of title is finally submitted by the transferee or before the transferee may register the vehicle in this state. The penalty is in addition to the fees otherwise provided by law.

(5) If the transferee does not apply for a certificate of title within the 20-day grace period, a secured party or lienholder of record may pay the fees for the transfer of title and for filing a voluntary security interest or lien. The secured party or lienholder is not liable for the late penalty imposed in subsection (4) or for registration fees, taxes, or fees in lieu of tax on the vehicle.

Section 10. Involuntary transfer. (1) (a) An involuntary transfer of title to or any interest in a motor vehicle may occur by operation of law through inheritance, devise, bequest, order in bankruptcy or insolvency, execution sale, or repossession upon default in the performance of the terms of a lease, executory sales contract, or security agreement or in any other manner other than by voluntary act of the person whose title or interest is transferred. Upon the involuntary transfer, the executor, administrator, receiver, trustee, sheriff, secured party, or other representative or successor in interest of the person whose interest is transferred shall send to the department:

(i) an application for a certificate of title; and

(ii) a verified or certified statement of the transfer of interest or a transfer statement, as defined in 30-9A-619.

(b) The statement of transfer of interest must state the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process or procedure creating the transfer, and other information requested by the department. A transfer statement submitted under this section must meet the requirements of 30-9A-619. Evidence and instruments that are required by law in order to effect a transfer of legal or equitable title to or an interest in chattels must be submitted with the statement.

(c) Except as provided in subsection (2), if the department determines that the transfer is regular and that all legal requirements have been complied with, the department shall send notice of the intended transfer to the owner, conditional sales vendor, lessor, mortgagee, and other lienholder, as shown in the department's records. Deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown in the department's records satisfies the notice required by this section. Not less than 5 days after sending the notice, the department shall issue a new certificate of title to the transferee.

(2) (a) Except as provided in subsection (2)(b), if an interest in a vehicle that is not registered in this state is involuntarily transferred to a person in this state, the person to whom the interest is transferred shall follow the procedure provided in subsection (1).

(b) In lieu of the statement required in subsection (1), the department may accept an affidavit of repossession as executed by the person seeking the involuntary transfer.

(3) The department is not required to send notice for a transfer of interest occurring under subsection (2).

Section 11. Surviving spouse or heir — small estates. (1) Subject to the limitations of Title 72, chapter 3, part 11, the surviving spouse or other heir may secure transfer of a decedent's ownership interests in one or more motor vehicles for which a certificate of title was issued under this chapter if:

(a) the combined value of the interests does not exceed $20,000;

(b) the decedent did not leave other property that requires the procuring of letters of administration or letters testamentary; and

(c) the decedent did not by execution of a will otherwise bequeath the property.

(2) The person seeking transfer of the decedent's interests under this section shall file an affidavit with the department setting forth the fact of survivorship, the name and address of any other heirs, and any other facts determined necessary to entitle the person to the transfer.

(3) If the department determines that the transfer is regular and that all legal requirements have been met, the department shall issue a certificate of title, subject to any security interests shown by the department's records, to the surviving spouse or other heir.

Section 12. Salvage vehicles. (1) A salvage vehicle for which a certificate of title is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before an electronic record of title can be created or a certificate of title can be issued. The inspection does not attest to the roadworthiness or safety condition of the vehicle and must be performed by an authorized employee or an authorized agent of the department or by a peace officer designated by the department.

(2) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(3) The department shall collect an inspection fee of $18.50 from the person requesting the inspection for each salvage vehicle inspected. The fees collected under this section must be distributed as follows:

(a) $5 must be deposited in the state general fund; and

(b) $13.50 must be deposited in an account in the state special revenue fund to be appropriated only for the inspection of salvage vehicles.

(4) (a) A person authorized to inspect salvage vehicles may seize and hold a vehicle:

(i) if the person has probable cause to believe that the vehicle has been stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that has a vehicle identification number that does not conform with the vehicle identification number on the certificate of title.

(b) A seized vehicle must be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. A person

authorized to inspect salvage vehicles may use any means necessary to identify a vehicle by its vehicle identification number or numbers.

(5) The department may not create an electronic record of title or issue a certificate of title for a salvage vehicle until the identity of the vehicle is established.

(6) The department may adopt rules for the inspection of salvage vehicles.

Section 13. Temporary registration permit. (1) A county treasurer or a law enforcement officer may issue a temporary registration permit under the provisions of 61-3-317. A county treasurer may also issue a temporary registration permit under the provisions of 61-3-342.

(2) An employee or agent of the department may issue a temporary registration permit only under express authorization from the department and in accordance with the provisions of this chapter.

(3) A dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or under Title 61, chapter 4, part 1, may issue a temporary registration permit only as authorized under 23-2-513, 23-2-619, 23-2-818, 61-4-111, or 61-4-112.

(4) A temporary registration permit issued under subsections (1) through (3) must contain the following information:

(a) a temporary registration permit control number, registration receipt number, or transaction record number, as prescribed by the department;

(b) the expiration date of the temporary registration permit; and

(c) if required by the department, a description of the vehicle, including year, make, model, and vehicle identification number, the name and address of the person from whom ownership of the vehicle was transferred, the name and residence address of the person to whom ownership of the vehicle has been transferred, and the date of transfer.

Section 14. Section 15-1-116, MCA, is amended to read:

"15-1-116. Manufactured home considered as improvement to real property — requirements. (1) A manufactured home will be considered for tax purposes an improvement to real property if:

(a) the running gear is removed; and

(b) the manufactured home is attached to a permanent foundation on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, with the permission of the landowner.

(2) To eliminate ~~the~~ *a manufacturer's certificate of origin properly assigned to an owner or a* certificate of ~~ownership~~ *title* of a manufactured home, an owner may file a statement of intent on a form furnished by the department of justice.

(3) The statement of intent must include:

(a) the serial number of the manufactured home;

(b) the legal description of the real property to which the manufactured home has been permanently attached;

(c) a description of any security interests in the manufactured home; and

(d) approval from all lienholders of the intent to eliminate the *certificate of* title.

(4) *(a)* The owner shall present the statement of intent to the county treasurer of the county in which the manufactured home is located and shall

surrender the certificate of ~~ownership~~ *title*. Upon ~~receipt of a titling fee of $5~~ *payment of the fee required in 61-3-203*, the county treasurer shall*:*

(i) enter the transfer of interest on the electronic record of title;

(ii) issue the owner ~~a duplicate receipt for the surrendered certificate~~ *a transaction summary receipt;* and

(iii) forward ~~a copy of~~ the statement of intent~~, the original receipt,~~ and the surrendered certificate *of title* to the department of justice.

(b) The county treasurer may not issue the receipt unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall remit the ~~titling~~ fee to the department for deposit in the state general fund.

(5) Upon the recording of the statement of intent and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home.

(6) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement."

Section 15. Section 15-1-117, MCA, is amended to read:

"15-1-117. Reversal of declaration — exception. (1) Before a manufactured home can be physically removed from its location, the owner shall obtain a search of the title to the land from a title insurance company in order to identify those persons or entities whose consent for removal must be obtained. The owner shall obtain permission in writing from the affected persons or entities before removing the manufactured home from its location.

(2) At least 30 days before the manufactured home is removed, the owner shall give written notice to the department and the county treasurer in which the home is currently located~~,~~ of the intended removal of the home. The written notice must include the written consents of the affected persons or entities identified in subsection (1). The owner may not remove the home until the written consents are received and all of the taxes that have been assessed have been paid in full to the county treasurer.

(3) Within 5 days of the removal of the home, the purchaser shall make a declaration of reversal and apply for a certificate of ~~ownership~~ *title* for the manufactured home from the department of justice in accordance with the provisions of Title 61, chapter 3, part 2."

Section 16. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ~~ownership~~ *title* fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to ~~61-3-201~~ *[section 9]*;

(j) title and registration fees pursuant to 61-3-203;

(k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses,

and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total

population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

Section 17. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal

year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $75,000 in fiscal year 2003;

(b) $2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 18. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning ~~such~~ *the* motorboat an identifying number and containing ~~such~~ information as required.

~~(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.~~

~~(3)~~*(2)* "Dealer" means ~~any~~ *a* person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

~~(4)~~*(3)* "Department" means the department of fish, wildlife, and parks of the state of Montana.

~~(5)~~*(4)* "Documented vessel" means a vessel ~~which~~ *that* has and is required to have a valid marine document as a vessel of the United States.

~~(6)~~*(5)* "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

~~(7)~~*(6)* "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

~~(8)~~*(7)* "Lienholder" means a person holding a security interest.

~~(9)~~*(8)* "Manufacturer" means ~~any~~ *a* person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

~~(10)~~*(9)* "Motorboat" means ~~any~~ *a* vessel, including a canoe, kayak, personal watercraft, rubber raft, or pontoon, propelled by any machinery, motor, or engine of any description, whether or not ~~such~~ *the* machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel ~~which~~ *that* has a valid marine document issued by the U.S. coast guard of the United States government or any *successor* federal agency ~~successor thereto~~.

~~(11)~~*(10)* "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(12)~~*(11)* "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(13)~~*(12)* "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

~~(14)~~*(13)* "Passenger" means ~~every~~ *each* person carried on board a vessel other than:

(a) the owner or ~~his~~ *the owner's* representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have *not* contributed ~~no~~ consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel ~~which~~ *that* is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for ~~his~~ carriage.

~~(15)~~*(14)* "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(16)~~*(15)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(17)~~*(16)(a)* "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(18)~~*(17)* "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

~~(19)~~*(18)* "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(20)~~*(19)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(21)~~*(20)* "Waters of this state" means any waters within the territorial limits of this state."

Section 19. Section 23-2-508, MCA, is amended to read:

"23-2-508. Certificate of ~~ownership -- filing of security interests~~ *title.* (1) Except as provided in subsection ~~(9)~~ *(3)*, a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ~~ownership~~ *title* has first been obtained from the department of justice in accordance with the laws of this state.

(2) ~~The owner of~~ *Unless expressly exempted, the provisions of Title 61, chapter 3, parts 1 and 2, apply to* a motorboat or sailboat 12 feet in length or longer ~~shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:~~

~~(a) name of the owner;~~

~~(b) residence of the owner, by town or county;~~

~~(c) business or home address of the owner;~~

~~(d) name and address of any lienholder;~~

~~(e) amount due under any contract or lien;~~

~~(f) name of the manufacturer;~~

~~(g) model number or name;~~

~~(h) identification number;~~

~~(i) name and address of the dealer or other person from whom acquired, if known; and~~

~~(j) other information that the department of justice may require.~~

~~(3) The application is to be accompanied by documentation of ownership, such as an invoice, a bill of sale, a foreign title, an official certificate of boat number, a fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired, if known, and other information requested by the department of justice.~~

~~(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.~~

~~(5) A motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number on the motorboat or sailboat must be assigned an identification number by the department. A fee of $1 must be paid to the department for an assignment of number.~~

~~(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.~~

~~(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.~~

~~(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, which must be forwarded by the county treasurer to the department of justice and deposited in the general fund~~.

~~(9)~~*(3)* A person who~~, on July 1, 1988, is the owner of a~~ *has owned the same* motorboat or sailboat 12 feet in length or longer *since July 1, 1988,* with a valid certificate of number issued by the state is not required to file an application for a certificate of ~~ownership~~ *title* for the motorboat or sailboat unless the person transfers a part of the person's interest in the motorboat or sailboat or renews the certificate of number for the motorboat or sailboat.

~~(10) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the boat encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.~~

~~(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9A.~~

~~(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.~~

~~(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.~~

~~(14) Except as provided in subsection (15), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(15) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.~~

~~(16) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.~~

~~(17) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the person fails to file the satisfaction.~~

~~(18) Upon receipt of notice of any involuntary liens or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.~~

~~(19) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.~~

~~(20) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of~~

~~ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.~~"

Section 20. Section 23-2-513, MCA, is amended to read:

"23-2-513. Dealer's identification number — premises — inspection — bond — judgment — *temporary registration permit.* (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number ~~shall~~ *must* be displayed on ~~his~~ *a* boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include ~~his~~ *the dealer's or manufacturer's* name and business address. Each dealer or manufacturer ~~will~~ *must* have one identifying number assigned to ~~his~~ *the* business.

(3) An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The department of justice shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (9), ~~as amended,~~ except that ~~no~~ *a* boat may *not* be described in the certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number ~~shall~~ *must* be displayed in the same manner as provided in 23-2-512(9), ~~as amended,~~ except that the number may be temporarily attached. The last three letters ~~shall~~ *must* be "DLR" for dealer and "MFR" for manufacturer. These letters ~~shall~~ *must* be included, respectively, in dealer or manufacturer identification numbers only.

(6) ~~No~~ *A* person other than a dealer or manufacturer or an employee of a dealer or manufacturer may *not* display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) ~~No~~ *A* dealer or manufacturer or *an* employee of a dealer or manufacturer may *not* use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) ~~of this section~~.

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where ~~he maintains~~ all business records *are maintained* and where ~~he~~ *the dealer* displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer's principal place of

business must be inspected by an official of the department of justice to ~~assure~~ *ensure* compliance with this section.

(9) In order to qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice, upon application for renewal, that ~~he~~ *the dealer* sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of $50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with ~~his~~ *the* application a bond of $5,000. The bond must be conditioned that the applicant shall conduct ~~his~~ *the* business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage ~~due to~~ *because of* the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

(11) Prior to the delivery of a motorboat or a sailboat 12 feet in length or longer to a purchaser, the dealer shall issue and affix to a motorboat or a sailboat constructed after October 31, 1972, a temporary registration permit, as defined in [section 3]. The temporary registration permit expires 30 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice."

Section 21. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644, ~~the following terms shall have the meanings indicated herein,~~ unless the context *requires* otherwise, ~~clearly requires that another meaning is intended~~ *the following definitions apply*:

(1) "Certificate of ~~ownership~~ *title*" means the document issued by the department of justice as prima facie evidence of ownership.

(2) "Certificate of registration" means the owner's receipt evidencing payment of taxes, decal fees, and registration fees for a~~given~~ registration year.

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means any snowmobile that has not been previously sold to an owner~~, as defined in subsection (7)~~.

(6) "Operator" includes ~~every~~ *each* person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" includes ~~every~~ *each* person ~~as defined herein~~, other than a lienholder or ~~other~~ person having a security interest ~~only~~ *in a snowmobile*, ~~holding~~ *that holds* a certificate of ~~ownership~~ *title* to a snowmobile and *is* entitled to the use or possession ~~thereof~~ *of the snowmobile*.

(8) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, ~~whether incorporated or not and~~ regardless of the degree of formal organization.

(9) "Roadway" includes only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(10) "Snowmobile" includes any self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, ~~which~~ *that* may be steered by skis or runners and ~~which~~ *that* is not otherwise registered or licensed under the laws of the state of Montana."

Section 22. Section 23-2-611, MCA, is amended to read:

"23-2-611. Certificate of ~~ownership~~ *title* ~~— filing of security interests~~. (1) A snowmobile may not be operated upon any private or public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ~~ownership~~ *title* has first been obtained from the department of justice in accordance with the laws of this state. A certificate of ~~ownership~~ *title* is not required for a snowmobile purchased prior to April 16, 1993, if use of the snowmobile is restricted to private land.

(2) ~~The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:~~

~~(a) the name of the owner;~~

~~(b) the residence of the owner, by town and county;~~

~~(c) the business or home mailing address of the owner;~~

~~(d) the name and address of any lienholder;~~

~~(e) the amount due under any contract or lien;~~

~~(f) the name of the manufacturer;~~

~~(g) the model number or name;~~

~~(h) the identification number; and~~

~~(i) the name and address of the dealer or other person from whom acquired.~~ *Unless expressly exempted, the provisions of Title 61, chapter 3, parts 1 and 2, apply to snowmobiles.*

~~(3) The application must be accompanied by documentation of ownership, such as an invoice, notarized bill of sale from the immediately previous owner, foreign title, official certificate of snowmobile number, or fee in lieu of tax receipt.~~

~~(4) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.~~

~~(5) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.~~

~~(6) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice,~~

~~which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant with a certificate of ownership, which must contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.~~

~~(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.~~

~~(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.~~

~~(9) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the snowmobile encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.~~

~~(10) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9A.~~

~~(11) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.~~

~~(12) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.~~

~~(13) Except as provided in subsection (14), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(14) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of~~

~~ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.~~

~~(15) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.~~

~~(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the satisfaction is not filed.~~

~~(17) Upon receipt of notice of any involuntary liens or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.~~

~~(18) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.~~

~~(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.~~"

Section 23. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) *(a)* The provisions of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644, with respect to registration, tax-paid decals, and certification of ownership, do not apply to*:*

(i) snowmobiles owned or used by the United States or another state or any agency or political subdivision ~~thereof,~~ *of another state;*

(ii) ~~any~~ *a* snowmobile registered in a country other than the United States ~~and~~ *that is* to be temporarily used within this state for a period of not more than 30 days~~,~~*;* or

(iii) ~~to any~~ *a* snowmobile registered in another state of the United States ~~but~~ *that is* to be temporarily used within this state for not more than 30 days.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision ~~thereof~~ *of this state* are exempt only from the payment of fees and ~~shall~~ *must* otherwise comply with all the requirements of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644.

(2) The provisions of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 with respect to registration, tax-paid decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 24. Section 23-2-615, MCA, is amended to read:

"23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements ~~pertaining to the~~ *for a* nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the snowmobile; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and a certificate of ~~ownership~~ *title* may not be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(5) All money collected by payment of fees under this section must be remitted to the department of revenue and deposited in the state general fund.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 25. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and decals — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person ~~in Montana~~ unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) *(a)* ~~Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained~~ *A Montana resident who owns a snowmobile operated on public land shall register the snowmobile* at the county treasurer's office in the county where the owner resides. ~~The application must contain the following information:~~

~~(a) the name and address of the owner;~~

~~(b) the certificate of ownership number;~~

~~(c) the make of the snowmobile;~~

~~(d) the model name of the snowmobile;~~

~~(e) the year of manufacture;~~

~~(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and~~

~~(g) other information that the department of justice may require.~~

(b) A county treasurer shall register a snowmobile if:

(i) as of the date that the snowmobile is to be registered, the owner delivers or has delivered an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer has confirmed that the department of justice has an electronic record of title for the snowmobile as provided in 61-3-101.

(c) To register a snowmobile, the county treasurer shall update the electronic record of title maintained by the department of justice, by entering the fees paid and recording any changes to the record.

(3) The ~~application must be accompanied by~~ *owner registering a snowmobile shall pay* a decal-registration fee of $6.50~~,~~ and, if the snowmobile has previously been registered, ~~by~~ *show the county treasurer* the registration ~~certificate~~ *receipt* for the most recent year in which the snowmobile was registered. ~~The~~ *Upon payment of the proper fees, including the fee in lieu of tax, the* treasurer shall ~~sign the application and~~ issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the ~~signed~~ application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not ~~accept any application~~ *register a snowmobile* under this section ~~until~~ *unless* the applicant has paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and, *if required,* the immediately previous year as required by 15-16-202.

(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund."

Section 26. Section 23-2-619, MCA, is amended to read:

"23-2-619. Dealer registration certificate — use of fees — *temporary registration permit*. (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer registration certificate must be issued in accordance with 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644.

(b) To qualify as a dealer, the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all snowmobiles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any snowmobile offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of snowmobiles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of snowmobiles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in snowmobiles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in snowmobiles.

(2) The dealer application must be accompanied by an application fee of $5 and a registration fee of $5. Upon receipt of the dealer application and payment of fees, the dealer must be issued two dealer snowmobile identification cards that must be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) (a) A dealer shall file a bond in the amount of $5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has sold five or more snowmobiles during the preceding year or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of $2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) Prior to the delivery of a snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a temporary registration permit. The temporary registration permit expires 20 days after the date of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice.

~~(8)~~*(9)* (a) The dealer application fees and all interest accruing from use of this money must be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601 ~~through~~*, 23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees must be deposited in the general fund."

Section 27. Section 23-2-622, MCA, is amended to read:

"23-2-622. Registration of racing snowmobile not required. A snowmobile built or used exclusively for racing in sanctioned competitive events or organized races, including testing areas designated by the sponsoring entity, is exempt from the certificate of ~~ownership~~ *title* requirements of ~~23-2-611~~ *[sections 5 through 11]* and registration under *[section 13] or* 23-2-616."

Section 28. Section 23-2-631, MCA, is amended to read:

"23-2-631. Operation on public roads, streets, and highways. (1) A person may not operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only in the event that:

(a) the street, road, or highway is drifted or covered by snow to ~~such an~~ *the* extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible;

(b) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(c) operation has been authorized on municipal streets by a municipal ordinance.

(2) A snowmobile may make a direct crossing of a street or highway whenever the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The snowmobile must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(3) A snowmobile may not be operated upon a public street or highway when permitted to do so by 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 unless equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless equipped with a suitable braking device operable by either hand or foot.

(4) (a) Unless operation is otherwise allowed under subsection (4)(b) or (4)(c), the operator of a snowmobile who operates the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 must have in possession a license to drive a motor vehicle as required by the laws of the state of Montana.

(b) The operator of a snowmobile may operate the snowmobile upon a public roadway, street, or highway when allowed to do so under the provisions of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 if the operator:

(i) has in possession a certificate showing the successful completion of a Montana-approved snowmobile safety education course; and

(ii) is in the physical presence and under the supervision of a person who is 18 years of age or older.

(c) An operator who crosses a street, road, or highway, who operates a snowmobile upon a street, road, or highway that is drifted or covered with snow to ~~such an~~ *the* extent that travel on the street, road, or highway by other motor vehicles is impractical or impossible, or who operates a snowmobile in any other areas of the state where operation is lawfully permitted is not required to apply for or possess a driver's license under the laws of the state of Montana."

Section 29. Section 23-2-634, MCA, is amended to read:

"23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, ~~every~~ *each* snowmobile must be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. A snowmobile may not be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) ~~Every~~ *Each* person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain the machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) A snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may not be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. ~~Every~~ *Each* person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in ~~such~~ a manner *so* that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644, a manufacturer shall make the certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with other standards for measurement of sound level ~~as~~ *that* the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands or waters, with the permission of the owner, lessee, or custodian of the land or waters; or

(b) public lands or waters, with the consent of the public agency having the authority to grant consent."

Section 30. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."

Section 31. Section 23-2-642, MCA, is amended to read:

"23-2-642. Penalties. (1) The failure to display a current decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year during the time provided in 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 is a misdemeanor, punishable by a fine in an amount equal to five times the applicable fee in lieu of tax payable under 23-2-626.

(2) A person who violates any other provision of 23-2-601~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 or a rule adopted pursuant to those sections shall pay a civil penalty of not less than $15 or more than $500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 is subject to the penalty provisions of subsection (2) if any machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, ~~every~~ *each* sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 constitutes a separate violation."

Section 32. Section 23-2-644, MCA, is amended to read:

"23-2-644. Deposit of funds from fines and forfeitures. All fines and forfeitures collected under 23-2-601 ~~through~~, *23-2-602, 23-2-611, 23-2-614, 23-2-615, 23-2-616 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through* 23-2-644 relating to snowmobiles, except those collected by a justice's court, must be transmitted to the department of revenue for deposit in the state general fund."

Section 33. Section 23-2-801, MCA, is amended to read:

"23-2-801. Definitions. *(1)* As used in this part, ~~unless the context clearly indicates otherwise, the following definitions apply:~~

~~(1) "Certificate of ownership" means a document issued by the department of justice as prima facie evidence of ownership as provided in 23-2-811.~~

~~(2) (a) "Off-highway vehicle"~~ *"off-highway vehicle"* means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to

motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

~~(b)~~*(2)* Off-highway vehicle does not include:

~~(i)~~*(a)* vehicles designed primarily for travel on, over, or in the water;

~~(ii)~~*(b)* snowmobiles; or

~~(iii)~~*(c)* except as provided in 23-2-804, vehicles otherwise ~~licensed~~ *issued a certificate of title and registered* under the laws of the state*, unless the vehicle is used for off-road recreation on public lands*."

Section 34. Section 23-2-804, MCA, is amended to read:

"23-2-804. Decal required. (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by any person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid for the current year:

(a) (i) the fee in lieu of tax provided for in 23-2-803; and

(ii) the registration fee provided for in 61-3-321; or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321, as evidenced by presentation of an owner's certificate of registration and payment receipt. *The county treasurer may confirm the registration status of a motorcycle or quadricycle by examining the current registration receipt for the vehicle or checking the electronic record of title for the vehicle.*

(2) The decal must be serially numbered and have the expiration date of December 31 of the appropriate year printed on the decal."

Section 35. Section 23-2-814, MCA, is amended to read:

"23-2-814. Nonresident temporary-use permits. (1) An off-highway vehicle that is owned by a nonresident and that is not registered in another state of the United States or in another country may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department of fish, wildlife, and parks. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $5, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of ~~ownership~~ *title* may not be issued.

(5) All money collected by payment of fees under this section must be transmitted to the department of revenue for deposit in the state general fund.

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of not less than $25 or more than $100. All fines collected under this section must be transmitted to the department of revenue for deposit in the state general fund."

Section 36. Section 23-2-817, MCA, is amended to read:

"23-2-817. Registration fee — application and issuance — disposition. (1) Each off-highway vehicle is subject to an annual registration fee of $2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

(a) the name and home mailing address of the owner;

(b) the certificate of ~~ownership~~ *title* number;

(c) the name of the manufacturer of the off-highway vehicle;

(d) the model number or name;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax; and

(g) such other information ~~as~~ *that* the department of justice may require.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt, which must contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(5) All registration fees collected must be forwarded to the department of justice and deposited in the general fund."

Section 37. Section 23-2-818, MCA, is amended to read:

"23-2-818. Dealer registration certificate — *temporary registration permit*. (1) (a) Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless the dealer has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(b) To qualify as a dealer the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all off-highway vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any off-highway vehicle offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of off-highway vehicles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of off-highway vehicles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in off-highway vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in off-highway vehicles.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of $5 and a registration fee of $5. To qualify for the fees in this subsection, the applicant for renewal shall certify that the applicant has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of $2 each.

(3) (a) A dealer shall file a bond in the amount of $5,000.

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer maintains all business records and where the dealer displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional $50 renewal registration fee; and

(b) provide a copy of a new off-highway vehicle franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) Prior to delivery of an off-highway vehicle to a purchaser, the dealer shall issue and affix to the off-highway vehicle a temporary registration permit, as defined in [section 3]. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice.

~~(7)~~*(8)* (a) The dealer application fees and all interest accruing from use of this money must be deposited in the general fund to be used by the department of justice for the administration of this part.

(b) All dealer registration fees and renewal fees collected must be deposited in the state general fund."

Section 38. Section 30-9A-311, MCA, is amended to read:

"30-9A-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties. (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt 30-9A-310(1);

(b) the certificate of ~~ownership~~ *title* provisions of Title 23 or ~~Title~~ 61; or

(c) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate *of title* as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in 30-9A-313 and 30-9A-316(4) and (5) and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in 30-9A-316(4) and (5) and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to this chapter.

(4) During any period in which collateral subject to a statute specified in subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person."

Section 39. Section 31-1-816, MCA, is amended to read:

"31-1-816. Title loan requirements — liability of borrower. (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

(a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

(b) the borrower consents to the title lender keeping possession of the certificate of title;

(c) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;

(d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

(A) declare outstanding principal and any finance charges due and payable; or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in 31-1-820; and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with ~~23-2-611 or~~ 61-3-103.

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan."

Section 40. Section 40-5-248, MCA, is amended to read:

"40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint. (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to the department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as described in 30-9A-301.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until the applicable statute of limitations expires, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or for temporary assistance for needy families, as defined in 53-4-201.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ~~ownership~~ *title* is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9A-301. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247."

Section 41. Section 61-1-102, MCA, is amended to read:

"61-1-102. Motor vehicle. *(1)* "Motor vehicle" ~~means~~*:*

(a) means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state~~.~~*;*

(b) ~~For~~ *for* the purpose of chapter 3, ~~the term also~~ includes trailers and semitrailers~~.~~*;*

(c) ~~For~~ *for* the purpose of chapter 3, parts 1 and 2, ~~the term also~~ includes campers*, as defined in 61-1-129, motorboats and personal watercraft, as defined in 23-2-502, sailboats, as defined in 23-2-502, that are 12 feet in length or longer, and snowmobiles, as defined in 23-2-601*.

(2) The term does not include a bicycle as defined in 61-1-123."

Section 42. Section 61-1-509, MCA, is amended to read:

"61-1-509. Certificate of ~~ownership~~ *title*. "Certificate of ~~ownership~~ *title*" means the ~~certificate~~ *paper record* issued by the department ~~to the transferee upon a transfer of ownership of a~~ *or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the* motor vehicle."

Section 43. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1)*(a)* The department shall ~~keep a~~ *create and maintain a central registry of electronic files that includes an electronic* record *of title* as specified in this section ~~of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in~~ *for* motor vehicles *for which:*

(i) an application for a certificate of title has been received by the department, its authorized agent, or a county treasurer;

(ii) a certificate of title has been issued by the department; or

(iii) a registration, security interest, or lien transaction has been recorded by the department.

(b) The central registry of electronic files described in subsection (1) must include an electronic record of registration for each vehicle registered in this state:

(i) for which the certificate of title was issued by another jurisdiction and that was registered in another jurisdiction; or

(ii) for which a certificate of title has not been issued or is not required.

(2) The *electronic* record *of title for a motor vehicle* must ~~show~~ *contain* the following *information*:

(a) the name ~~of the owner, the~~ residence ~~address by street or rural route, the town,~~ and ~~the county and the~~ mailing address ~~if different from the residence address~~ *of the owner and:*

(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction;

(b) ~~the name and address of the conditional sales vendor, mortgagee, or other lienholder and the amount due under the contract or lien;~~ *a description of the motor vehicle, including, as pertinent to the motor vehicle:*

~~(c)~~*(i)* the manufacturer of the vehicle;

~~(d)~~*(ii)* the manufacturer's designation of the style of the vehicle;

~~(e)~~*(iii)* the identifying number;

~~(f)~~*(iv)* the *manufacturer's designated model* year of manufacture *and the odometer reading at the time of the transfer of ownership*;

~~(g)~~*(v)* the character of the motive power and the shipping weight of the vehicle as shown by the manufacturer;

~~(h)~~*(vi)* the distinctive license number assigned to the vehicle, if any;

~~(i)~~*(vii)* ~~if a truck or trailer, the number of tons capacity or GVW if imprinted on the manufacturer's identification plate~~ *the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight*;

~~(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle;~~

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the vehicle and the date of each transaction;

(ix) any brand required under state law or any brand carried forward from a certificate of title surrendered from another jurisdiction;

(x) if the vehicle has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the vehicle and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and

~~(k)~~*(xi)* other information that may *be required for registration or may* from time to time be found desirable.

(3) ~~The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:~~

~~(a) under the distinctive license number assigned to the vehicle by the county treasurer;~~

~~(b) alphabetically under the name of the owner;~~

~~(c) numerically under make and identifying number of the vehicle; and~~

~~(d) under another index of registration as the department considers expedient~~ *The electronic record of registration for a motor vehicle must contain, at a minimum, the following information:*

(a) the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii);

(b) the same data that is required under subsection (2)(b) for the electronic record of title; and

(c) any other data consider to be pertinent by the department.

~~(4) The department shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.~~

~~(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.~~

~~(6) In the case of dealers, the records must show the information contained in the application for a dealer's, wholesaler's, or auto auction license, as required by chapter 4, parts 1 and 2, of this title, as well as the distinctive license number assigned to the dealer.~~

~~(7)~~*(4)* In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

~~(8)~~*(5)* Subject to the provisions of Title 61, chapter 11, part 5, ~~department~~ *vehicle* records *maintained by the department* must be open to inspection during reasonable business hours, and the department shall furnish any information from the records, except personal information and highly restricted personal information, as defined in 61-11-503, upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department shall require the applicant to provide identification. The department may not disclose personal information or highly restricted personal information except as permitted or required under 61-11-507, 61-11-508, or 61-11-509."

Section 44. Section 61-3-103, MCA, is amended to read:

"61-3-103. ~~(Temporary)~~ Filing of security interests — perfection — rights — procedure — fees. (1) *(a)* Except as provided in ~~61-3-109~~ *subsection (2)*, the department, *its authorized agent, or a county treasurer shall, upon payment of the fee required by subsection (5), enter a* ~~may not file any~~ voluntary security interest or lien ~~unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the~~

~~certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.~~ *against the electronic record of title for a motor vehicle upon receipt of a written acknowledgment by a vehicle owner of a voluntary security interest or lien on a form required by the department. The entry may be made if:*

(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or

(ii) a transfer of ownership is not sought.

(b) After the voluntary security interest or lien has been entered on the electronic record of title for the vehicle, the department, its authorized agent, or a county treasurer shall issue a transaction summary receipt to the owner and, if requested, to the secured party or lienholder, showing the date that the security interest or lien was perfected.

(c) A voluntary security interest or lien is perfected on the date that the department, its authorized agent, or a county treasurer receives the written acknowledgment of the voluntary security interest or lien from the owner of the vehicle.

(d) Unless a person applying for a certificate of title requests issuance of a certificate of title under 61-3-201, the department may not record a voluntary security interest or lien on the face of a certificate of title.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under *Title 23, chapter 2, part 5, 6, or 8, or* chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against *the electronic record of title for* a motor vehicle that is subject to two security interests previously perfected under this section *and the applicant has requested issuance of a certificate of title under 61-3-201*, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests ~~need~~ *is* not *required to* be endorsed on the certificate.

~~(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.~~

~~(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.~~

~~(7)~~*(4)* Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

~~(8)~~*(5)* A ~~conditional sales vendor or chattel mortgagee or assignee~~ *secured party or lienholder who has a perfected security interest in a vehicle and* who fails to file a satisfaction of ~~a chattel mortgage, assignment, or conditional sales contract~~ *the security interest or lien* within ~~15~~ *21* days after receiving final payment is required to pay the department ~~the sum of $1~~ *$25* for each day that the ~~person~~ *secured party or lienholder* fails to file the satisfaction.

~~(9)~~*(6)* ~~Upon receipt of~~ *Within 24 hours after receiving* notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall ~~within 24 hours~~ mail to the owner~~, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees~~ *or any secured party or lienholder of record* a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

~~(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.~~

(7) (a) This section does not prevent a secured party or lienholder from assigning the secured party's or lienholder's interest in a motor vehicle, for which a certificate of title is issued under this chapter, to any other person without the consent of and without affecting the interest of the holder of the certificate of title.

(b) If a secured party assigns all or part of the party's interest in a motor vehicle for which a certificate of title is issued under this chapter, the secured party assigning the interest shall file a copy of the assignment with the department and the department shall record the assignment in the department's records.

~~(11)~~*(8) (a)* A fee ~~of $8~~ must be paid to the department to file any security interest or other lien against a motor vehicle. The ~~$8~~ fee ~~includes the cost of filing a satisfaction or release of the security interest and also~~ *covers* the cost of entering *and, upon* the *subsequent* satisfaction or release, *of removing the security interest or lien from the electronic record of title* ~~on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer.~~

(b) Beginning January 1, 2002, and ending June 30, 2011, the fee is $8. Of the $8 fee, $4 must be deposited in the state general fund in accordance with 15-1-504. The remaining $4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(c) Beginning July 1, 2011, the fee is $4 and must be deposited in the state general fund. ~~(Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)~~

~~**61-3-103. (Effective July 1, 2008) Filing of security interests — perfection — rights — procedure — fees.** (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.~~

~~(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.~~

~~(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.~~

~~(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.~~

~~(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.~~

~~(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes~~

~~constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.~~

~~(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.~~

~~(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file such satisfaction.~~

~~(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.~~

~~(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.~~

~~(11) A fee of $8 must be paid to the department to file any security interest or other lien against a motor vehicle. The $8 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the $8 fee, $4 must be deposited in the state general fund in accordance with 15-1-504. The remaining $4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2011 -- sec. 9, Ch. 394, L. 2001.)~~

~~61-3-103. (Effective July 1, 2011) Filing of security interests — perfection — rights — procedure — fees.~~ ~~(1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate;~~

however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file such satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

~~(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.~~

~~(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.~~"

Section 45. Certificate of title — transaction summary receipt — prima facie evidence. A certificate of title or transaction summary receipt issued by, or under the authority of, the department is prima facie evidence of the facts appearing on the certificate of title or transaction summary receipt.

Section 46. Section 61-3-106, MCA, is amended to read:

"61-3-106. Report of stolen and recovered motor vehicles — accessibility — insurance fraud and theft reporting — immunity. (1) It ~~shall be~~ *is* the duty of the sheriff of ~~every~~ *each* county of the state and of the chief of police or commissioner of police of ~~every~~ *each* city to make an immediate entry regarding each vehicle theft or recovery into the state automated stolen vehicle file maintained by the ~~law enforcement network system (LENS)~~ *department on the state's criminal justice information system*. Failure on the part of any officer ~~shall be considered to be~~ *to make the immediate entry is considered* misfeasance in office and ~~shall constitute~~ *constitutes* grounds for removal. Upon entry of ~~such~~ *the* information, ~~LENS~~ *the state's criminal justice information system* and the national crime information center must be allowed immediate access to the state automated stolen vehicle file. ~~It shall also be the duty of LENS to~~ *The department shall* file reports of stolen and recovered motor vehicles reported to it from other states.

(2) The state automated stolen vehicle file must be made available to the secretary of state or other proper official in each state of the United States through access to the national crime information center. ~~Before issuing a certificate of ownership, the department shall check the vehicle identification number on the motor vehicle to be registered against the state automated stolen vehicle file.~~

(3) Upon written request to an insurer by an authorized governmental agency or upon an insurer's own initiative to notify a specific lienholder, an insurer or an agent authorized by an insurer to act on its behalf shall release to the requesting agency or lienholder relevant information in the insurer's possession relating to any specific motor vehicle theft or motor vehicle insurance fraud.

(4) (a) Except as otherwise provided by law, information furnished pursuant to this section is privileged and may not become part of a public record. The evidence or information is not subject to a subpoena duces tecum in a civil or criminal proceeding unless the court determines after reasonable notice to the parties listed in subsection (4)(b) and a hearing that the public interest and any ongoing investigation by the parties listed in subsection (4)(b) will not be jeopardized by compliance with the subpoena duces tecum.

(b) The notice required by subsection (4)(a) must be sent to an insurer, an agent authorized by an insurer to act on its behalf, an authorized governmental agency that has an interest in the information, and a specific lienholder.

(5) An authorized governmental agency provided with information pursuant to this section may release or provide the information to any other authorized governmental agency.

(6) An insurer, an agent authorized by an insurer to act on its behalf, or an employee of an insurer or agent is not subject to civil or criminal liability in any cause of action for releasing or receiving information under this section.

(7) As used in this section, the following definitions apply:

(a) "Authorized governmental agency" means any ~~duly~~ constituted criminal investigative department or agency of the United States; the state department of justice; the state auditor's office; a peace officer of the state or a political subdivision of the state; or a prosecuting attorney of any state, of any political subdivision of any state, or of the United States or any district of the United States.

(b) "Relevant information" includes but is not limited to:

(i) insurance policy information related to any motor vehicle theft or motor vehicle insurance fraud under investigation, including an application for a policy;

(ii) available policy premium payment records;

(iii) the history of previous claims made by the insured; and

(iv) information relating to the investigation of any motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proof of loss and notice of loss, and any information that an insurer knows or reasonably believes reveals or may reveal the identity of a person who it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim or has knowledge of an act that has not been reported to an authorized governmental agency.

(c) "Specific lienholder" means a person or firm that holds a security interest in a motor vehicle involved in a specific motor vehicle theft or motor vehicle insurance fraud."

Section 47. Section 61-3-107, MCA, is amended to read:

"61-3-107. Identification number for trailers, campers, and other vehicles. (1) A trailer, semitrailer, housetrailer, or camper that does not have a manufacturer's or other identifying number ~~thereon~~ *on the trailer, semitrailer, housetrailer, or camper* must be assigned an identification number by the department.

(2) The department may not issue a certificate of ownership *or a certificate of title* or reissue a certificate of ownership *or a certificate of title* covering a vehicle on which the identification number has been altered, removed, obliterated, defaced, omitted, or is otherwise absent unless the owner or other person lawfully in possession of the vehicle files an application with the department, accompanied by a fee of $5. The application must be on a form provided by the department and must contain information required by the department for the assignment of a special identification number for a vehicle. Upon receipt of the application and if the department is satisfied that the applicant is entitled to the assignment of an identification number, the department shall designate a

special identification number for the vehicle. The department shall note the special identification number on the application and on records to be kept by the department. This assigned identification number must be stamped or securely attached in a conspicuous position on the vehicle in the manner and form prescribed by the department.

(3) ~~In a case where~~ *If* the true identity of a vehicle can be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks, the department may not assign a special identification number and shall replace the vehicle's identification mark by duplicating the manufacturer's full numeric or alphanumeric identification sequence. The department may replace an identification mark only after conducting an inquiry to determine that ownership of the vehicle bearing a restored identification mark has been lawfully transferred to the applicant. The applicant shall apply for and the department shall replace the identification mark on the vehicle as required under subsection (2).

(4) Upon receipt by the department of a certificate of inspection completed by a peace officer or authorized member of the department verifying that the identification number has been stamped or securely attached in a conspicuous position upon the vehicle, accompanied by an application for a certificate of ownership *or a certificate of title* and the required fee, the department shall use the number as the numeric or alphanumeric identification mark for the vehicle in any certificate of ownership *or a certificate of title* that may be issued."

Section 48. Section 61-3-109, MCA, is amended to read:

"61-3-109. ~~(Temporary)~~ Electronic ~~search~~ *title,* lien filing, and registration. (1) The department shall *develop and* implement a pilot program ~~allowing~~ *to allow:*

(a) electronic transmission of data by the department's authorized agent or a county treasurer to or from the department in lieu of the transmission of paper documents;

(b) substantiation of electronic record transactions performed by the department, its authorized agent, or a county treasurer;

(c) the search of electronic ~~search of motor vehicle titles, electronic filing and perfection of liens on motor vehicles, and electronic~~ *records of title and* registration ~~of motor vehicles~~ *by the department, its agents, and county treasurers;*

(d) electronic filing, perfection, and release of security interests or liens of record; and

(e) certification and audit by the department of its authorized agents.

(2) The department shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens and electronically ~~registered titles~~ *maintained ownership records* to subsequent purchasers, ~~or encumbrancers~~ *secured parties, or lienholders* from the date of a lien's perfection or ~~title registration~~ *transfer of ownership*. ~~(Terminates June 30, 2008 -- sec. 2, Ch. 260, L. 1999.)~~"

Section 49. Section 61-3-201, MCA, is amended to read:

"61-3-201. ~~Transfer of interest~~ *Certificate of title required* — ~~cancellation of erroneous certificate of ownership or registration~~ *exclusions.* ~~(1) Upon a transfer of any interest in a motor vehicle registered~~

~~under the provisions of this chapter, the person whose interest is to be transferred shall sign the certificate of ownership issued for the vehicle in the appropriate space provided, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee of the department, or a notary public.~~

~~(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The county treasurer shall collect the penalty at the time of registration and forward the penalty fee to the department of revenue for deposit in the state general fund. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.~~

~~(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required by the department, together with a verified or certified statement of the transfer of interest. The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown on its records.~~

~~(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration. However, in lieu of the statement required in subsection (3), the~~

~~department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to the certificates.~~

~~(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered under this chapter and not exceeding a combined value of $15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.~~

~~(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.~~

~~(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a).~~

~~(6) Subsection (5) does not prevent a secured party from assigning the secured party's interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of the secured party's security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment must be made in its records.~~

(1) Except as provided in subsection (2), the owner of a motor vehicle that is in this state and for which a certificate of title has not been issued by or an electronic record of title has not been created by the department shall apply to the department, its authorized agent, or a county treasurer for a certificate of title for the motor vehicle.

(2) The following vehicles are exempt from the requirements of this part:

(a) a vehicle owned by the United States, unless the vehicle is registered in this state;

(b) a vehicle that is:

(i) owned by a manufacturer, a dealer, a wholesaler, or an auto auction; and

(ii) held for sale, even though incidentally moved on the highway, used for purposes of testing or demonstration, or used solely by a manufacturer for testing;

(c) a vehicle owned by a nonresident of this state;

(d) a vehicle regularly engaged in the interstate transportation of person or property and:

(i) for which a currently effective certificate of title has been issued in another state or jurisdiction; or

(ii) that is properly registered under the provisions of Title 61, chapter 3, part 7;

(e) a vehicle moved solely by human or animal power;

(f) an implement of husbandry;

(g) special mobile equipment;

(h) a self-propelled wheelchair or tricycle used by a person with a disability; or

(i) a dolly or converter gear.

~~(7)~~*(3)* The certificate of ~~ownership~~ *title* is valid until canceled by the department upon a transfer of any interest shown in the certificate *of title*, and annual renewal is not needed.

~~(8) (a) Upon its determination that a certificate of ownership or a registration receipt contains an error or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney, the department may cancel the certificate of ownership or receipt and, in the case of an error, issue a replacement for the erroneous certificate or receipt if the owner has returned the certificate or receipt to be canceled. If the owner fails to return to the department the certificate of ownership, the registration receipt, or the license plate, the department shall direct a peace officer or department employee to secure and return the certificate, receipt, or license plate to the department.~~

~~(b) Any person who fails to return a certificate of ownership or a registration receipt that contains an error or that has been canceled by the department because of an insufficient funds check, as provided in subsection (8)(a), after receiving actual notice of the department's demand for the return of the certificate or receipt, as required by subsection (8)(a), is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500.~~"

Section 50. Section 61-3-202, MCA, is amended to read:

"61-3-202. Certificate of ~~ownership~~ *title* — issuance — contents — joint ownership ~~— inspection — fees.~~ ~~(1) Upon completion of the application for certificate of ownership, on forms furnished by the department, the county treasurer shall forward one copy of the application to the department, which shall enter the information contained in the application upon the corresponding records of its office and, except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties, shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.~~

~~(2)~~*(1)* ~~The~~ *A* certificate of ~~ownership shall~~ *title issued by the department must* contain ~~upon the face thereof~~:

(a) the date issued;

(b) the name and ~~mailing and residence~~ address of the owner ~~or the names and addresses of joint owners~~;

(c) the mileage disclosed by the transferor when ownership of the vehicle was transferred, including a notation that the record mileage is actual, not actual, or exceeds mechanical limits;

~~(c)~~*(d)* ~~except as provided in 61-3-103,~~ the name and ~~complete~~ address of ~~any holder of a perfected security interest in the registered vehicle~~ *each secured party and lienholder, in the order of priority and perfection or, if the application was based on a surrendered certificate of title, in the order that the names and addresses are shown on the certificate of title*;

~~(d) a description of the registered vehicle, including the year built and vehicle identification number;~~

~~(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle; and~~

(e) the title number assigned to the vehicle;

(f) the name of the jurisdiction in which the vehicle owner resides; the words "certificate of title"; the vehicle identification number; the manufacturer's designated model year of manufacture, make, and model of the vehicle; and any required or carried-forward brands;

(g) the unique transaction record number, if available and assigned by the department; and

~~(f)~~*(h)* ~~such other statement of facts as may be determined by~~ *any other data that* the department *prescribes.*

(2) A certificate of title issued by the department is valid until canceled by the department upon:

(a) a transfer, in the electronic record, of title of any ownership interest shown in the certificate of title;

(b) notice received by the department of the surrender of the certificate of title to a motor vehicle title issuing agency of another jurisdiction for an issuance of a title in that jurisdiction;

(c) the issuance of a duplicate certificate of title; or

(d) a determination by the department that the certificate of title contains a substantial error or that the person who requested issuance of the certificate of title paid the required fees and taxes with an insufficient funds check.

(3) (a) Whenever the conditions described in subsection (2)(d) occur, the department shall:

(i) give prompt written notice of the cancellation of the certificate of title to any owner, secured party, or lienholder of record; and

(ii) stop any change to the electronic record of title.

(b) The action taken by the department under subsection (3)(a) prevents the transfer of any ownership interest until the error is corrected or the fees and taxes have been paid.

~~(3)~~*(4)* ~~When~~ *If* the names and addresses of more than one owner ~~who are members of the same immediate family~~ are listed on the certificate of ~~ownership~~ *title*, joint ownership with right of survivorship, and not as tenants in common, is presumed.

~~(4) Upon receipt of the application, the department shall recheck the application. If there is any error in the application, it may be returned to the owner or to the county treasurer to effectively secure the correction of such error, who shall return the same to the department.~~

~~(5) The certificate of ownership shall contain a notice to the department of a transfer of interest of the owner and such other statements as may be determined by the department.~~

~~(6) A salvage vehicle for which a certificate of ownership is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before a certificate of ownership can be issued. The inspection may not attest to the roadworthiness or safety condition of the vehicle and must be performed by department employees or peace officers designated by the department.~~

~~(7) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.~~

~~(8) To defray the cost of the vehicle inspection program, the department shall collect a fee of $18.50 for the inspection of each salvage vehicle for which a certificate of ownership is sought. The fee must be distributed as follows:~~

~~(a) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the state treasurer for deposit in the general fund.~~

~~(b) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the inspection site that has contractually permitted the use of its facility for the inspection.~~

~~(9) (a) An authorized inspector may seize and hold a vehicle:~~

~~(i) the inspector has probable cause to believe is stolen;~~

~~(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or~~

~~(iii) that does not conform with the vehicle identification number on the certificate of ownership.~~

~~(b) A seized vehicle may be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. An authorized inspector may use any means necessary to identify a vehicle by its vehicle identification number or numbers.~~

~~(10) The department may not issue a certificate of ownership for a vehicle until the identity of the vehicle is established.~~

~~(11) The department may adopt rules for the implementation and administration of the vehicle inspection program.~~"

Section 51. Section 61-3-203, MCA, is amended to read:

"61-3-203. Fee for original certificate of ~~ownership and transfer of registration~~ *title* — disposition. A ~~charge~~ *person applying for a certificate of title shall pay a fee* of $5 ~~must be made~~ for issuance of an original certificate of ~~ownership of~~ title. ~~and for a transfer of registration, which~~ *The fee* must be collected by the county treasurer *or by an authorized agent of the department at the time of application*. An additional fee of $2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks. The fees must be deposited in the state general fund."

Section 52. Section 61-3-204, MCA, is amended to read:

"61-3-204. ~~Lost certificates~~ *Replacement certificate of title — application.* *(1)* ~~In the event any~~ *If a* certificate of ~~ownership~~ *title* is lost, *stolen, destroyed,* mutilated, or becomes illegible~~,~~ *, or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information,* the owner ~~shall immediately make application for and obtain~~*, as shown on the electronic record of title, may apply for and request the department to issue* a ~~duplicate thereof, upon furnishing~~ *replacement certificate of title. The application must include* satisfactory evidence of ~~such~~ *the* facts *requiring the replacement certificate of title* and ~~upon payment of~~ *be accompanied by* a fee of ~~$3~~ $5. Revenue from this fee must be deposited in the general fund.

(2) Each replacement certificate of title issued by the department must contain the following statement:

"This replacement voids any previously issued title."."

Section 53. Section 61-3-205, MCA, is amended to read:

"61-3-205. Transfer of ownership of vehicles by insurance company. (1) When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a certificate of ~~ownership~~ *title* signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, or a notary public.

(2) If the certificate of ~~ownership~~ *title* names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest."

Section 54. Section 61-3-206, MCA, is amended to read:

"61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record. (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ~~ownership~~ *title* the odometer reading at the time of transfer or, if the certificate of ~~ownership~~ *title* does not provide for the recording of the odometer reading, furnish to the purchaser a written statement that is signed by the seller, who shall also print the seller's name on the written statement, and that contains the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

(d) the purchaser's name and current address;

(e) the vehicle year, make, model, body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to the best of the seller's knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, the seller shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, the seller shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and printing the purchaser's name on the disclosure statement.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 10 years old or older;

(b) a vehicle that is not self-propelled;

(c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless the vehicle has been used as a demonstrator;

(d) a vehicle having a gross weight rating of more than 16,000 pounds; or

(e) a vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer or wholesaler licensed under chapter 4 of this title shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains."

Section 55. Section 61-3-207, MCA, is amended to read:

"61-3-207. Mobile home or housetrailer — transfer of interest. (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer must be made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer. The county treasurer may not accept the application unless all taxes, interest, and penalties that have been assessed on the mobile home or housetrailer have been paid in full.

(2) When a mobile home or housetrailer is sold under contract or under conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is responsible for payment of taxes upon the mobile home or housetrailer after the transfer. The clerk and recorder shall immediately notify the department of revenue of the information in the notice. The penalty provisions of ~~61-3-201(2)~~ *[section 9]* do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer."

Section 56. Section 61-3-208, MCA, is amended to read:

"61-3-208. Affidavit and bond for certificate*of title*. (1) If an applicant for a ~~vehicle~~ certificate of title cannot provide the department with ~~a~~ *the* certificate of title ~~transferred~~ *that assigns the prior owner's interest in the vehicle* to the applicant, the department may issue a certificate of title ~~for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department~~ *if subsection (2) is complied with*.

(2) *(a)* The *applicant shall submit an* affidavit *in a form prescribed by the department that* must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and ~~include~~ *must*:

~~(a)~~*(i) include* the facts and circumstances through which the applicant acquired ownership and possession of the vehicle;

~~(b)~~*(ii)* ~~information as required by the department to enable it to determine what~~ *disclose* security interests, liens, ~~and~~ *or* encumbrances~~, if any,~~ *that are known to the applicant and that* are outstanding against the vehicle;

~~(c) the date and the amount secured by the security interests, liens, and encumbrances, if any; and~~

~~(d)~~*(iii)* ~~a statement~~ *state* that the applicant has the right to have a certificate of title issued.

(b) The application must satisfy one of the following conditions:

(i) The vehicle for which the application is being made must be a boat, personal watercraft, sailboat 12 feet in length or longer, or a snowmobile, and the

loss of the certificate of title must be established by the applicant to the department's satisfaction.

(ii) The applicant shall certify in the affidavit that the value of the vehicle for which the application is made is $500 or less as indicated by

~~(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:~~

~~(a) in an amount equal to~~ the average trade-in or wholesale value of the vehicle as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application ~~for certificate of title~~ is made~~. When~~ *or, if* a national appraisal guide is not available for a vehicle, ~~the department shall determine an alternative value for the vehicle.~~ *according to the applicant's knowledge and belief.*

~~(b)~~*(iii) The applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the vehicle for which the application is being made, as determined by the surety company. The bond is* conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle and any respective successors in interest against expenses, losses, or damages, *including reasonable attorney fees,* caused by the issuance of the certificate *of title* or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the vehicle~~; and~~

~~(c) issued by a surety company authorized to do business in the state~~.

~~(4)~~*(3)* Any interested person has a right of action to recover on the bond *furnished under this section* for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

~~(5)~~*(4)* Unless the department has been notified of a pending action to recover the bond *furnished under this section*, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer ~~registered~~ *required to have a certificate of title* in this state."

Section 57. Section 61-3-210, MCA, is amended to read:

"61-3-210. Definitions. As used in this part, the following definitions apply:

(1) "Cab" means the passenger compartment of a common truck or pickup truck. It is a unit of construction that includes the top or roof and the cowl and may or may not include glass, instrumentation, the steering column, and a seat or seats.

(2) "Center structure" includes the section of either a unibody or frame-type passenger vehicle that consists of a unit of sheet metal that extends from the firewall to the back of the rear seat or the centerline of the rear wheels. The structure may comprise the roof, side and rear window posts, cowl panel, dash panel, floor pans, doors, and rocker panels if two or more of these parts are assembled together as one unit.

(3) "Component part" means the front-end assembly, center structure, or tail section of an automobile, the cab of a truck, the bed of a 1-ton or lighter truck, the frame of a vehicle, or any part of a vehicle that contains a vehicle identification number or a derivative of a vehicle identification number.

(4) "Frame" means the structure that supports the automobile body and other external component parts.

(5) "Front-end assembly" includes the hood, right front and left front fenders, grill, bumper, and radiator supports if two or more of these parts are assembled together as one unit forward of the firewall.

(6) "Salvage certificate" means a certificate of ~~ownership~~ *title* issued by the department for a salvage vehicle that may be used to retitle the vehicle.

(7) "Salvage vehicle" means a vehicle damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the owner, an insurer, or other person acting on behalf of the owner determines that the cost of parts and labor makes it uneconomical to repair the vehicle.

(8) "Salvage vehicle purchaser" means a person, other than an insurer, who purchases or otherwise obtains possession of a salvage vehicle.

(9) "Tail section" includes the floor pan, right rear and left rear quarter panels, deck lid, upper rear and lower rear panels, and rear bumper if two or more of these parts are assembled together as one unit.

(10) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the vehicle or a component part of the vehicle."

Section 58. Section 61-3-211, MCA, is amended to read:

"61-3-211. Surrender of certificate of ~~ownership~~ *title* — issuance of salvage certificate — salvage retitling requirements. (1) An insurer acquiring ownership of a vehicle that is less than 5 years of age that ~~he~~ *the insurer* determines to be a salvage vehicle shall surrender the certificate of ~~ownership~~ *title* to the department within 15 days after acquiring the certificate *of title*. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of ~~ownership~~ *title*, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of ~~ownership~~ *title* names one or more holders of a perfected security interest in the vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of ~~ownership~~ *title* and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of ~~ownership~~ *title*, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage

certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of ~~ownership~~ *title* to the department. Upon receipt of the certificate of ~~ownership~~ *title* from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of ~~ownership~~ *title* in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of ~~ownership~~ *title* or a comparable ownership document.

(5) At the time of surrender of a certificate of ~~ownership~~ *title* for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 75-10-513(2)."

Section 59. Section 61-3-212, MCA, is amended to read:

"61-3-212. Retitling salvage vehicles — penalty. (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the vehicle and the salvage certificate, if one has been issued, or the certificate of ~~ownership~~ *title*, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the vehicle to a department employee or designated peace officer for inspection ~~at a regional inspection site authorized under 61-3-202(7)~~, *as provided in [section 12]*. An owner may obtain a 72-hour temporary registration permit from the department or its designee for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the vehicle to verify the identity of the vehicle.

(b) The inspector shall verify that the component parts used to rebuild the vehicle are evidenced by traceable receipts or bills of sale and that there are no indications that the vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the vehicle on the roads and highways of this state, the owner shall apply for a new certificate of ~~ownership~~ *title* by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of the inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee ~~for a salvage vehicle~~ required in ~~61-3-202(8)~~ *61-3-203*, the department

shall issue a new certificate of ~~ownership~~ *title* with the words "rebuilt salvage" on the face of the certificate *of title*.

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $500. The salvage vehicle purchaser shall produce the salvage certificate upon request of a public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a *temporary registration* permit has been issued *as provided in subsection (1)*."

Section 60. Section 61-3-303, MCA, is amended to read:

"61-3-303. ~~Application for registration~~ *Registration — process — fees.* (1) ~~Each owner of~~ *A Montana resident who owns* a motor vehicle operated or driven upon the public highways of this state shall~~for each~~ *register the* motor vehicle ~~owned, except as otherwise provided in this section, file~~ in the office of the county treasurer in the county where the owner permanently resides ~~at the time of making the application~~ or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in ~~the taxing jurisdiction of~~ the county where the vehicle is permanently assigned ~~an application for registration or reregistration on a form prescribed by the department~~. ~~The application must contain:~~

~~(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;~~

~~(b) the name and address of the holder of any security interest in the motor vehicle;~~

~~(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;~~

~~(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;~~

~~(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and~~

~~(f) other information that the department may require.~~

(2) (a) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(i) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.

(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.

(3) (a) A county treasurer shall register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

~~(2)~~*(5)* A person who ~~files an application for registration or reregistration of~~ *seeks to register* a motor vehicle, except ~~of~~ a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall ~~upon the filing of the application~~ pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

~~(3)~~*(6)* The ~~application may not be accepted by the~~ county treasurer *may not issue a registration receipt or license plates for the vehicle to the owner* unless *the owner makes* the payments required by subsection ~~(2)~~ *(5)* ~~accompany the application~~. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

~~(4)~~*(7)* The department may make full and complete investigation of the *registration* status of the vehicle. ~~An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.~~ *A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department, if requested.*

~~(5)~~*(8)* Revenue that accrues from the voluntary donation provided in subsection ~~(2)(c)~~ *(5)(c)* must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts."

Section 61. Section 61-3-311, MCA, is amended to read:

"61-3-311. ~~Time for making application~~ *Registration — annual renewal — time periods.* *(1)* ~~Registration~~ *Except as provided in 61-3-562, vehicle registration* must be renewed annually, and ~~license~~ *registration* fees must be paid annually. Except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526, and 61-3-721, all registrations expire on December 31 of the year in which they are issued and ~~application for registration or reregistration must be filed with~~ *must be renewed annually upon payment of all required fees to* the county treasurer *or the department's agent* not later than February 15 of each year. If the ownership of a motor vehicle is transferred during the registration year, *the new owner shall apply for a certificate of title and register* the motor vehicle ~~must be reregistered and relicensed~~ as provided by ~~statute~~ *this chapter*.

(2) The department, its authorized agent, or a county treasurer may not renew the registration of a vehicle whose ownership has been transferred and that was originally registered under the provisions of 61-3-342(3), unless:

(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

Section 62. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-314, 61-3-318, 61-3-526, and 61-3-721, *the registration of* a vehicle ~~registration~~ under this chapter expires on December 31 of each year and must be renewed annually upon ~~application and~~ payment of ~~license~~ *registration* fees as provided in 61-3-303 and 61-3-321. The renewal takes effect on January 1 of each year. ~~The certificate of~~ *A* registration *receipt* is valid only during the registration year for which it is issued.

(2) The owner of a vehicle registered under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration ~~certificate~~ *decal* of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year."

Section 63. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. *(1)* Except as otherwise provided in this section, the new owner of a transferred motor vehicle has a grace period of 20 calendar days from the date of purchase to make application *for a certificate of title* and pay the registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the

24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year.

(2) If the motor vehicle was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a ~~certificate of~~ *current* registration *receipt or registration decal* during the 20-day period~~, provided that~~ *if* at all times during that period, a ~~vehicle purchase sticker in a form prescribed and furnished by the department~~ *temporary registration permit*, obtained from the county treasurer or a law enforcement officer as authorized by the department, ~~reciting the date of purchase~~ is clearly displayed in the rear window of the motor vehicle *or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle*.

(3) Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.

(4) Failure to make application *for a certificate of title* within the time provided in this section subjects the purchaser to a penalty of $10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund."

Section 64. Section 61-3-322, MCA, is amended to read:

"61-3-322. ~~Certificates of registration~~ *Registration receipts —* issuance. (1) Upon completion of the ~~application for registration on forms furnished by the department, the county treasurer shall file one copy in the treasurer's office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which must be marked "file copy"~~ *registration process, the county treasurer shall issue a registration receipt to the owner of the vehicle.*

(2) The ~~certificate of~~ registration *receipt* must contain ~~upon the face of the certificate the information described in 61-3-202(2)~~ *the name and address of the vehicle owner, the license plate number assigned to the vehicle, sufficient information to identify the registered vehicle and determine its registration date and period of registration, and any additional information required by rule.*

(3) The registration receipt~~, a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer, a notarized photostatic copy, or a duplicate furnished by the department~~ must at all times be carried in the vehicle to which it refers or must be carried by the person driving or in control of the vehicle, who shall display it upon demand of a ~~police~~ *peace* officer or any officer or employee of the department or the transportation department.

~~(4) The county treasurer shall daily forward to the department one copy of all applications for registration received that day.~~

~~(5) It is not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt.~~"

Section 65. Section 61-3-342, MCA, is amended to read:

"61-3-342. Temporary ~~window sticker~~ *registration permit — validity — expiration.* (1) Any purchaser of a motor vehicle who is unable to fully complete the process of applying for a ~~Montana~~ *certificate of* title ~~at the time he makes application for registration or reregistration of the vehicle~~ because the

previously issued certificate of ~~ownership~~ *title* is lost, in the possession of third parties, ~~or~~ in the process of reissuance in this state or elsewhere*, or subject to a disputed, preexisting security interest* may, upon making affidavit to that effect upon a form prescribed by the department and upon the payment of all applicable *registration* fees and taxes, plus an additional fee of $2 to be collected by the county treasurer and remitted to the department, obtain *a temporary registration permit* from the county treasurer. ~~of the county in which the vehicle is to be registered a temporary window sticker of such size, color, and design as the department may prescribe, to be validated~~ *The temporary registration permit, when issued* by the county treasurer*, is valid* for ~~a period of~~ 60 days from the date of issuance. The purchaser, upon displaying the ~~sticker on the upper left-hand corner of the rear window of the motor vehicle~~ *temporary registration permit in the manner prescribed by the department,* may operate the vehicle during the period ~~for which the window sticker has been validated~~ *stated in the temporary registration permit* without displaying the ~~registration certificate or~~ number plates or plate for the current year. The county treasurer may not sell, and ~~no~~ *a* person may *not* purchase, more than one 60-day temporary ~~window sticker~~ *registration permit* for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day ~~window sticker~~ *temporary registration permit*.

~~(2) A vehicle for which an application for title cannot be completed may not be registered by the county treasurer nor may license plates for the vehicle be issued by the county treasurer until the completed certificate of ownership or application for title is presented for the purpose of transferring ownership.~~

~~(3)~~*(2)* ~~In the event~~ *The department may authorize the county treasurer to extend the previously issued temporary registration permit for an additional 60-day period if:*

(a) an unusual circumstance prevents the owner of a vehicle from presenting the certificate of ~~ownership~~ *title* within the 60-day period permitted under subsection (1)~~,~~*;*

(b) the owner ~~may apply to the motor vehicle division for an extended temporary window sticker on an application form provided by the division. The form must be accompanied by the title application~~ *requests, on a form prescribed by the department, an extension of the time for which the temporary registration permit is valid and pays a $10 fee.*

~~(4)~~*(3)* Upon ~~receipt of an application for an extended temporary window sticker and title as designated in subsection (3), the motor vehicle division or the county treasurer, with the authorization of the motor vehicle division, may issue an extended temporary window sticker, valid for an additional 60 days, upon payment of a fee of $10 that must be deposited in the general fund. At the end of the extended 60-day period or in the event the request for extension is rejected by the department for cause, the owner may obtain a certificate of ownership by the method provided~~ *the expiration of the second 60-day temporary registration permit, if the purchaser still cannot present the previously issued certificate of title, properly assigned to the purchaser by the prior owner, or if a dispute remains as to any preexisting, perfected security interests created by the prior owner or the owner's assignee, the department may authorize the county treasurer to register the vehicle and advise the purchaser that the registration will not be renewed at the end of the registration period, unless:*

(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the purchaser complies with the requirements of ~~in~~ 61-3-208."

Section 66. Section 61-3-411, MCA, is amended to read:

"61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item. (1) An owner of a motor vehicle that is more than 30 years old and that is used solely as a collector's item and not for general transportation purposes may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom purchased;

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(d) that the vehicle is owned and operated solely as a collector's item and not for general transportation purposes.

(2) Upon receipt of the application for registration and payment of the registration ~~fee~~ *fees, including fees in lieu of tax*, the department shall file the application and register the motor vehicle in the manner specified in ~~61-3-101~~ *61-3-303* and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(3) The year of issuance may not be shown on the plates.

(4) Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is in existence and owned by the initial registrant. Upon sale of the motor vehicle, the purchaser shall renew the registration and pay a license renewal fee of $10 for a vehicle weighing more than 2,850 pounds and $5 for a vehicle weighing 2,850 pounds or less."

Section 67. Section 61-3-412, MCA, is amended to read:

"61-3-412. Display of original Montana license plates on collector's item vehicle — definition — validation. (1) As used in this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 to display original Montana license plates, with validation as required in subsection (3), after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a $5 fee, receipt of the highway patrol officer's certification that the officer has determined that the license plate is legible and meets the requirements of subsection (1); and

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in ~~61-3-101~~ *61-3-303*; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(2)(a); or

(B) "V" to designate vehicles described in 61-3-411(2)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if a windshield does not exist, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of $20."

Section 68. Section 61-3-456, MCA, is amended to read:

"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana. (1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in ~~61-3-303(2)(b)~~ *61-3-303(5)(b)*;

(b) assessment under 15-8-202 or 61-3-503, the fee in lieu of tax under 61-3-529, or the registration fee under 61-3-560 through 61-3-562; or

(c) any of the fees provided in part 5 of this chapter."

Section 69. Section 61-3-519, MCA, is amended to read:

"61-3-519. Grace period for registration and payment of fee — penalty for failure to pay fee. (1) Unless the fee in lieu of tax provided in 61-3-523 for the year has been paid, the purchaser of a new camper has 20 days from the date of purchase to apply for the camper decal, as provided in 61-3-524, and to pay the fee, as if the fee on the camper were being imposed for the first time in that registration year. The purchaser may operate or transport a camper on the highways of Montana without a decal during the 20-day period if the operator of the camper or of the vehicle upon which the camper is transported has in the operator's possession a 20-day ~~certificate~~ *temporary registration permit* issued by a dealer, if the camper was purchased from a dealer, or a ~~vehicle purchase certificate~~ *temporary registration permit* issued pursuant to 61-3-317 or other evidence of purchase of the camper.

(2) A purchaser who fails to make application and pay the fee within the time provided in subsection (1) is subject to a penalty of $10, which must be collected by the county treasurer when the tax is paid and ~~must be~~ *is* in addition to the fees otherwise provided by law."

Section 70. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b);

(iii) the former county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;

(vi) if applicable, the amateur radio operator license plate fee under 61-3-422;

(vii) if applicable, the annual scholarship donation fee under 61-3-465; and

(viii) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section, other than the local option vehicle tax or flat fee, for the purposes of 61-3-321(3) and 61-10-201. The county treasurer shall retain the local option vehicle tax or flat fee.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ~~ownership~~ *title* under 61-3-201 and file an application for registration under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)"

Section 71. Section 61-3-603, MCA, is amended to read:

"61-3-603. Penalty for alteration or forgery of certificate of ownership *or certificate of title* — ~~or~~ assignment ~~thereof~~. ~~Any~~ *A* person who alters or forges or causes to be altered or forged any motor vehicle certificate of ownership *or certificate of title* or any assignment ~~thereof~~ *of a certificate of ownership or certificate of title* or who holds or uses any ~~such~~ certificate or assignment knowing ~~it to have~~ *that the certificate has* been altered or forged is guilty of a felony. ~~and upon~~ *Upon a* conviction ~~thereof~~ *of a violation of this section, the offender* is subject to a fine of not more than $5,000, ~~or~~ to imprisonment ~~in any penal institution within the state~~ for a period of not more than 10 years, or both~~, in the discretion of the court~~."

Section 72. Section 61-3-701, MCA, is amended to read:

"61-3-701. ~~Foreign~~ *Out-of-state* vehicles used in gainful occupation to be registered — reciprocity. (1) Before a ~~foreign-licensed~~ motor vehicle *that is registered in another jurisdiction* may be operated on the highways of this state for hire, compensation, or profit or before the owner or user of the vehicle uses the vehicle if the owner or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall *register the vehicle at the office of* ~~apply to~~ a county treasurer ~~for registration upon an application form furnished by~~ *or an authorized agent of* the department. Upon satisfactory evidence of ownership submitted to the county treasurer *or the department's authorized agent* and the payment of fees in lieu of taxes or registration fees, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, 61-3-529, 61-3-537, or 61-3-560 and 61-3-561, the treasurer *or authorized agent shall enter the vehicle for registration purposes only on the electronic registry maintained by the department under 61-3-101* ~~shall accept the application for registration and shall collect the regular license fee required for the vehicle~~.

(2) Upon payment of the fees or taxes, the treasurer *or the department's authorized agent* shall issue to the ~~applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant~~ *vehicle owner a registration receipt and* the proper license plates or other identification markers~~;~~. ~~which~~ *The license plates or identification markers* must at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the ~~effective~~ *registration* period ~~of the license~~ *indicated on the receipt*.

(3) The registration receipt does not constitute evidence of ownership but must be used only for registration purposes. A Montana certificate of ~~ownership~~ *title* may not be issued for ~~this type of registration~~ *a vehicle registered under this section*.

(4) This section is not applicable to a vehicle covered by a valid and existing reciprocal agreement or declaration entered into under ~~the provisions of the laws of~~ Montana *law*."

Section 73. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that has occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, or special mobile equipment. The dealer or wholesaler must also have ~~a duly~~ *an* assigned certificate of ownership *or certificate of title* from the owner of the motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it has been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership, *certificates of title,* or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership, *certificate of title,* or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and have access to and copy any records required under this chapter."

Section 74. Section 61-4-111, MCA, is amended to read:

"61-4-111. Used motor vehicles — transfer to and from dealers. (1) A licensed dealer, broker, or wholesaler who intends to resell a used motor vehicle and who operates the vehicle only for demonstration purposes:

(a) is exempt from registration under 61-3-201(2) when applying for a certificate of ~~ownership~~ *title*; and

(b) may transfer or receive ownership of a motor vehicle by use of a dealer reassignment section on a certificate of ~~ownership~~ *title*~~;~~. ~~however~~ *However*, when the allotted number of dealer reassignment sections on a certificate of ~~ownership~~ *title* has been completed, ownership of the vehicle may not be transferred until an application for a certificate of ~~ownership~~ *title* has been submitted by the dealer to the department and a new certificate of ~~ownership~~ *title* has been issued.

(2) Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue *a temporary registration permit for the vehicle* and affix *the temporary registration permit* to ~~the rear window of~~ the vehicle ~~a 20-day permit~~ in a ~~form to be~~ *manner* prescribed by the department ~~and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number~~. *The temporary registration permit issued by the dealer is valid for 20 days from the date of issuance.* There must be imprinted on the *temporary registration* permit in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". ~~One~~ *Unless a durable license plate style placard is issued, one* copy of the *temporary registration* permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer's file. *If a durable placard is issued, the dealer shall create and retain the relevant records as prescribed by the department.* It is unlawful for the dealer to issue more than one *20-day temporary registration* permit ~~per~~ *for each* vehicle sale.

(b) Within 4 working days following the date of delivery of the vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides*:*

(i) the *assigned* certificate of ~~ownership and certificate of registration~~ *title or, if a certificate of title for the vehicle has not been issued in this state, a copy of the then-current registration receipt or certificate* ~~(if the certificates are then~~ in the dealer's possession~~), with an application for registration~~*;*

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of *[section 10] and* 61-3-322~~.~~*;* and

(iii) a copy of the *temporary registration* permit affixed to the vehicle by the dealer. ~~The department, upon receipt of the documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration, together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202.~~

(c) Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first-class mail, in which event they are considered to have been delivered at the time of mailing.

~~(c)~~*(d)* If the dealer is unable to forward the certificate of ~~ownership~~ *title* or, *if applicable, registration receipt* ~~certificate of registration~~ within the time set forth in subsection (2)(b) because the certificate *of title* is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first-class mail, within 3 days after receipt.

(3) Upon compliance by the dealer with the requirements in this section, title to the motor vehicle is considered to have passed to the purchaser as of the date of the delivery of the vehicle to the purchaser by the dealer, and the dealer has no further liability or responsibility with respect to the processing of registration.

(4) Upon receipt from the county treasurer of the documents required under subsection (2), the department shall:

(a) update the electronic record of the title maintained by the department under 61-3-101; or

(b) issue a certificate of title, if requested under, [section 5(2)(f)]; and

(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3.

~~(4)~~*(5)* For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111."

Section 75. Section 61-4-112, MCA, is amended to read:

"61-4-112. New motor vehicles — transfers by dealers. (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a *temporary registration* permit, as prescribed in 61-4-111(2)(a), for transfers of used motor vehicles and retain a copy of the *temporary registration* permit *or, if a durable license-plate style placard is issued, affix the placard and create and retain all other relevant records prescribed by the department*;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the *temporary registration* permit issued under subsection (1)(a) *or a copy of the information described in the records concerning a placard*;

(ii) an application for *a* certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a ~~statement~~ *manufacturer's certificate* of origin that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person~~, firm, corporation, or association~~ other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ~~ownership and certificate of registration, together with a statement of lien as provided in 61-3-202~~ *title, if requested under [section 5(2)(f)], and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable.*"

Section 76. Section 61-4-120, MCA, is amended to read:

"61-4-120. Application for auto auction license — general regulations. (1) A person~~, firm, association, or corporation~~ that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are

kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $35,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary *registration* permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary *registration* permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary *registration* permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary *registration* permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each *temporary registration* permit to offset the cost of the *temporary registration* permit. It is unlawful for the auto auction to issue more than one temporary *registration* permit ~~per~~ *for each* vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, ~~partnerships, corporations,~~ service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary *registration* permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary *registration* permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary*registration* permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number and engine number, if any; and

(ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ~~ownership~~ *title* at a location on the ~~front or back of the~~ certificate *of title*, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate *of title* between the transferor and transferee. If the certificate of ~~ownership~~ *title* lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ~~ownership~~ *title* and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206."

Section 77. Section 61-4-121, MCA, is amended to read:

"61-4-121. Twenty-day permit — limitation on issuance and transfer — violation — penalty. (1) (a) A dealer may not issue more than one 20-day *temporary registration* permit under 61-4-111 or 61-4-112 ~~per~~ *for each* vehicle sale.

(b) A dealer may not transfer 20-day *temporary registration* permits to another dealer unless the dealer:

(i) notifies the department within 3 days of the transfer;

(ii) identifies to the department the dealer to whom any *temporary registration* permits have been transferred;

(iii) informs the department of the date of the transfer and the quantity and serial numbers of the transferred *temporary registration* permits.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day *temporary registration* permits for a period of time determined by the department."

Section 78. Section 61-12-406, MCA, is amended to read:

"61-12-406. Issuing certificate of ~~ownership~~ *title.* The department shall issue a certificate of ~~ownership~~ *title* upon presentation by the purchaser of the certificate of sale and payment of the fees required by law."

Section 79. Section 75-10-512, MCA, is amended to read:

"75-10-512. Records required of facilities. (1) Each motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

(2) This record must also contain:

(a) the certificate of ~~ownership~~ *title*, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;

(b) the name of the state where the vehicle was last registered;

(c) the make of the vehicle;

(d) the vehicle identification number, as defined in 61-3-210, or the motor number, identification number, or serial number;

(e) the date purchased;

(f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents credentials may also inspect, have access to, and copy records required under this section."

Section 80. Section 75-10-513, MCA, is amended to read:

"75-10-513. Disposal of junk vehicles — fees and records. (1) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of $2 for each vehicle submitted, and the vehicle is then the property of the state.

(2) Quarterly, each motor vehicle wrecking facility shall mail to the department of justice, on a form approved by the department of justice, a list of all junk vehicles received by the motor vehicle wrecking facility during the quarter, stating the year, make, and complete identification number of each vehicle. If a certificate of ~~ownership~~ *title* is received for a junk vehicle on the list, that certificate of ~~ownership~~ *title* must accompany the list. The department of justice shall issue a receipt for the certificate of ~~ownership~~ *title* if requested by the licensed facility, and the receipt may serve as an instrument for reclaiming the certificate of ~~ownership~~ *title* if the vehicle is rebuilt.

(3) A motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by it that are required by rules of the department."

Section 81. Repealer. Sections 23-2-509, 23-2-510, 23-2-520, 23-2-612, 23-2-613, 23-2-620, 23-2-810, 23-2-811, 23-2-812, 23-2-813, 61-3-105, 61-3-305, and 61-3-518, MCA, and section 4, Chapter 90, Laws of 1997, section 2, Chapter 260, Laws of 1999, and section 9, Chapter 394, Laws of 2001, are repealed.

Section 82. Codification instruction. (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 61, chapter 1, and the provisions of Title 61, chapter 1, apply to [sections 1 through 4].

(2) [Sections 5 through 13] are intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [sections 5 through 13].

(3) [Section 45] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 45].

Section 83. Coordination instruction. (1) If House Bill No. 261 and [this act] are both passed and approved, then:

(a) [Sections 4 through 7] of House Bill No. 261, amending 23-2-508, 23-2-611, 23-2-811, and 61-3-203, are void.

(b) Section 44 of [this act], amending 61-3-103, must include as a new subsection (9):

(9) A fee of $10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the vehicle owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. The $10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550.

(c) [Section 51] of [this act], amending 61-3-203, must read:

"61-3-203. Fee for original certificate of ~~ownership and transfer of registration~~ *title* — disposition. A ~~charge~~ *person applying for a certificate of*

title shall pay a fee of ~~$5~~ *$10* ~~must be made~~ for issuance of an original certificate of ~~ownership of~~ title. ~~and for a transfer of registration, which~~ *The fee* must be collected by the county treasurer*or by an authorized agent of the department at the time of application*. An additional fee of $2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks. The fees must be *paid to the county treasurer or agent of the department and, of the $10 fee, $5 must be forwarded to the department of revenue and* deposited in the state general fund. *The remaining $5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550*."

(d) Section 52 of [this act], amending 61-3-204, must read:

"61-3-204. ~~Lost certificates~~ *Replacement certificate of title — application.* *(1)* ~~In the event any~~ *If a* certificate of ~~ownership~~ *title* is lost, *stolen, destroyed,* mutilated, or becomes illegible~~,~~ *or if the owner wants to update personal information on the electronic record of title or have a replacement certificate of title issued with updated information,* the owner ~~shall immediately make application for and obtain~~*, as shown on the electronic record of title, may apply for and request the department to issue* a ~~duplicate thereof, upon furnishing~~ *replacement certificate of title. The application must include* satisfactory evidence of ~~such~~ *the* facts *requiring the replacement certificate of title* and ~~upon payment of~~ *be accompanied by* a fee of ~~$3~~ *$10*. ~~Revenue from this~~ *Of the $10* fee, *$5* must be deposited in the *state* general fund *in accordance with 15-1-504, and the remaining $5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550*.

(2) Each replacement certificate of title issued by the department must contain the following statement:

"This replacement voids any previously issued title.""

(2) If House Bill No. 698 and [this act] are both passed and approved, then [section 3] of House Bill No. 698 is void and [section 60] of [this act], amending 61-3-303, must read:

"61-3-303. ~~Application for registration~~ *Registration — process — fees.* (1) ~~Each owner of~~ *A Montana resident who owns* a motor vehicle operated or driven upon the public highways of this state shall ~~for each~~ *register the* motor vehicle ~~owned, except as otherwise provided in this section, file~~ in the office of the county treasurer in the county where the owner permanently resides ~~at the time of making the application~~ or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in ~~the taxing jurisdiction of~~ the county where the vehicle is permanently assigned ~~an application for registration or reregistration on a form prescribed by the department. The application must contain:~~

~~(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;~~

~~(b) the name and address of the holder of any security interest in the motor vehicle;~~

~~(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on~~

~~all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;~~

~~(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;~~

~~(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and~~

~~(f) other information that the department may require.~~

(2) (a) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(i) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.

(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.

(3) (a) A county treasurer shall register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

~~(2)~~*(5)* A person who ~~files an application for registration or reregistration of~~ *seeks to register* a motor vehicle, except ~~of~~ a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall ~~upon the filing of the application~~ pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; ~~and~~

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts*; and*

(d) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

~~(3)~~*(6)* The ~~application may not be accepted by the~~ county treasurer *may not issue a registration receipt or license plates for the vehicle to the owner* unless *the owner makes* the payments required by subsection ~~(2)~~ *(5)* ~~accompany the application~~. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

~~(4)~~*(7)* The department may make full and complete investigation of the *registration* status of the vehicle.~~An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.~~*A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department, if requested.*

~~(5)~~*(8)* Revenue that accrues from the voluntary donation provided in subsection ~~(2)(c)~~ *(5)(c)* must be forwarded by the respective county treasurer *to the department of revenue* for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) Revenue that accrues from the voluntary donation provided in subsection (5)(d) must be forwarded by the respective county treasurer to the department of revenue for deposit in the state special revenue fund to the credit of the account established in [section 2 of House Bill No. 698] to support activities related to education regarding prevention of traumatic brain injury."

Section 84. Effective date. [This act] is effective January 1, 2004.

Section 85. Applicability — retroactive applicability. (1) Except as provided in subsection (2), [this act] applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

(2) [Section 42] applies retroactively, within the meaning of 1-2-109, to security interests filed before [the effective date of this act].

Ap proved April 24, 2003

CHAPTER NO. 478

[HB 734]

AN ACT CHANGING THE DESIGNATED STATE AGENCY FOR THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL

TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 2-15-2204 AND 53-20-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, requires each state to have a state council on developmental disabilities and to designate a state agency to provide support and administrative services to the council without interference or placement of conditions upon the operations of the council; and

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 recognizes only one council in each state, which may take the form of a nonprofit corporation, and the state Developmental Disabilities Planning and Advisory Council is Montana's council; and

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act of 2000 further states that each state is required to designate a state agency to administer the federal funds, but that the designated state agency may not provide or pay for services for individuals with developmental disabilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. State developmental disabilities planning and advisory council. The state may contract with a nonprofit corporation for the purposes of carrying out the responsibilities delegated to the statewide developmental disabilities planning and advisory council appointed pursuant to 2-15-2204 in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and this section. Approval of the contract delegating the responsibilities of the council to a nonprofit corporation must be in the form of a letter signed by the secretary of the federal department of health and human services or the secretary's designee.

Section 2. Section 2-15-2204, MCA, is amended to read:

"2-15-2204. Developmental disabilities planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, *codified at 42 U.S.C. 15001, et seq*.

~~(2) The council is composed of 29 members and includes the following:~~

~~(a) six persons with developmental disabilities;~~

~~(b) six persons who are:~~

~~(i) parents or guardians of a child with developmental disabilities; or~~

~~(ii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves;~~

~~(c) six persons who may be:~~

~~(i) a person with a developmental disability;~~

~~(ii) a person who is the parent or guardian of a child with a developmental disability; or~~

~~(iii) a person who is an immediate relative or guardian of an adult with mentally impairing developmental disabilities who cannot self-advocate;~~

~~(d) a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;~~

~~(e) a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;~~

~~(f) a representative of the program of services provided under the authority of Title V of the Social Security Act, 42 U.S.C. 701, et seq.;~~

~~(g) a representative of the programs of services provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;~~

~~(h) a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;~~

~~(i) one member of the state senate;~~

~~(j) one member of the state house of representatives;~~

~~(k) a representative of the university affiliated or satellite program on developmental disabilities created pursuant to 42 U.S.C. 6061;~~

~~(l) a representative of the state protection and advocacy system created pursuant to 42 U.S.C. 6041; and~~

~~(m) two representatives of nongovernmental in-state entities that are concerned with the provision of services to persons with developmental disabilities.~~

(2) In addition to the members appointed under subsection (1), the council must include one member of the senate and one member of the house of representatives.

~~(3)~~*(3) (a) Except as provided in subsection (3)(b), members of the council serve 1-year terms.* ~~Nine of the members appointed to the council pursuant to subsections (2)(a) through (2)(c) must be appointed by the~~ governor

(b) Of the members described in 42 U.S.C. 15025(b)(3) who represent persons with developmental disabilities and parents or relatives of persons with developmental disabilities, the governor shall appoint:

(i) not less than one-half of the members to serve for terms concurrent with the gubernatorial term and until their successors are appointed~~. The remaining members serving on the council pursuant to subsections (2)(a) through (2)(c) must be appointed by the governor~~*; and*

(ii) the remaining members to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

~~(4) Members appointed to the council to fulfill representation requirements of subsections (2)(d) through (2)(m) serve 1-year terms.~~

~~(5) At least one member appointed to the council pursuant to subsections (2)(a) through (2)(c) must be either:~~

~~(a) a person with a developmental disability who resides or previously resided in an institution; or~~

~~(b) an immediate relative or guardian of a person with a developmental disability who resides or previously resided in an institution.~~

~~(6)~~*(4)* Members appointed to the council ~~pursuant to subsections (2)(a) through (2)(c)~~ may also be selected to represent the geographical regions and the racial and ethnic composition of the state, including American Indians.

~~(7)~~*(5)* ~~The~~ *Except as provided in [section 1], the* council is allocated to the department *of commerce* for administrative purposes only and, unless

inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply. *The department of commerce shall remain the designated state agency for funding purposes if the responsibilities of the council are delegated by contract to a nonprofit corporation.*"

Section 3. Section 53-20-206, MCA, is amended to read:

"53-20-206. Planning and advisory council. (1) ~~The~~ *If the duties of the planning and advisory council are delegated to an administratively attached state agency, the provisions of this section apply.*

(2) The planning and advisory council may elect from among its members the officers necessary for the proper management of the council.

~~(2)~~*(3)* The council may adopt rules governing its own organization and procedures.

~~(3)~~*(4)* A majority of the members of the council constitutes a quorum for the transaction of business.

~~(4)~~*(5)* The council ~~may~~ *shall* employ and fix the compensation and duties of necessary staff *and control the location of its office*.

~~(5)~~*(6)* A council member, unless ~~he is~~ *the member is* a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed $25, for each day in which ~~he~~ *the member* is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

~~(6)~~*(7)* The council shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to persons with developmental disabilities; *and*

~~(b) develop a plan for a statewide system of community-based services for persons with developmental disabilities; and~~

~~(c)~~*(b)* serve in any capacity required by federal law for the administration of federal programs for services to persons with developmental disabilities."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 1].

Section 5. Instructions to code commissioner. The code commissioner shall renumber 2-15-2204 as an integral part of Title 2, chapter 15, part 18, and make any necessary corresponding changes to reflect the numbering.

Section 6. Effective date. [This act] is effective July 1, 2003.

Ap proved April 24, 2003

CHAPTER NO. 479

[SB 76]

AN ACT ELIMINATING CERTAIN SPECIAL EDUCATION DEFINITIONS TO COMPLY WITH FEDERAL CHANGES MADE BY CONGRESS IN THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401 AND 20-7-436, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.~~

~~(2) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:~~

~~(a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;~~

~~(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with a disability;~~

~~(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;~~

~~(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;~~

~~(e) training or technical assistance for a child with a disability or, if appropriate, training or technical assistance for that child's family; and~~

~~(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child with a disability.~~

~~(3) "Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.~~

~~(4)~~*(1)* "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having ~~cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health~~

~~impairments; deaf-blindness; multiple disabilities; or specific learning disabilities~~ *a disability* and who because of ~~those impairments~~ *the disability* needs special education and related services. ~~A child who is 5 years of age or younger may be identified as a child with a disability without the specific disability being specified.~~

~~(5) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.~~

~~(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.~~

~~(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.~~

~~(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.~~

~~(9)~~*(2)* "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

~~(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.~~

~~(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, or cerebral palsy).~~

~~(12) "Other health impairment" means limited strength, vitality, or alertness because of chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.~~

~~(13)~~*(3)* "Related services" means ~~transportation and any developmental, corrective, and other supportive~~ services *in accordance with regulations of the Individuals With Disabilities Education Act* that are required to assist a child with a disability to benefit from special education ~~and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training~~.

~~(14)~~*(4)* "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

~~(15) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive delay; or environmental, cultural, or economic disadvantages.~~

~~(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.~~

~~(17)~~*(5)* "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

~~(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.~~

~~(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness.~~"

Section 2. Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the ~~health care financing administration~~ *centers for medicare and medicaid services*, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) "Eligible child" means a *Montana resident* child or youth who is less than 19 years of age~~, who is emotionally disturbed as defined in 20-7-401, and whose~~ *and who has an* emotional problem *that* is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children or youth with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment."

Section 3. Notification of code commissioner required. The office of public instruction shall provide the code commissioner with written verification of the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires states to implement the changes required by reauthorization.

Section 4. Contingent effective date. [This act] is effective on the date by which congress, in the reauthorization of the Individuals With Disabilities Education Act, requires all states to implement the changes required by reauthorization.

Ap proved April 24, 2003

CHAPTER NO. 480

[SB 89]

AN ACT EXEMPTING PROPERTY HELD BY A LOCAL GOVERNMENT ENTITY FROM THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTION 70-9-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-9-802, MCA, is amended to read:

"70-9-802. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

(7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

(10) *(a)* "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser.

(b) The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust

other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(13) *(a)* "Property" means tangible property described in 70-9-804 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business~~,~~ or*, except as provided in subsection (13)(b),* by a government, governmental subdivision, agency, or instrumentality~~,~~ and all income or increments from the property. The term includes property that is referred to as or evidenced by:

~~(a)~~*(i)* money, check, draft, deposit, interest, or dividend;

~~(b)~~*(ii)* credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

~~(c)~~*(iii)* stock or other evidence of ownership of an interest in a business association or financial organization;

~~(d)~~*(iv)* bond, debenture, note, or other evidence of indebtedness;

~~(e)~~*(v)* money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

~~(f)~~*(vi)* an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

~~(g)~~*(vii)* an amount distributable from a trust or custodial fund that is established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(b) The term does not include property that is held, issued, or owed by a local government entity, as defined in 2-7-501.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 24, 2003

CHAPTER NO. 481

[SB 115]

AN ACT EXTENDING AND REVISING THE STATUTORY APPROPRIATION, FOR THE FISCAL YEARS BEGINNING JULY 1, 2005, AND ENDING JUNE 30, 2010, OF THE INTEREST FROM $140 MILLION OF THE COAL SEVERANCE TAX PERMANENT FUND THAT IS DEPOSITED IN THE GENERAL FUND FOR THE COOPERATIVE DEVELOPMENT CENTER, FOR THE GROWTH THROUGH AGRICULTURE PROGRAM, FOR A SMALL BUSINESS DEVELOPMENT CENTER, FOR A SMALL BUSINESS INNOVATIVE RESEARCH PROGRAM, FOR CERTIFIED COMMUNITIES, FOR A MANUFACTURING EXTENSION CENTER, FOR EXPORT TRADE ENHANCEMENT, AND FOR RESEARCH AND COMMERCIALIZATON PROJECTS; AMENDING SECTIONS 15-35-108 AND 17-7-502, MCA, AND SECTION 10, CHAPTER 10, SPECIAL LAWS OF MAY 2000; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) For fiscal years beginning on or after July 1, 2003, the amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) For fiscal years beginning on or after July 1, 2003, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in

the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) for the fiscal year beginning July 1, 2001, $1.25 million, for the fiscal year beginning July 1, 2002, $925,000, and for fiscal years beginning on or after July 1, 2003, $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) except for the fiscal year beginning July 1, 2002, $425,000 for certified communities;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement;

(iv) $175,000 to the office of economic development for business recruitment and retention; and

(v) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) For the fiscal year beginning July 1, 2001, there is transferred from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002. Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection (7)(b) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000; sec. 8(1), Ch. 12, Sp. L. August 2002.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 7.75% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) *(a) Subject to subsection (7)(b), all* ~~All~~ other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified communities;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; ~~90-6-710;~~ and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 3. Section 10, Chapter 10, Special Laws of May 2000, is amended to read:

"Section 10. Termination. (1) [Section 1] terminates June 30, 2001.

(2) ~~[Sections 2 through 4]~~ *[Sections 2 and 4]* terminate June 30, 2005.

(3) [Section 3] terminates June 30, 2010."

Section 4. Coordination instruction. If House Bill No. 76 is passed and approved and if it includes provisions eliminating the certified communities program, the code commissioner is instructed to substitute "certified regional development corporations" for "certified communities" where it appears in [this act], unless the context requires otherwise.

Section 5. Effective date. [This act] is effective July 1, 2005.

Section 6. Termination. [Section 1] terminates June 30, 2010.

Ap proved April 24, 2003

CHAPTER NO. 482

[SB 143]

AN ACT DEFINING "CHARITABLE GIFT ANNUITY", "CHARITABLE ORGANIZATION", AND "QUALIFIED CHARITABLE GIFT ANNUITY"; PROVIDING THAT A QUALIFIED CHARITABLE GIFT ANNUITY IS NOT INSURANCE; REQUIRING THAT CHARITABLE ORGANIZATIONS ENTERING INTO A CHARITABLE GIFT ANNUITY AGREEMENT GIVE NOTICE TO DONORS AND THE STATE AUDITOR; PROVIDING A FINE FOR FAILURE TO GIVE PROPER NOTICES; CONFORMING CHARITABLE GIFT ANNUITY LAWS TO LAWS RELATED TO DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS AND TAX CREDITS FOR CONTRIBUTIONS TO QUALIFIED ENDOWMENTS; AMENDING SECTIONS 15-30-121, 15-30-165, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. In [sections 1 through 5], the following definitions apply:

(1) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, for the duration of that life or those lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

(a) section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(3); or

(b) section 170(c) of the Internal Revenue Code of 1986, 26 U.S.C. 170(c).

(3) (a) "Qualified charitable gift annuity" means a charitable gift annuity, described by section 501(m)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 501(m)(5), section 514(c)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 514(c)(5), section 1011(b) of the Internal Revenue Code of 1986, 26 U.S.C. 1011(b), and the implementing regulations, that is issued by a charitable organization that, on the date of the annuity agreement:

(i) has a minimum of $300,000 net worth or has a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement;

(ii) has been in continuous operation for at least 3 years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least 3 years; and

(iii) maintains a separate annuity fund with at least one-half the value of the initial amount transferred for outstanding annuities.

(b) If the charitable organization cannot meet the requirements of subsections (3)(a)(i) through (3)(a)(iii), the issuance of a qualified charitable gift annuity by a charitable organization must be commercially insured by a licensed insurance company that is qualified to do business in Montana.

Section 2. Charitable gift annuity not insurance. (1) The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

(2) A charitable gift annuity issued before [the effective date of this act] is a qualified charitable gift annuity for purposes of [sections 1 through 5], and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

Section 3. Notice to donor. (1) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor, in writing, in the annuity agreement, that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the commissioner or protected by an insurance guaranty association.

(2) The notice provisions required by this section must be in a separate paragraph in print size that is not smaller than that employed in the annuity agreement generally.

Section 4. Notice to commissioner. (1) A charitable organization that issues qualified charitable gift annuities shall notify the commissioner in writing within 90 days after [the effective date of this act] or the date on which it enters into the organization's first qualified charitable gift annuity agreement and shall notify the commissioner on March 1 of each year in which the charitable organization issues qualified charitable gift annuities. The notice must:

(a) be signed by an officer or director of the organization;

(b) identify the organization;

(c) certify that:

(i) the organization is a charitable organization; and

(ii) the annuities issued by the organization are qualified charitable gift annuities.

(2) The organization is not required to submit additional information except:

(a) within 30 days of receipt of a written request, to provide the commissioner with financial documents verifying information that was provided to the commissioner in the notice; or

(b) to enable the commissioner to determine appropriate penalties that may be applicable under [section 5].

Section 5. Failure to provide required notice. The failure of a charitable organization to comply with the notice requirements imposed under [sections 3 and 4] does not prevent a charitable gift annuity that otherwise meets the requirements of [sections 1 through 5] from constituting a qualified charitable gift annuity. The commissioner may enforce performance of the requirements of [sections 3 and 4] by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of [sections 3 and 4]. The commissioner may fine the charitable organization in an amount not to exceed $1,000 for each qualified charitable gift

annuity agreement issued until the time that the charitable organization complies with [sections 3 and 4].

Section 6. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); *and*

(v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in [section 1];

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in

the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 7. Section 15-30-165, MCA, is amended to read:

"15-30-165. (Temporary) Qualified endowments credit — definitions — rules. For the purposes of 15-30-166, the following definitions apply:

(1) Subject to subsection (3), "planned gift" means an irrevocable contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exempt organization, when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) (a) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(i) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(ii) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

(b) For the purposes of sections 15-30-165 through 15-30-167, the affordable housing revolving loan account established in 90-6-133 is considered to be a qualified endowment.

(3) (a) A contribution using a technique described in subsection (1)(a) or (1)(b) is not a planned gift unless the trust agreement provides that the trust may not terminate and the beneficiaries' interest in the trust may not be assigned or contributed to the qualified endowment sooner than the earlier of:

(i) the date of death of the beneficiaries; or

(ii) 5 years from the date of the contribution.

(b) A contribution using the technique described in subsection (1)(g) is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by rule by the department in effect on the date of the contribution.

(c) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity may not be assigned to the qualified endowment sooner than the earlier of:

(i) the date of death of the annuitant or annuitants; or

(ii) 5 years after the date of the contribution.

(d) A contribution using a technique described in subsection (1)(f) or (1)(g) is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in [section 1].

(4) The department shall adopt rules to prepare life expectancy tables that are derived from the actuarial tables contained in the most recent Publication 1457 by the internal revenue service. (Subsection (2)(b) terminates December 31, 2004—sec. 7, Ch. 411, L. 2001; section terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 8. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. (1) In computing the net income, the following deductions are allowed from the gross income received by the corporation within the year from all sources:

(a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation contained in this section, and rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for

depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii) *or (1)(g)(iii)*, charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in [section 1].

(h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net

income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company, as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as those sections may be amended or renumbered."

Section 9. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [sections 1 through 5].

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Applicability. [This act] applies to charitable contributions made after [the effective date of this act].

Ap proved April 24, 2003

CHAPTER NO. 483

[SB 194]

AN ACT AUTHORIZING WATER ADMINISTRATION INTERIM AGREEMENTS TO PROVIDE FOR JOINT TRIBAL AND STATE ADMINISTRATION OF NEW WATER USES ON A RESERVATION PENDING FINAL ADJUDICATION OF INDIAN RESERVED WATER RIGHTS IF A COURT OF COMPETENT JURISDICTION HAS HELD THAT THE DEPARTMENT LACKS EXCLUSIVE AUTHORITY TO ISSUE NEW WATER USE PERMITS WITHIN THE EXTERIOR BOUNDARIES OF THE RESERVATION; AMENDING SECTION 85-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-708, MCA, is amended to read:

"85-2-708. Water administration interim agreements within Indian reservations. (1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) ~~An~~ *Subject to subsection (4), an* agreement entered into pursuant to subsection (1) must:

(a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;

(b) provide that any permits must be issued in accordance with the criteria established by state law; and

(c) provide that permits may be only for new uses with a date of priority in compliance with state law.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

(4) The provisions of subsection (2) do not apply if a court of competent jurisdiction has held that the department lacks exclusive authority to issue new water use permits within the exterior boundaries of an Indian reservation pending final adjudication of Indian reserved water rights. In that case, the department, with the approval of the governor, may enter into an interim agreement that provides for joint tribal and state administration of new water uses on the reservation pending final adjudication of Indian reserved water rights. Any interim agreement entered into pursuant to this subsection (4):

(a) must address how and whether new ground water uses for domestic and municipal purposes will be granted. Except for the criterion in 85-2-311(1)(a)(ii), an interim agreement that grants new ground water uses must establish criteria for new water uses that incorporate the criteria listed in 85-2-311.

(b) must address how and whether changes in existing appropriation rights within the exterior boundaries of the reservation will be granted. An interim agreement that grants changes must establish criteria for changes in existing appropriation rights that incorporate the criteria listed in 85-2-402.

(c) must address how and whether water use will be authorized under the interim agreement and how the use will be secure and valid in the event of the termination of the interim agreement, quantification of reserved water rights, or termination of negotiations of reserved water rights under 85-2-704;

(d) must maintain the jurisdictional claims of each party to the interim agreement;

(e) must protect each party against a waiver of the right to challenge the claims of each party at any time;

(f) may not prejudice the regulatory or adjudicatory jurisdiction of either party;

(g) must provide that none of the activities of each party in the negotiation or implementation of an interim agreement may be used to affect the equitable or legal position of either party in any future litigation; and

(h) must provide that nothing in the negotiation or implementation of an interim agreement may be considered as enlarging or diminishing the jurisdiction or authority of either party within the reservation."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 24, 2003

CHAPTER NO. 484

[SB 230]

AN ACT ADOPTING THE MONTANA PRUDENT INVESTOR RULE; PROVIDING STANDARDS OF CARE AND DUTIES OF TRUSTEES IN MAKING INVESTMENTS AND MANAGING TRUST ASSETS; AMENDING SECTIONS 72-34-113 AND 72-34-114, MCA; AND REPEALING SECTION 72-34-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] and 72-34-104 constitute the Montana prudent investor rule and may be cited as the "Montana Uniform Prudent Investor Act".

Section 2. Compliance — duty of trustee — exception — liability. (1) The trustee has a duty to administer the trust solely in the interest of the beneficiaries. Except as provided in subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(2) The trustor may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

Section 3. Standard of care — investments and management — considerations. (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee's investment and management decisions respecting individual assets and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of [sections 1 through 9] and 72-34-104.

Section 4. Diversification — duty of trustee — exception. (1) Subject to subsection (2), in making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is not prudent to do so.

(2) If trust assets include farm or ranch property, a closely held family business, timber interests, or interests in oil, gas, or minerals, the trustee may elect to retain those assets unless otherwise directed by a majority of adult trust beneficiaries. A trustee's exercise of discretion to retain assets of the character described in this subsection is not a breach of the trustee's duty to diversify investments.

Section 5. Review of assets — time for compliance. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of [sections 1 through 9] and 72-34-104.

Section 6. Costs — incurrence. In investing and managing trust assets, a trustee may incur only costs that are appropriate and reasonable in relation to the assets, overall investment strategy, purposes, and other circumstances of the trust.

Section 7. Compliance determinations — standards. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Section 8. Delegation of investment and management functions — standards of care — trustees and agents — liability — jurisdiction. (1) A

trustee may delegate investment and management functions as prudent under the circumstances. The trustee shall exercise prudence in the following:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(c) periodically reviewing the agent's overall performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent has a duty to exercise reasonable care to comply with the terms of the delegation.

(3) Except as otherwise provided in 72-34-502, a trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Section 9. Interpretation of trust terms construing legal investments. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, must be construed as authorizing any investment or strategy permitted under [sections 1 through 9] and 72-34-104: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

Section 10. Section 72-34-113, MCA, is amended to read:

"72-34-113. Duty not to delegate entire administration of trust. (1) The trustee has a duty not to delegate *to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person or delegate* the entire administration of the trust to a cotrustee or other person.

~~(2) A trustee may delegate investment, management, and administrative functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:~~

~~(a) selecting an agent;~~

~~(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;~~

~~(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.~~

~~(3) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.~~

~~(4) A trustee who complies with the requirements of subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.~~

~~(5) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.~~

(2) In a case in which a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

(3) This section does not apply to investment and management functions under [section 8]."

Section 11. Section 72-34-114, MCA, is amended to read:

"72-34-114. Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

~~(2) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.~~

~~(3) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of a trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.~~

~~(4) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:~~

~~(a) general economic conditions;~~

~~(b) the possible effect of inflation or deflation;~~

~~(c) the expected tax consequences of investment decisions or strategies;~~

~~(d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;~~

~~(e) the expected total return from income and the appreciation of the capital;~~

~~(f) other resources of the beneficiaries;~~

~~(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and~~

~~(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.~~

~~(5) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.~~

~~(6) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.~~

~~(7)~~*(2)* The trustor may expand or restrict the standards provided in ~~subsections~~ *subsection* (1) ~~through (6)~~ by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

~~(8)~~*(3)* Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

(4) This section does not apply to investment and management functions governed by the Montana Uniform Prudent Investor Act, as set forth in [sections 1 through 9] and 72-34-104."

Section 12. Repealer. Section 72-34-121, MCA, is repealed.

Section 13. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 72, chapter 34, and the provisions of Title 72, chapter 34, apply to [sections 1 through 9].

Section 14. Instruction to code commissioner. The code commissioner shall renumber 72-34-104 as an integral part of [sections 1 through 9].

Ap proved April 24, 2003

CHAPTER NO. 485

[SB 232]

AN ACT TRANSFERRING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; ALLOWING NEGOTIATIONS FOR AN INDIRECT ADMINISTRATIVE RATE; AMENDING SECTION 22-3-1002, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-1002, MCA, is amended to read:

"22-3-1002. Montana heritage preservation and development commission. (1) There is a Montana heritage preservation and development commission. The commission is attached to the ~~Montana historical society~~ *department of commerce* for administrative purposes *only, pursuant to 2-15-121. The commission and the department shall negotiate a specific indirect administrative rate annually, with biennial review by a designated, appropriate legislative interim committee.*

(2) The commission consists of 14 members. The members shall broadly represent the state. Nine members must be appointed by the governor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house. The director of the Montana historical society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce shall serve as members.

~~(2)~~ Of the members appointed by the governor:

(a) one member must have extensive experience in managing facilities that cater to the needs of tourists;

(b) one member must have experience in community planning;

(c) one member must have experience in historic preservation;

(d) two members must have broad experience in business;

(e) one member must be a member of the tourism advisory council established in 2-15-1816;

(f) one member must be a Montana historian; and

(g) two members must be from the public at large.

(3) Except for the initial appointments, members appointed by the governor shall serve 3-year terms. Legislative appointees shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) (a) The commission may employ:

(i) an executive director who has general responsibility for the selection and management of commission staff, developing recommendations for the purchase of property, and overseeing the management of acquired property;

(ii) a curator who is responsible for the display and preservation of the acquired property; and

(iii) other staff that the commission and the executive director determine are necessary to manage and operate commission properties.

(b) The commission shall prescribe the duties and annual salary of the executive director, the curator, and other commission staff."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved April 24, 2003

CHAPTER NO. 486

[SB 282]

AN ACT REQUIRING THAT TEMPORARY TOTAL DISABILITY BENEFITS NOT BE PAID FOR THE LESSER OF EITHER THE FIRST 32 HOURS OR 4 DAYS' LOSS OF WAGES IF A CLAIMANT IS TOTALLY DISABLED AND UNABLE TO WORK FOR 5 OR MORE DAYS BECAUSE OF AN INJURY; AMENDING SECTION 39-71-736, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation — from what dates paid. (1) (a) ~~Compensation~~ *Compensation* may not be paid for the first ~~40~~ *32* hours or ~~5~~ *4* days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work ~~due to~~ *because of* an injury. A claimant is eligible for compensation starting with the ~~6th~~ *5th* day.

(b) Separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the ~~5-day~~ *4-day* waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

Section 2. Effective date — applicability. [This act] is effective July 1, 2003, and applies to injuries occurring on or after July 1, 2003.

Ap proved April 24, 2003

CHAPTER NO. 487

[SB 288]

AN ACT REVISING THE COUNTY COMPENSATION BOARD; ALLOWING TWO TO FOUR TAXPAYER MEMBERS; CLARIFYING THAT A CHARTER COUNTY AND A CHARTER, CONSOLIDATED CITY-COUNTY ARE NOT REQUIRED TO CREATE A COUNTY COMPENSATION BOARD; AND AMENDING SECTION 7-4-2503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is $50,000 a year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is

entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and ~~two~~ *two to four* resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of ~~one~~ *one or two* taxpayer ~~member~~ *members* for a 2-year term and ~~one~~ *one or two* taxpayer ~~member~~ *members* for a 3-year term. The county compensation board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers. The county compensation board may consider the compensation paid to comparable officials in other Montana counties, other states, state government, federal government, and private enterprise.

(b) The county compensation board shall prepare a compensation schedule for the elected county officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration county variations, including population, the number of residents living in unincorporated areas, assessed valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

(c) A recommended compensation schedule requires a majority vote of the county compensation board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

(d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government."

Ap proved April 24, 2003

CHAPTER NO. 488

[SB 321]

AN ACT CHANGING THE MEMBERSHIP OF THE WATER POLLUTION CONTROL ADVISORY COUNCIL; AMENDING SECTION 2-15-2107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2107, MCA, is amended to read:

"2-15-2107. Water pollution control advisory council. (1) There is a water pollution control advisory council.

(2) The council consists of ~~eleven~~ *11* members. The members are *appointed by the governor and include*:

~~(a) the director of fish, wildlife, and parks;~~

~~(b) the administrator of the water resources division of the department of natural resources and conservation;~~

~~(c) the director of agriculture;~~

~~(d) eight members appointed by the governor as follows:~~

~~(i)~~*(a)* a representative of industry concerned with the disposal of inorganic waste;

~~(ii)~~*(b)* a representative of industry concerned with the disposal of organic waste;

~~(iii) a livestock feeder;~~

~~(iv) a representative of municipal government;~~

~~(v) a representative of an organization concerned with fishing for sport;~~

~~(vi) a representative from labor;~~

~~(vii)~~*(c)* a supervisor of a soil and water conservation district;

~~(viii) a representative of an organization concerned with water recreation.~~

(d) an irrigated agriculture representative;

(e) a production agriculture representative;

(f) a person serving as public works director, director of public utilities, wastewater or public works superintendent, plant manager, or operator in charge of a publicly owned treatment works;

(g) a conservation organization representative;

(h) a realtor or developer representative;

(i) a licensed professional engineer with experience in sanitary engineering;

(j) a fisheries biologist; and

(k) a member of the public.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 24, 2003

CHAPTER NO. 489

[SB 337]

AN ACT REVISING THE CIVIL LIABILITY OF BUSINESSES AND SOCIAL HOSTS FOR INJURIES INVOLVING ALCOHOL CONSUMPTION; ESTABLISHING CRITERIA GOVERNING LIABILITY; PROVIDING THAT THE JURY OR TRIER OF FACT MAY CONSIDER THE CONSUMPTION OF ALCOHOL IN ADDITION TO THE SALE OR SERVICE IN DETERMINING THE CAUSE OF ANY INJURY OR DAMAGE; PROVIDING THAT NO CIVIL ACTION MAY BE BROUGHT BY THE PERSON CONSUMING THE ALCOHOLIC BEVERAGE UNLESS THE CONSUMER WAS A MINOR OR WAS COERCED; PROVIDING THAT A CIVIL ACTION MUST BE COMMENCED WITHIN 2 YEARS OF THE SERVICE; LIMITING NONECONOMIC AND PUNITIVE DAMAGES; ALLOWING CRIMINAL AND INTENTIONAL ACTS OF A PERSON CAUSING AN INJURY TO BE ADMITTED INTO EVIDENCE; AMENDING SECTION 27-1-710, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-710, MCA, is amended to read:

"27-1-710. Civil liability for injuries involving alcohol consumption. (1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) Except as provided in 16-6-305, a person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

(b) the consumer was visibly intoxicated; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

(4) A jury or trier of fact may consider the consumption of an alcoholic beverage in addition to the sale, service, or provision of the alcoholic beverage in determining the cause of injuries or damages inflicted upon another by the consumer.

(5) A civil action may not be brought pursuant to subsection (3) by the consumer or by the consumer's estate, legal guardian, or dependent, unless:

(a) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or

(b) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol.

(6) A civil action may not be commenced under this section against a person who furnished alcohol unless the person bringing the civil action provides notice of an intent to file the action to the person who furnished the alcohol by certified mail within 180 days from the date of sale or service. The civil action must be commenced pursuant to this section within 2 years after the sale or service.

(7) In any civil action brought pursuant to this section, the total liability for noneconomic damages may not exceed $250,000.

(8) In any civil action brought pursuant to this section, the total liability for punitive damages may not exceed $250,000.

(9) Evidence of intentional or criminal activity by a person causing injury in connection with any event or injury commenced pursuant to this part is admissible in any action brought pursuant to this section."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to all proceedings begun after [the effective date of this act].

Ap proved April 24, 2003

CHAPTER NO. 490

[SB 400]

AN ACT REVISING THE RAILROAD VANDALISM PREVENTION ACT; REDUCING THE PENALTIES; INCREASING FROM $500 TO $1,000 THE AMOUNT OF PROPERTY DAMAGE NEEDED TO MAKE THE OFFENSE A FELONY; MAKING THE ACT PERMANENT; AMENDING SECTION 69-14-1205, MCA; REPEALING SECTION 8, CHAPTER 432, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-1205, MCA, is amended to read:

"69-14-1205. ~~(Temporary)~~ Intentional vandalism to railroad property. (1) A person commits the offense of intentional vandalism to railroad property if the person knowingly or purposely vandalizes railroad property.

(2) A person convicted of intentional vandalism to railroad property must be ordered to make restitution to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost of any train or shipment delay, and the cost of any accident or damage resulting from the vandalism.

(3) (a) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property does not exceed ~~$500~~ *$1,000* and in which there is no bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed ~~$10,000~~ *$1,000* or be incarcerated *in the county jail* for a term not to exceed ~~10 years~~ *6 months*, or both.

(b) A person convicted of the offense of intentional vandalism to railroad property in which the damage to railroad property exceeds ~~$500~~ *$1,000* or in which there is bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed ~~$20,000~~ *$10,000* or be incarcerated for a term not to exceed ~~20~~ *10* years, or both.

(c) A person convicted of the offense of intentional vandalism to railroad property that results in serious bodily injury to another person as a result of the offender's actions shall be fined an amount not to exceed ~~$25,000~~ *$20,000* or be incarcerated in a state prison for ~~any~~ *a* term ~~of~~ *not to exceed 20* years ~~or for life~~, or both~~, except as provided in 46-18-219 and 46-18-222~~.

(d) A person convicted of the offense of intentional vandalism to railroad property that results in the death of another person as a result of the offender's actions shall be fined an amount not to exceed ~~$100,000~~ *$50,000* or be incarcerated in a state prison for ~~any~~ *a* term ~~of~~ *not to exceed 40* years ~~or for life~~, or both~~, except as provided in 46-18-219 and 46-18-222~~. ~~(Terminates April 30, 2003 -- sec. 8, Ch. 432, L. 2001.)~~"

Section 2. Repealer. Section 8, Chapter 432, Laws of 2001, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 24, 2003

CHAPTER NO. 491

[SB 401]

AN ACT REVISING AND EXPANDING THE MEMBERSHIP OF THE BOARD OF VETERANS' AFFAIRS; SPECIFYING THE DUTIES OF THE BOARD; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT AND A FEDERAL SPECIAL REVENUE ACCOUNT TO BE USED FOR VETERANS' SERVICES; AUTHORIZING THE BOARD TO SPONSOR PATRIOTIC LICENSE PLATES; AUTHORIZING COUNTIES TO PROVIDE FOR VETERANS' SERVICE OFFICERS; ALLOWING THE BOARD TO ACCEPT FEDERAL FUNDS AND DONATIONS; SPECIFYING THE ACCOUNT TO WHICH DONATIONS ARE DEPOSITED; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD THE OVERSIGHT OF AND RULEMAKING AUTHORITY FOR STATE VETERANS' CEMETERIES; AUTHORIZING ADDITIONAL VETERANS' CEMETERIES; TRANSFERRING FROM THE DEPARTMENT OF MILITARY AFFAIRS TO THE BOARD OF VETERANS' AFFAIRS THE OVERSIGHT OF A SPECIAL REVENUE ACCOUNT FOR VETERANS' CEMETERIES; ALLOWING INCOME TAX DEDUCTIONS FOR CONTRIBUTIONS TO STATE VETERANS' SERVICES; REVISING CERTAIN VEHICLE LICENSE PLATE REGISTRATION FEES TO BENEFIT STATE VETERANS' SERVICES; AMENDING SECTIONS 2-15-1205, 10-2-102, 10-2-106, 10-2-601, 10-2-602,

10-2-603, 15-1-122, AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the 57th Legislature requested a study of veterans' issues, and the State Administration and Veterans' Affairs Interim Committee conducted numerous hearings, received expert testimony, and examined research during a 14-month period; and

WHEREAS, the Interim Committee found that, using 2000 data, Montana's population of nearly 107,000 veterans and an estimated 170,000 family members of veterans not only ranks Montana second in the nation in the number of veterans per capita (11.9%) but also means that veterans and their family members constitute more than 25% of Montana's total population; and

WHEREAS, the Interim Committee found that more than 80,000 Montana veterans are combat-era veterans (more than 36,000 are Vietnam-era, more than 16,000 are Persian Gulf-era, more than 16,000 are World War II-era, and about 14,000 are Korean-era veterans) and that the largest group of veterans is now between 50 and 65 years of age; and

WHEREAS, the U.S. Department of Veterans Affairs estimates that more than 50% of combat theater veterans suffer from clinically serious and disabling posttraumatic stress disorder, that twice as many veterans as nonveterans experience homelessness, that many veterans have overlapping and complex needs encompassing medical and nursing home care, mental health and chemical dependency counseling, housing, transportation, education and training, job services, and family support services, and that the children and families of veterans who do not get the help that they need are themselves at risk; and

WHEREAS, these complex needs and a maze of federal, state, local, public, and private services demand a high level of interagency coordination and cooperation for effective service delivery to ensure that veterans and their families do not fall through the cracks and to avoid unnecessary cost-shifting from federal to state and local public assistance programs; and

WHEREAS, the Interim Committee found that current statutory language establishing the Board of Veterans' Affairs as the lead agency for veterans' affairs dates back to 1919 and that although the Board's duties and responsibilities have consistently evolved, statutory language has not kept pace; and

WHEREAS, the Board hires and supervises its own classified employees, who make up the Montana Veterans' Affairs Division, but the Board does not have rulemaking authority to implement programs; and

WHEREAS, the Board is administratively attached to the Department of Military Affairs, which has greatly assisted veterans and supported the Board but has no statutory authority over veterans' affairs; and

WHEREAS, a legislative performance audit requested by the Interim Committee revealed that although the Montana Veterans' Affairs Division is to be commended for doing a great job with limited resources and limited statutory guidance, it also revealed that new management tools and updated information management systems are needed to provide more consistency and to track and manage staff workload; and

WHEREAS, the U.S. Department of Veterans Affairs spent about $175 million in Montana during fiscal year 2000, which ranked Montana 37th

nationwide in per capita expenditures by the U.S. Department of Veterans Affairs on veterans; and

WHEREAS, the Interim Committee found that a statutory restructuring of powers, duties, and responsibilities for state veterans' affairs programs is essential, not only to address inadvertent statutory shortfalls and elevate the profile of state veterans' affairs, but also to better integrate benefit claims with human services programs so that eligible veterans and family members receive the federal compensation, benefits, and care that they have earned in self-sacrificing service in the armed forces of the United States of America.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1205, MCA, is amended to read:

"2-15-1205. Board of veterans' affairs — *composition — quorum — voting — compensation — allocation*. (1) There is a board of veterans' affairs.

(2) *(a)* The board consists of ~~five~~ *20* members. *All members must be residents of this state. Eleven members are voting members, who must be confirmed by the senate, and nine members are nonvoting, ex officio members.*

(b) The governor shall appoint 19 members ~~appointed by the governor with the consent of the senate. Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status.~~ *in a manner that provides for staggered terms. The members are:*

(i) ~~All~~ *five regional representatives, who must be voting members and who* ~~members shall be residents of this state and shall~~ *must* have been honorably discharged from service in the military forces of the United States ~~in any of its wars~~. *Each must be appointed to represent a different geographic region of the state and must be a resident of that geographic region. The board shall establish the geographic regions by rule. A member who represents a geographic region and who changes residence to a different geographic region may no longer serve on the board unless appointed as a representative for the new location or as a representative meeting other criteria.*

(ii) one honorably discharged veteran, who must be a voting member and serve as a representative of veterans at large;

(iii) one tribal member who must be an honorably discharged veteran and who is a voting member;

(iv) three members who must have training, education, or experience related to veterans' issues, including but not limited to health and medical care, mental health care, chemical or drug dependency, homelessness, or job training and placement. These three members are voting members.

(v) a representative of the office of state coordinator of Indian affairs, who is a nonvoting member;

(vi) a representative from the department of public health and human services, who is a nonvoting member;

(vii) a representative of the United States department of veterans affairs, who is a nonvoting member;

(viii) a representative of the veterans' employment and training service office in the United States department of labor, who is a nonvoting member;

(ix) a representative of the state administration and veterans' affairs interim committee, who is a nonvoting member;

(x) three members, one representing each house and senate member of Montana's congressional delegation, who are nonvoting members; and

(xi) the director of the department of military affairs, who is a nonvoting member.

(c) The tribal leaders of the eight tribal councils in Montana may appoint one voting member who is affiliated with a Montana tribe and is an honorably discharged veteran. If a tribal member is not appointed by the Montana tribal leaders, the governor shall choose this member by lot from a pool of names submitted by the eight tribal councils in the state, with each tribal council submitting one name.

(3) A vacancy occurring on the board ~~shall~~ *must* be filled by the governor, subject to the conditions of ~~this~~ subsection *(2)*.

(4) A quorum is six voting members.

(5) A vote resulting in a tie is the same as a negative vote.

~~(3)~~*(6)* Each *voting* member ~~shall~~ *must* receive ~~compensation~~ *meals, lodging,* and travel expenses as provided for in ~~37-1-133~~ *2-18-501 through 2-18-503. Compensation for the legislator who represents the state administration and veterans' affairs interim committee must be paid from the board of veterans' affairs budget.*

(7) The board shall meet at least four times a year. Special meetings may be called by the administrator or by a majority of voting members. Meetings may be held at different locations around the state to give local veterans an opportunity to attend. Advance notice of meetings must be provided to all veterans' groups and to any individual who requests notification.

~~(4)~~*(8)* Each *voting* member ~~shall~~ *may* serve for a *maximum of two terms. Each* term ~~of 5~~ *is for 4* years.

~~(5)~~*(9) A member may be removed by the governor only for incompetence, malfeasance, or neglect of duty.*

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, ~~and 2-15-121(2)(d) does not apply~~ *including an administrator. The administrator shall serve as the secretary of the board and may represent the board in communications with the governor and with other state agencies, notwithstanding the provisions of 2-15-121(3)(a).*"

Section 2. Section 10-2-102, MCA, is amended to read:

"10-2-102. ~~Duty~~ *Duties* of board — employee qualifications. (1) The board shall establish a statewide service for ~~discharged~~ veterans and their families~~,~~ *as provided in this section. The board shall:*

(a) actively cooperate with *local,* state, and federal agencies ~~having to do with~~ *whose services encompass* the affairs of veterans and their families~~, and~~;

(b) promote the general welfare of all veterans and their families*;*

(c) assist veterans and their families who are residents of this state in filing claims for the benefits to which they are entitled. In carrying out this duty, the board and its accredited employees shall, upon the request of an eligible claimant, act as agents for the claimant in developing and presenting claims for

benefits provided under Title 38 of the United States Code. The board shall seek to secure speedy and just action for each claimant. A board employee officially acting as an agent on behalf of a claimant must be properly accredited and recognized pursuant to 38 CFR 14.628 and 14.629.

(d) officially advocate for the fair treatment of Montana's veterans and their families by the U.S. department of veterans affairs with respect to claims processing, health care services, and other veteran-related programs and inform veterans and their family members of all available grievance procedures;

(e) develop and implement an information and communication program to keep veterans and their family members informed about available federal, state, and community-based services and benefits. The program may include but is not limited to:

(i) development and distribution of a services and benefits directory;

(ii) regular public service announcements through various media;

(iii) an internet website with information and links relevant to veterans and their families and including information about board meetings and activities related to veterans' affairs; and

(iv) a quarterly newsletter, which may be printed or electronically distributed by e-mail or by posting it to an appropriate website.

(f) seek grants to help fund veterans' programs established pursuant to this section;

(g) develop a memorandum of understanding with the federal veterans' employment and training service and with other appropriate entities to facilitate interagency cooperation, such as resource sharing, cross-training, data and information sharing, and service delivery coordination;

(h) establish management tools, including but not limited to needs assessments, policy statements, program goals and objectives, performance measures, and program evaluation criteria;

(i) prepare a biennial report to the governor, the department of military affairs, the appropriate legislative interim committee, and veterans' service organizations. The report must include but is not limited to the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in [section 3] and 10-2-603, and a review of the veterans' affairs budget.

(j) request legislation responsive to identified needs.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the United States during World War I, World War II, the Korean war, ~~or~~ the Vietnam conflict*, or other period of conflict involving the United States military overseas* and must have been honorably discharged. Preference for employment must be given to disabled veterans.

(3) The board shall hire an administrator to implement board policy and carry out the duties of the board."

Section 3. Veterans' services special revenue account — sources of funds — designated uses. (1) There is a veterans' services account in the state special revenue fund, established pursuant to 17-2-102(1)(b), to the credit of the board.

(2) Money transferred pursuant to 15-1-122(3)(g) from license plate sales as described in [section 5], and from gifts, grants, or donations must be deposited in the veterans' services account.

(3) Legislative appropriations of money in the veterans' services account must be used for the purposes identified in 10-2-102 or other functions authorized by the board.

(4) There is a veterans' services federal account in the federal special revenue fund established for federal funds received under 10-2-106.

Section 4. Rulemaking authority. The board shall adopt rules in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4, to implement the provisions of this part.

Section 5. Patriotic license plates — surcharge — disposition. (1) Subject to 61-3-472 through 61-3-481 and this section, the board may sponsor a generic specialty license plate designed as a patriotic salute to Montana's military veterans.

(2) A Montana resident may purchase patriotic plates for a $15 surcharge to be paid for each original set of plates and each renewal. The surcharge is in addition to the one-time administrative fee charged pursuant to 61-3-480(1).

(3) The surcharge collected pursuant to this section must be remitted as provided in 61-3-480 and deposited to the veterans' services account established in [section 3(1)].

Section 6. County veterans' service officers. A county may, with the advice of the board, provide for a county veterans' service officer to assist veterans and their families in filing benefit claims. If a county provides for a veterans' service officer under this section, the officer must be trained, accredited, and supervised in accordance with the applicable provisions of 38 CFR 14.629. A county may fund the position as provided for in 15-10-425 or through other means provided by law.

Section 7. Section 10-2-106, MCA, is amended to read:

"10-2-106. Acceptance of federal funds *or other funds*. *(1)* The board may accept from the federal government or any *of its* agencies ~~thereof~~ any funds made available to carry out ~~purposes within the scope of~~ the activities and purposes of the board *as identified in 10-2-102* ~~and accept such funds as the board directs~~. *Federal funds must be deposited in the veterans' services federal account established in [section 3(4)].*

(2) The board may accept gifts, grants, or donations from other public or private sources, which must be used within the scope of activities and purposes identified in 10-2-102 or as otherwise authorized by the board.

(3) Gifts, grants, or donations must be deposited in the veterans' services account established in [section 3(1)] unless specifically assigned by the donor to the special revenue account for state veterans' cemeteries established in 10-2-603."

Section 8. Section 10-2-601, MCA, is amended to read:

"10-2-601. State veterans' cemeteries. The ~~department of military affairs~~ *board* shall establish *and operate* state veterans' cemeteries. A cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, and at Miles City. *The board may establish additional state veterans' cemeteries as funding appropriated pursuant to 10-2-603 allows.*"

Section 9. Section 10-2-602, MCA, is amended to read:

"10-2-602. Rulemaking authority. The ~~department of military affairs~~ *board* shall adopt rules ~~that~~ *to administer the state veterans' cemetery program and to* provide criteria for determining ~~which veterans~~ *who* may be buried in a state veterans' cemetery. The criteria must include but are not limited to discharge status and length of service. *The rules must be adopted in accordance with the Montana Administrative Procedure Act provided for in Title 2, chapter 4.*"

Section 10. Section 10-2-603, MCA, is amended to read:

"10-2-603. Special revenue account — use of funds — solicitation. (1) There is an account in the special revenue fund to the credit of the ~~department of military affairs~~ *board* for the state veterans' cemeteries.

(2) Plot allowances, ~~and~~ donations *to the cemetery program, and fund transfers pursuant to 15-1-122(3)(d)* must be deposited into the account.

(3) As appropriated by the legislature, money in the account may be used only for the construction, maintenance, operation, and administration of the state veterans' cemeteries.

(4) The ~~department of military affairs may~~ *board shall* solicit veterans' license plate sales and donations on behalf of the state veterans' cemeteries."

Section 11. Income tax deduction for contribution to veterans' programs. (1) A taxpayer who itemizes deductions in filing an individual or a joint income tax return may, in computing net income, claim a deduction for donations to the veterans' services account established in [section 3(1)], the state veterans' cemetery program pursuant to 10-2-603, or any surcharge paid pursuant to [section 5] unless the amount is included as a deduction under 15-30-121(1)(a).

(2) A taxpayer may enclose a separate check or other payment to contribute to the veterans' special revenue accounts, established in [section 3(1)] and 10-2-603 and count that deduction from taxes for the year in which the donation was made.

(3) The department shall provide a form to identify the deduction, and the contribution must be attached to the form.

(4) All money received pursuant to subsection (1) must be forwarded upon receipt by the department to the state treasurer for deposit in the veterans' services account established in [section 3(1)] or to the special revenue account established in 10-2-603. If the taxpayer does not specify to which fund the contribution is intended to go, the department shall deposit the money in the veterans' services account established in [section 3(1)]. The department may not make deductions for administrative expenses in handling these donations.

Section 12. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $75,000 in fiscal year 2003;

(b) $2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered,

other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(g) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in [section 3(1)].

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 13. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, $13.75;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, $8.25;

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) over 2,850 pounds, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9;

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75;

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25;

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, $16.25;

(k) travel trailers, $11.75; and

(l) recreational vehicles, $3.50.

(2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(3) An additional fee of $5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) (a) Except as provided in 61-3-562 and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.

(b) The following vehicles are not subject to the fee:

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(ii) off-highway vehicles registered pursuant to 23-2-817; and

(iii) vehicles bearing license plates described in 61-3-332(10)(d).

~~(7)~~*(8)* The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

~~(8)~~*(9)* A person qualifying under 61-3-332(10)(d) is exempt from the fees required under this section.

~~(9)~~*(10)* Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund."

Section 14. Implementation. (1) The members of the board of veterans' affairs, established in 2-15-1205, who are members on the day before [the effective date of this act] may continue to serve the remainder of their terms as described under the provisions of 2-15-1205.

(2) Appointments to the board made after [the effective date of this act] must be made as described in 2-15-1205(2).

Section 15. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 16. Codification instruction. (1) [Sections 3 through 6] are intended to be codified as an integral part of Title 10, chapter 2, part 1, and the provisions of Title 10, chapter 2, part 1, apply to [sections 3 through 6].

(2) [Section 11] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 11].

Section 17. Effective date. [This act] is effective January 1, 2004.

Ap proved April 24, 2003

CHAPTER NO. 492

[SB 441]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ISSUE IMPACT AID REVENUE BONDS; DEFINING "FEDERAL IMPACT AID BASIC SUPPORT PAYMENT", "GENERAL OBLIGATION BONDS", AND "IMPACT AID REVENUE BONDS"; PLACING A LIMIT ON THE MAXIMUM AMOUNT OF IMPACT AID BONDS THAT A SCHOOL DISTRICT MAY ISSUE; PROVIDING SECURITY FOR IMPACT AID RESERVE BONDS; REQUIRING TRUSTEES TO SPECIFY IN A RESOLUTION, AN ELECTION PETITION, AND ON THE BOND ELECTION BALLOT WHETHER BONDS WILL BE GENERAL OBLIGATION OR IMPACT AID REVENUE BONDS; PROVIDING THAT IMPACT AID REVENUE BONDS MUST BE PAID SOLELY FROM FEDERAL IMPACT BASIC SUPPORT PAYMENTS RECEIVED AND DO NOT PLEDGE THE FULL FAITH AND CREDIT AND TAXING AUTHORITY OF THE SCHOOL DISTRICT; PROVIDING THAT THE TRUSTEES PROVIDE A COUNTY TREASURER WITH AN IMPACT AID REVENUE BOND DEBT SERVICE SCHEDULE AND A SEPARATE IMPACT AID REVENUE BOND DEBT SERVICE FUND AND AUTHORIZING ESTABLISHMENT OF AN IMPACT AID REVENUE BOND DEBT SERVICE RESERVE ACCOUNT; PROVIDING THAT THE GUARANTEED TAX BASE IS LIMITED TO GENERAL OBLIGATION BONDS; AMENDING SECTIONS 20-9-371, 20-9-403, 20-9-406, 20-9-408, 20-9-422, 20-9-423, 20-9-426, 20-9-427, 20-9-430, 20-9-433, 20-9-437, 20-9-438, 20-9-439, AND 20-9-440, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-371, MCA, is amended to read:

"20-9-371. Calculation and uses of school facility entitlement amount. (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/statewide mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on *general obligation* bonds that qualify under the provisions of 20-9-370(3).

(2) The state advance for school facilities for a district is determined as follows:

(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for *general obligation* bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement in the ensuing school fiscal year for all outstanding bonded indebtedness on *general obligation* bonds sold in the debt service fund of the district after July 1, 1991. The trustees may apply the state advance for school facilities to reduce the levy requirement in the current school fiscal year for debt service payments on *general obligation* bonds to which the state advance for school facilities applies."

Section 2. Section 20-9-403, MCA, is amended to read:

"20-9-403. Bond issues for certain purposes. (1) The trustees of a school district may issue and negotiate *general obligation bonds or impact aid* bonds ~~on the credit~~ of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, ~~and/or~~ *or* obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of ~~said~~ buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; ~~or~~

(e) funding a judgment against the district, including the repayment of tax protests lost by the district*; or*

(f) funding a debt service reserve account that may be required for impact aid revenue bonds.

(2) ~~Any money~~ *Money* realized from the sale of ~~any~~ bonds issued on the credit of a high school district ~~shall~~ *may* not be used for any of the ~~above~~ purposes *listed in subsection (1)* in an elementary school district, and ~~such~~ *the* money may be used for any of the ~~above~~ purposes *listed in subsection (1)* for a junior high school but only to the extent that the 9th grade of the high school is served ~~thereby~~."

Section 3. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of *general obligation*

bonds, including all indebtedness represented by outstanding *general obligation* bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of *general obligation* bonds, including all indebtedness represented by outstanding *general obligation* bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB may become indebted by the issuance of *general obligation* bonds, including all indebtedness represented by outstanding *general obligation* bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1)~~, however, may~~ *do* not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to *general obligation* bonds issued for the repayment of tax protests lost by the district. All*general obligation* bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

~~(3)~~*(4)* When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable

and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

~~(4)~~*(5)* Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b), but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 4. Section 20-9-408, MCA, is amended to read:

"20-9-408. Definition of forms of bonds. As used in this part:

(1) "amortization bond" means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) "general obligation bonds" means bonds that pledge the full faith and credit and the taxing power of a school district;

(3) "impact aid revenue bonds" means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the account established in 20-9-514; and

~~(2)~~*(4)* "serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding three times the principal amount of the bonds maturing in the immediately preceding installment."

Section 5. Section 20-9-422, MCA, is amended to read:

"20-9-422. Additional requirements for trustees' resolution calling bond election. (1) In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election must:

(a) specify whether the bonds will be general obligation bonds or impact aid revenue bonds;

~~(a)~~*(b)* fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

~~(b)~~*(c)* fix the maximum number of years in which the proposed bonds would be paid;

~~(c)~~*(d)* in the case of initiation by a petition, state the essential facts about the petition and its presentation; and

~~(d)~~*(e)* state the amount of the state advance for school facilities estimated, pursuant to subsection (2), to be received by the district in the first school fiscal year in which a debt service payment would be due on the proposed bonds.

(2) Prior to the adoption of the resolution calling for a school bond election *for a general obligation bond*, the trustees of a district may request from the superintendent of public instruction a statement of the estimated amount of state advance for school facilities that the district will receive for debt service payments on the proposed *general obligation* bonds in the first school fiscal year in which a debt service payment is due. The district shall provide the superintendent with an estimate of the debt service payment due in the first school fiscal year. The superintendent shall estimate the state advance for the *general obligation* bond issue pursuant to 20-9-371(2)."

Section 6. Section 20-9-423, MCA, is amended to read:

"20-9-423. Form, contents, and circularization of petition proposing school district bond election. Any petition for the calling of an election on the proposition of issuing school district bonds ~~shall~~ *must*:

(1) specify whether the bonds will be general obligation bonds or impact aid revenue bonds;

~~(1)~~*(2)* plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;

~~(2)~~*(3)* be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;

~~(3)~~*(4)* be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they ~~shall~~ *must* be fastened together to form a single petition when submitted to the county registrar;

~~(4)~~*(5)* be circulated by any one or more qualified electors of the school district; and

~~(5)~~*(6)* contain an affidavit of each registered elector circulating a petition attached to the portion of the petition ~~he~~ circulated. ~~Such~~ *The* affidavit ~~shall~~ *must* attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it."

Section 7. Section 20-9-426, MCA, is amended to read:

"20-9-426. Preparation and form of ballots for bond election. (1) The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose.

(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.

(3) All ballots must be substantially in the following form:

OFFICIAL BALLOT SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell *(state type of bonds here: general obligation or impact aid revenue)* bonds of this school district in the amount of.... dollars ($....), bearing interest at a rate not more than.... percent (....%) a year, payable semiannually, during a period not more than....

years, for the purpose.... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO."

Section 8. Section 20-9-427, MCA, is amended to read:

"20-9-427. Notice of bond election by separate purpose. (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No..... of.... County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the.... day of...., ..., an election of the registered electors of School District No..... of.... County, state of Montana, will be held on the.... day of...., ..., at.... for the purpose of voting upon the question of whether or not the trustees may issue and sell *(state here: general obligation or impact aid revenue)* bonds of the school district in the amount of.... dollars ($....), bearing interest at a rate not more than.... percent (....%) a year, payable semiannually, for the purpose of.... (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding.... (state number) years.

The polls will be open from.... o'clock....m. and until.... o'clock....m. of the election day.

Dated and posted this.... day of....,.....

.....

Presiding officer, School District No.....

of..... County

Address.....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) The notice must specify whether the bonds will be general obligation bonds or impact aid revenue bonds."

Section 9. Section 20-9-430, MCA, is amended to read:

"20-9-430. Notice of sale of school district bonds. The trustees shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No..... of.... County, state of Montana, that the trustees will on the.... day of...., ..., at the hour of.... o'clock....m. at...., in the school district, sell to the highest and best bidder for cash *(state here:* general obligation *or impact aid revenue)* bonds of the school district in the total amount of.... dollars ($....), for the purpose of.....

The bonds will be issued and sold in the aggregate principal amount of.... dollars ($....) each and will become payable according to the maturity schedule

set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of...., ..., will pay interest commencing on the.... day of.... (month), ..., will be payable semiannually on the.... day of.... (month) and.... (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than $...., with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of.... dollars ($....) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

.....

Presiding officer, School District No.....

of..... County

Address:.....

ATTEST:

Subscribed and sworn to before me this.... day of....., ...; ..... Notary Public for the State residing at...., Montana. My commission expires.....”

Section 10. Section 20-9-433, MCA, is amended to read:

“20-9-433. Form and execution of school district bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the trustees shall adopt a resolution *or indenture of trust* providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and prescribing the manner of execution of the bonds.

(2) Each bond and coupon attached to a bond must be signed by or bear the facsimile signatures of the presiding officer of the trustees and the school district clerk, provided that one signature of a school official or the bond registrar must be a manual signature.”

Section 11. Section 20-9-437, MCA, is amended to read:

“20-9-437. School district liable on bonds. (1) The full faith, credit, and taxable resources of a school district issuing *general obligation* bonds under the provisions of this title are pledged for the repayment of the bonds with interest according to the terms of the bonds. For the purpose of making the provisions of this part enforceable, each school district is a body corporate that may sue and be sued by or in the name of the trustees of the school district.

(2) A school district may use up to 25% of its federal impact aid funds received pursuant to 20-9-514 for repayment of *general obligation* bonds.

(3) Impact aid revenue bonds must be payable solely from the federal impact aid basic support payment received by the school district and deposited to the credit of the impact aid fund established in 20-9-514 and do not constitute a

general obligation of the school district. The school district's taxing power is not pledged for the repayment of impact aid revenue bonds."

Section 12. Section 20-9-438, MCA, is amended to read:

"20-9-438. Preparation of *general obligation* debt service fund budget — operating reserve. (1) The trustees of each school district having outstanding *general obligation* bonds shall include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the final budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year; and

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the final budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in the statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the final budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the final budget. The amount confirmed or revised by the county superintendent is the final budget expenditure amount for the debt service fund of the school district."

Section 13. Section 20-9-439, MCA, is amended to read:

"20-9-439. Computation of net levy requirement *for general obligation bonds* — procedure when levy inadequate. (1) The county superintendent shall compute the levy requirement for each school district's *general obligation* debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are *authorized by 20-9-437(2) to be* used to repay the district's bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

Section 14. Section 20-9-440, MCA, is amended to read:

"20-9-440. Payment of debt service obligations — termination of interest. (1) *The school district shall provide the county treasurer with a general obligation bond or impact aid revenue bond debt services schedule.* The county treasurer shall maintain a separate debt service fund for each school district *and, if bonds are to be issued as impact aid revenue bonds, a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required,* and shall credit all tax ~~moneys~~ *money or impact aid revenue* collected for debt service to ~~such~~ *the appropriate* fund and use the ~~moneys~~ *money* credited to ~~such~~ *the* fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as ~~such~~ *the* interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as ~~the same~~ *they* become due. If the bonds are held by the state of Montana, then all payments ~~shall~~ *must* be remitted to the state treasurer who shall cancel the coupons or bonds and return ~~such~~ *the* coupons or bonds to the county treasurer with ~~his~~ *the state treasurer's* receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to ~~such~~ *the* bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds ~~shall become~~ *becomes* due and payable, interest ~~shall cease~~ *ceases* on ~~such~~ *that* date unless sufficient funds are available to pay ~~such~~ *the* bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on ~~such~~ *the* bond or installment ~~shall continue~~ *continues* until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due ~~shall draw~~ *draws* interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds."

Section 15. Security for impact aid reserve bonds — agreement of state. (1) To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution or indenture of trust may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received and credited to the account established in 20-9-514 and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund.

(2) Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited as provided in 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the impact aid revenue bond debt service fund account is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district, regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those

instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state pledges to and agrees with the holders of impact aid revenue bonds that the state will not limit, alter, or impair the ability of a school district to qualify for impact aid revenue or in any way impair the rights and remedies of the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include this pledge and undertaking in resolutions and indentures authorizing and securing the bonds.

Section 16. Codification instruction. [Section 15] is intended to be codified as an integral part of Title 20, chapter 9, part 4, and the provisions of Title 20, chapter 9, part 4, apply to [section 15].

Section 17. Effective date — applicability. [This act] is effective on passage and approval and applies to bonds authorized on or after [the effective date of this act].

Ap proved April 24, 2003

CHAPTER NO. 493

[SB 444]

AN ACT GENERALLY REVISING SECURITIES LAWS, INSURANCE LAWS, AND ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS TO PROVIDE FOR THE PROTECTION OF CONSUMERS AND SENIOR CITIZENS AND PERSONS WITH DEVELOPMENTAL DISABILITIES WITH RESPECT TO THE MARKETING OF SECURITIES AND INSURANCE PRODUCTS; RESTRICTING THE MANNER IN WHICH INSURANCE PRODUCERS MAY ACT AS LEGAL GUARDIANS OF CLIENTS; EXPANDING THE DEFINITION OF "SECURITY" TO INCLUDE VIATICAL SETTLEMENT PURCHASE AGREEMENTS; MODIFYING THE DEFINITION OF "VIATICAL SETTLEMENT CONTRACT"; PROVIDING FOR PENALTIES AND OTHER REMEDIES WITH RESPECT TO PERSONS FAILING TO RESPOND TO CERTAIN INFORMATION REQUESTS OF THE INSURANCE COMMISSIONER; EXPANDING THE SCOPE FOR WHICH INJUNCTIONS AND OTHER REMEDIES ARE AVAILABLE UNDER INSURANCE LAWS; PROVIDING ADDITIONAL PENALTIES FOR DOMESTIC INSURERS FAILING TO PROPERLY MAINTAIN RECORDS; MODIFYING PENALTIES FOR INSURANCE PRODUCERS OR ADJUSTERS OPERATING WITHOUT A LICENSE; PROVIDING THAT THE DEFINITION OF "EXPLOITATION" UNDER ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS INCLUDES ACTS DONE IN THE COURSE OF AN OFFER OR SALE OF SECURITIES OR INSURANCE PRODUCTS; IMPOSING A POSSIBLE FELONY SENTENCE FOR A CONVICTION OF ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE; AMENDING SECTIONS 30-10-103, 33-1-315, 33-1-318, 33-3-401, 33-17-1004, 33-20-1302, 33-20-1315, 52-3-803, AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Restrictions on acting as legal guardian of insured or policyholder. (1) Except as otherwise approved by the commissioner or court order, an insurance producer may not act as a legal guardian of an insured or policyholder if the insurance producer conducts insurance business with the insured or policyholder when the insurance business includes but is not limited to the solicitation, offer, sale, or replacement of insurance or a contract.

(2) This section does not apply to immediate family members.

Section 2. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or

more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or

collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) *(a)* "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

~~(a)~~*(i)* an issuer in:

~~(i)~~*(A)* effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

~~(ii)~~*(B)* effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

~~(iii)~~*(C)* effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933; or

~~(iv)~~*(D)* effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

~~(b)~~*(ii)* a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; *viatical settlement purchase agreement;* certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 3. Section 33-1-315, MCA, is amended to read:

"33-1-315. Witnesses — production of records — subpoena — failure to respond. (1) With respect to the subject of any examination or investigation being conducted by the commissioner, or the commissioner's designee if general written authority has been given the designee by the commissioner, the commissioner or the designee may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. Subpoenas of witnesses must be served in the same manner as if issued from a district court.

(2) If in connection with ~~any~~ *an* examination of an insurer the commissioner *or the commissioner's designee* desires to examine an officer, director, or manager who is outside this state, the commissioner *or the commissioner's designee* may conduct and enforce by all appropriate and available means any examination under oath in any other state or territory of the United States in which ~~an~~ *the* officer, director, or manager ~~may then presently be~~ *is located*, to the full extent permitted by the laws of ~~another~~ *that* state or territory.

(3) If a witness fails to obey a subpoena to appear before the commissioner or the commissioner's designee or refuses to testify or answer any material question or to produce records, books, papers, contracts, or documents when required to do so, the commissioner or the commissioner's designee shall institute proceedings in the district court to compel obedience to the subpoena or other order or to punish the witness for neglect or refusal to obey the summons or other order.

(4) Witness fees and mileage, if claimed, must be allowed *on* the same *basis* as for testimony in a district court. Witness fees, mileage, and the actual

expenses necessarily incurred in securing attendance of witnesses and their testimony must be itemized and paid by the person being examined if the person is found to have been in violation of the law as to the matter with respect to which the ~~witness was~~ *witnesses were* subpoenaed.

(5) A person who knowingly fails to attend, answer, and produce records, documents, or other evidence requested by the commissioner or the commissioner's designee, who knowingly fails to give full and truthful information or to answer in writing to any material inquiry of the commissioner or the commissioner's designee relative to the subject of an examination, investigation, or hearing, or who knowingly fails to appear and testify under oath before the commissioner or the commissioner's designee is subject to the provisions of 33-1-317 and 33-1-318."

Section 4. Section 33-1-318, MCA, is amended to read:

"33-1-318. Injunctions and other remedies. (1) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or practice constituting a violation of *33-1-107*, 33-1-501~~,~~,*33-1-1302*, 33-14-201~~,~~, chapters 2, 16 through 18, and 30 of this title~~,~~ *, part 13 of chapter 20 of this title,* or part 4 of chapter 25 of this title~~,~~, or any rule or order issued under this code, ~~he~~ *the commissioner* may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing;

(b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt of the order to make a written request for a hearing on the allegations contained in the order. The hearing must be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and the commissioner does not order a hearing, the order becomes final.

(c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction to enjoin ~~such~~ *the* acts or practices and to enforce compliance with this code or any rule or order issued under this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

(2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings of fact, conclusions of law, orders, and supporting briefs to the ~~hearing~~ *hearings* examiner. The parties have an additional 10 days within which to submit comments on the opposing party's proposed findings of fact, conclusions of law, orders, and briefs. A final order must ~~issue~~ *be issued* within 30 days of the submission of the comments.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 ~~per~~ *for each* violation upon a person found to have engaged in an act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state

of Montana and deposited in the general fund. Imposition of a fine under this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of ~~his~~ *the* right to do business in this state under this code."

Section 5. Section 33-3-401, MCA, is amended to read:

"33-3-401. Home office and records — penalty for unlawful removal of records or assets. (1) ~~Every~~ *Each* domestic insurer ~~shall~~ *must* have and *shall* maintain its principal place of business and home office in this state and shall ~~keep therein~~ *maintain at its principal place of business or home office* complete records of its assets, transactions, and affairs in accordance with ~~such~~ methods and systems ~~as are~~ customary or suitable ~~as~~ to the kind or kinds of insurance ~~transacted~~ *that it transacts*. Records of the insurer's operations and other financial records reasonably related to its insurance operations for the preceding 5 years must be maintained and be available to the commissioner or ~~his~~ *the commissioner's* ~~duly constituted~~ examiner.

(2) ~~Every~~ *Each* domestic insurer ~~shall~~ *must* have and *shall* maintain its assets in this state, except ~~as to~~ *for*:

(a) real property and *appurtenant* personal property ~~appurtenant thereto~~ lawfully owned by the insurer and located outside this state; and

(b) ~~such~~ property of the insurer ~~as may be~~ *that is* customary, necessary, and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) ~~below~~.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under this code or for ~~such~~ reasonable purposes and periods of time as may be approved by the commissioner in writing in advance ~~of such removal or concealment of such records or assets or material part thereof from the commissioner~~ is prohibited. Any person who removes or attempts to remove ~~such~~ *all or a material part of* records or assets ~~or such material part thereof~~ from the home office, ~~or~~ other place of business, or ~~of~~ safekeeping of the insurer in this state with the intent to remove the ~~same~~ *records or assets* from this state or who conceals or attempts to conceal ~~the same~~ *records or assets* from the commissioner, in violation of this subsection, shall upon conviction ~~thereof~~ be guilty of a felony punishable by a fine of not more than $10,000 or by imprisonment in the penitentiary for not more than 5 years or by both ~~such~~ *a* fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of ~~such~~ records or assets or upon retention of ~~such~~ records or assets or *a* material part ~~thereof~~ *of the records or assets* outside this state beyond the period ~~therefor~~ specified in the commissioner's consent under which the records were ~~so~~ removed ~~thereat~~ or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 2, part 13.

(4) This section ~~shall~~ *does* not ~~be deemed to~~ prohibit or prevent an insurer from:

(a) establishing and maintaining branch offices or regional home offices in other states ~~where~~ *when* necessary or convenient to the transaction of its business and keeping ~~therein~~ *there* the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by ~~such an~~ *the out-of-state* office, as long as ~~such~~ *the* records and assets are made readily available at ~~such~~ *that* office for examination by the commissioner ~~at his request~~ *when requested*;

(b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business;

(c) making deposits under custodial arrangements as provided by 33-2-604(3).

(5) An insurer that fails to maintain records and make them available to the commissioner's staff is subject to the penalties and procedures in 33-1-317, 33-1-318, and 33-2-119."

Section 6. Section 33-17-1004, MCA, is amended to read:

"33-17-1004. Acting as insurance producer or adjuster without license — penalty. ~~Except as provided~~ *In addition to the requirements and penalties described* in *33-17-201 and* 33-17-411, a person who, in this state, acts as an insurance producer or adjuster without having authority to do so by virtue of a license issued and in force pursuant to this chapter is *subject to the provisions of 33-1-317 and 33-1-318 and may be subject to conviction of a crime.*

(2) A person convicted under this section shall, for a first conviction, ~~guilty of a misdemeanor and upon conviction shall~~ be fined $500 or imprisoned in the county jail for 90 days, or both. *For a second conviction, the person shall be fined an amount not to exceed $1,000 or incarcerated for a term not to exceed 1 year, or both. For a third or subsequent conviction, the person shall be fined an amount not to exceed $5,000 or incarcerated for a term not to exceed 2 years, or both.*"

Section 7. Section 33-20-1302, MCA, is amended to read:

"33-20-1302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Financing entity" means an underwriter, placement agent, lender, or any entity, other than a nonaccredited investor, that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, whose sole activity related to the transaction is the provision of funds to effect the viatical settlement contract, and who has an agreement in writing with one or more licensed viatical settlement providers.

(2) "Related provider trust" means a trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner.

(3) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

~~(1)~~*(4)* (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

(i) offers or advertises the availability of viatical settlement contracts;

(ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or

(iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

~~(2)~~*(5) (a)* "Viatical settlement contract" means a written agreement~~between a viatical settlement provider and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:~~

~~(a) the terms establish that the viatical settlement provider pays something of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and~~

~~(b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate to name the beneficiary.~~ *establishing the terms under which compensation or anything of value will be paid, when the compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.*

(b) The term includes:

(i) a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy; or

(ii) an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.

(c) The term does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.

~~(3)~~*(6)* (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

(b) ~~A viatical settlement provider may use the term "life settlement provider" to describe the business transacted under the license and may use the term "life settlement contract" instead of "viatical settlement contract".~~

~~(c)~~ Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under 33-20-1304.

~~(4)~~*(7)* (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest in a life insurance policy for the purpose of deriving an economic benefit.

(b) A viatical settlement purchase agreement does not include a viatical settlement contract.

~~(5)~~*(8)* (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

(b) A viatical settlement purchaser does not include a licensed viatical settlement provider, ~~or~~ *a* licensed viatical settlement broker, *a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.*

(9) (a) "Viator" means the owner of a life insurance policy or the certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.

(b) The term does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust."

Section 8. Section 33-20-1315, MCA, is amended to read:

"33-20-1315. Rules — standards — bond. The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts *for insured persons who are terminally ill or chronically ill*. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is

available, as well as model standards developed by the national association of insurance commissioners.

(2) shall require a bond ~~and an errors and omissions insurance policy of both kinds of licensees~~ *or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers*; ~~and~~

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts; and

(b) fees that are commensurate with fees charged pursuant to 33-2-708*; and*

(4) shall require viatical settlement providers or viatical settlement brokers to pay an amount greater than the cash surrender value or accelerated death benefit if the insured is not terminally ill or chronically ill."

Section 9. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability *in order* to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, or benefit of the person's money, assets, or property*;*

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently

depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 10. Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) ~~Any~~ *A* person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) ~~Any~~ *An* individual who purposely or knowingly abuses, sexually abuses, neglects, or exploits an older person or a person with a developmental disability is guilty of a *crime* ~~misdemeanor and upon a first conviction may be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. Upon a second or succeeding conviction, an individual~~ *and* may be imprisoned for a term not to exceed 10 years ~~and may~~ *or* be fined an amount not to exceed $10,000, or both."

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 17, part 10, and the provisions of Title 33, chapter 17, part 10, apply to [section 1].

Section 12. Coordination instruction. If House Bill No. 17 and [this act] are both passed and approved, then [section 10 of this act], amending 52-3-825, is void.

Section 13. Effective date. [This act] is effective on passage and approval.

Section 14. Applicability. [This act] applies to viatical settlement contracts entered into on or after [the effective date of this act].

Ap proved April 24, 2003

CHAPTER NO. 494

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide only necessary and ordinary expenditures for the fiscal year ending June 30, 2003. The unspent balance of any appropriation must revert to the general fund.

Section 2. Appropriations — authorization to expend money. (1) Except as provided in subsection (2), the following money is appropriated, subject to the terms and conditions of [section 1].

Agency and Program	Amount	Fund
Department of Public Health & Human Services		
Disability Services Division	$924,354	General Fund
Child Support Enforcement Division	$1,200,000	General Fund
Department of Natural Resources & Conservation		
Forestry	$1,325,762	General Fund
Department of Justice		
Legal Services Major Litigation	$110,000	General Fund
Highway Patrol Prisoner Per Diem	$390,000	General Fund
Office of Public Instruction		
School BASE Aid	$1,940,000	General Fund
Commissioner of Higher Education		
Indirect Cost Recoveries	$76,000	General Fund

(2) If the actual common school interest and income revenue deposited in the guarantee account established in 20-9-622 by the end of fiscal year 2003 is less than the amount of common school interest and income revenue estimated for fiscal year 2003 in House Joint Resolution No. 2 as passed and approved, then the office of public instruction school BASE aid appropriation for the fiscal year ending June 30, 2003, as provided in subsection (1) of this section, is increased by the amount of the difference between the amount of common school interest and income revenue estimated in House Joint Resolution No. 2 as passed and approved and the actual receipts in the guarantee account, up to a maximum of $8 million.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved April 25, 2003

CHAPTER NO. 495

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditure is authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to all terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
Montana Supreme Court			
District Court Operations			
Probation Miscellaneous Revenue	2003	$100,000	State Special
State Auditor's Office			
Securities			
National White Collar Crime Center	2003	$39,311	Federal Funds
Office of Public Instruction			
State Level Activities			

All remaining fiscal year 2003 federal budget amendment authority for reading excellence is authorized to continue into federal fiscal year 2004.

Local Education Activities			
Reading Excellence	2003	$10,366,578	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for reading excellence for local education activities is authorized to continue into federal fiscal year 2004.

Board of Crime Control			
Justice System Support Services			
Forensic Science Improvements	2003	$29,178	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for forensic science improvements is authorized to continue into state fiscal year 2004.

Department of Justice

Legal Services Division

All remaining fiscal year 2003 federal budget amendment authority for encourage to arrest is authorized to continue into federal fiscal year 2004.

Division of Criminal Investigation

All remaining fiscal year 2003 federal budget amendment authority for the Rocky Mountain high intensity drug trafficking area is authorized to continue into state fiscal year 2004.

Forensic Sciences Division

All remaining fiscal year 2003 federal budget amendment authority for the Rocky Mountain high intensity drug trafficking area is authorized to continue into state fiscal year 2004.

Montana Arts Council

Promotion of the Arts

All remaining fiscal year 2003 federal budget amendment authority from the national endowment for the arts virtual exhibit of Montana folklife and folk art is authorized to continue into state fiscal year 2004.

Historical Society

Administration Program

All remaining fiscal year 2003 federal budget amendment authority for the Montana historical society press administration grant is authorized to continue into state fiscal year 2005.

Library Program

National Archives and Records	2003	$9,320	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the national archives and records is authorized to continue into state fiscal year 2004.

Publications Program

All remaining fiscal year 2003 federal budget amendment authority for the Montana historical society press is authorized to continue into state fiscal year 2005.

Historic Preservation Program

Heritage Databases -

Bureau of Land Management	2003	$30,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the heritage databases - bureau of land management is authorized to continue into state fiscal year 2004.

Heritage Preservation Program

Virginia City/Nevada City

Wildfire Mitigation	2003	$63,165	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority from the federal emergency management agency for the Virginia City and Nevada City wildfire hazard mitigation is authorized to continue into state fiscal year 2004.

Heritage Commission

All remaining fiscal year 2003 federal budget amendment authority for the institute of museum and library services is authorized to continue into state fiscal year 2004.

Lewis and Clark Bicentennial Commission

All remaining fiscal year 2003 federal budget amendment authority for the national park service national cost share agreement for the Lewis and Clark national historic trail bicentennial observance is authorized to continue into state fiscal year 2004.

Department of Fish, Wildlife, and Parks

Fisheries Division

Pallid Sturgeon at Miles City	2003	$42,893	Federal Funds
Fish Restoration and Irrigation Mitigation Act	2003	$15,720	Federal Funds
Native Fishes at Fort Peck Dam	2003	$461,203	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the pallid sturgeon production at the Miles City hatchery and Fish Restoration and Irrigation Mitigation Act is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the research on responses of native fishes at Fort Peck dam is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the U.S. fish and wildlife service for sauger conservation in the Missouri and Yellowstone Rivers is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority from the state wildlife prairie fish survey is authorized to continue into state fiscal year 2004.

Capital Outlay Program

All remaining fiscal year 2003 federal budget amendment authority for the U.S. fish and wildlife service for the Thompson/Fisher drainage is authorized to continue into federal fiscal year 2005.

Parks Division

Lewis and Clark Bicentennial	2003	$65,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the Lewis and Clark bicentennial is authorized to continue into state fiscal year 2005.

Department of Environmental Quality

Planning, Prevention, and Assistance Division

All remaining fiscal year 2003 federal budget amendment authority for the monitoring and writing the TMDL supplemental is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for developing and implementing a nationwide fine particular monitoring network is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for wetlands protection in Montana is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for state and tribal assistance grants is authorized to continue into federal fiscal year 2005.

Remediation Division

All remaining fiscal year 2003 federal budget amendment authority for the Lockwood solvent grant is authorized to continue into state fiscal year 2004.

Department of Livestock

Animal Health Division

Greater Yellowstone Interagency			
Brucellosis Committee	2003	$61,533	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the greater Yellowstone interagency brucellosis committee is authorized to continue into state fiscal year 2004.

Department of Natural Resources and Conservation

Water Resources Division

All remaining fiscal year 2003 federal budget amendment authority for water management activities is authorized to continue into federal fiscal year 2004.

Forestry/Trust Lands			
Conservation Reserve Program			
Grant Number 5	2003	$5,621	Federal Funds
Conservation Reserve Program			
Grant Number 6	2003	$6,951	Federal Funds
Stryker Basin Trail System Grant	2003	$7,292	Federal Funds
Hazardous Fuel Reduction	2003	$232,500	Federal Funds
Fire Suppression	2003	$690,569	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the conservation reserve program grants is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the Stryker basin trail system grant is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for hazardous fuel reduction is authorized to continue into federal fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for defensible space is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for habitat conservation is authorized to continue into state fiscal year 2005.

Department of Administration

Information Technology Services Division

All remaining fiscal year 2003 federal budget amendment authority for the GIS cadastral mapping project is authorized to continue into federal fiscal year 2005.

Department of Agriculture

Central Management Division

All remaining fiscal year 2003 federal budget amendment authority for the federal noxious weed grant is authorized to continue into federal fiscal year 2005.

Agricultural Sciences Division

Organic Producers' Cost Share	2003	$110,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the organic producers' cost share is authorized to continue in to federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the federal noxious weed grant is authorized to continue into federal fiscal year 2005.

Department of Corrections

Juvenile Corrections

All remaining fiscal year 2003 federal budget amendment authority for the U.S. department of justice - corrections serious and violent offender reentry initiative grant is authorized to continue into state fiscal year 2005.

Department of Commerce

Business Resources Division

All remaining fiscal year 2003 federal budget amendment authority for the U.S. forest service grant is authorized to continue into federal fiscal year 2004.

Department of Labor and Industry

Workforce Services Division

One-Stop Workforce			
Investment Act Grant	2003	$25,000	Federal Funds
One-Stop Glendive Workforce			
Investment Act Grant	2003	$25,000	Federal Funds
Special Reed Act Funds	2003	$1,839,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for special Reed Act funds is authorized to continue into federal fiscal year 2005 for legitimate Wagner-Peyser Act employment services activities, unemployment insurance benefits, and unemployment insurance administration.

Unemployment Insurance Division

National Customer Service			
Award Grant	2003	$25,000	Federal Funds
Special Reed Act Funds	2003	$12,601,627	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the national customer service award grant is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for internet unemployment claims is authorized to continue into state fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for special Reed Act funds is authorized to continue into federal fiscal year 2005 for legitimate Wagner-Peyser Act employment services activities, unemployment

insurance benefits, and unemployment insurance administration. The $12,601,627 of special Reed Act federal funds will be reduced by the amount of any special Reed Act federal funds that is contained in the General Appropriations Act of 2003 for the department in item 1.

Department of Military Affairs

Army National Guard

Facility Operation and Maintenance	2003	$698,000	Federal Funds
Communications Funding	2003	$375,524	Federal Funds
Army Recruiting Office Lease	2003	$18,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for communications funding and for the army recruiting office lease is authorized to continue into state fiscal year 2004.

Air National Guard

Firefighters and Security Funds	2003	$167,322	Federal Funds
MTANG Firefighter	2003	$32,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for MTANG firefighter funds is authorized to continue into state fiscal year 2004.

Disaster and Emergency Services

All remaining fiscal year 2003 federal budget amendment authority for predisaster mitigation is authorized to continue into state fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the state domestic preparedness equipment program is authorized to continue into state fiscal year 2005.

All remaining fiscal year 2003 federal budget amendment authority for the state domestic preparedness program is authorized to continue into federal fiscal year 2004.

All remaining fiscal year 2003 federal budget amendment authority for the federal emergency management agency supplemental federal planning grant funds is authorized to continue into state fiscal year 2004.

Department of Public Health and Human Services

Human and Community Services Division

2003 LIEAP Award	2003	$1,038,139	Federal Funds
Food Stamp Program	2003	$6,000,000	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the 2003 LIEAP award, the food stamp program, and the child care apprenticeship grant is authorized to continue into state fiscal year 2004.

Child and Family Services Division

All remaining fiscal year 2003 federal budget amendment authority for the Walla Walla IV-E grant is authorized to continue into state fiscal year 2004.

Child Support Enforcement Division

Special Improvement Project	2003	$149,464	Federal Funds

All remaining fiscal year 2003 federal budget amendment authority for the special improvement project is authorized to continue into state fiscal year 2004.

Health Policy and Services Division

All remaining fiscal year 2003 federal budget amendment authority for the rape prevention and education grant is authorized to continue into federal fiscal year 2005.

Operations and Technology Division

All remaining fiscal year 2003 federal budget amendment authority for the electronic death registration system is authorized to continue into federal fiscal year 2004.

Disability Services Division

All remaining fiscal year 2003 federal budget amendment authority for the systems change grant is authorized to continue into federal fiscal year 2005.

Senior and Long-Term Care Division

All remaining fiscal year 2003 federal budget amendment authority for community-integrated personal assistance services and supports is authorized to continue into federal fiscal year 2004.

Section 3. Appropriation. There is appropriated for fiscal year 2003 to the Montana supreme court $500,000 of federal budget amendment authority for a statewide video network funded by the United States department of justice, office of community oriented policing services.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [Section 3] applies retroactively, within the meaning of 1-2-109, to February 10, 2003.

Ap proved April 25, 2003

CHAPTER NO. 496

[HB 10]

AN ACT ALLOCATING REVENUE FROM THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX TO MAKE DEBT SERVICE PAYMENTS ON CERCLA BONDS; CREATING A CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; COORDINATING CERTAIN PROVISIONS OF THE CERCLA MATCH DEBT SERVICE ACCOUNT, CERCLA BONDS, THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT, AND THE CERCLA COST RECOVERY SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-38-106, 75-10-621, 75-10-622, AND 75-10-623, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-106, MCA, is amended to read:

"15-38-106. (Temporary) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must

be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under [section 5], to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

~~(a)~~*(b)* $366,000 of the proceeds of the resource indemnity and ground water assessment taxes in the ground water assessment account established by 85-2-905;

~~(b)~~*(c)* 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects;

~~(c)~~*(d)* $150,000 of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached $100 million and for succeeding fiscal years, the amount required under 39-10-106(4);

~~(d)~~*(e)* all remaining proceeds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007—sec. 10, Ch. 586, L. 2001.)

15-38-106. (Effective July 1, 2007) Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account

established under [section 5], to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

~~(a)~~*(b)* $366,000 of the proceeds in the ground water assessment account established by 85-2-905;

~~(b)~~*(c)* 50% of the remaining proceeds in the orphan share account established in 75-10-743; and

~~(c)~~*(d)* all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 2. Section 75-10-621, MCA, is amended to read:

"75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(b) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(c) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

~~(a) funds are statutorily appropriated, as provided in 17-7-502(4), to the CERCLA match debt service account necessary to make principal, interest, and premium payments due on CERCLA bonds;~~

~~(b)~~*(a)* not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

~~(c)~~*(b)* to the extent funds are available after the appropriations in ~~subsections~~ *subsection* (3)(a) ~~and (3)(b)~~, the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection ~~(3)(c)~~ *(3)(b)*, the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until appropriated by the legislature for the purposes specified in this section."

Section 3. Section 75-10-622, MCA, is amended to read:

"75-10-622. CERCLA match debt service fund. (1) There is a CERCLA match debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the CERCLA match debt service fund ~~as received an amount necessary to satisfy principal and interest payments due on outstanding CERCLA bonds~~ *money from the resource indemnity and ground water assessment tax, as provided in 15-38-106, and from the CERCLA cost recovery account, as provided in [section 5].*

(3) Money in the CERCLA match debt service fund is statutorily appropriated, as provided in 17-7-502(4)."

Section 4. Section 75-10-623, MCA, is amended to read:

"75-10-623. CERCLA bonds. (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to ~~finance the match requirements~~ *fund state participation in remedial action* under section 104 of CERCLA*, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain*

matching federal funds ~~and to finance the match requirements for federal money~~ for underground storage tank corrective action*, and costs of issuing the bonds or notes*. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of environmental quality, at public or private sale, in the denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members."

Section 5. CERCLA cost recovery account. (1) There is a CERCLA cost recovery special revenue account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the CERCLA cost recovery account amounts obtained by the department through cost recovery under CERCLA for costs paid, in whole or in part, with the proceeds of CERCLA bonds authorized in 75-10-623, together with interest on the proceeds.

(3) (a) Money in the CERCLA cost recovery account must be transferred to the CERCLA match debt service fund in each fiscal year in an amount then available, but not to exceed the amount necessary to pay the principal of, premium, if any, and interest on the bonds and notes issued pursuant to 75-10-623 to become due in the next fiscal year, or as appropriate, to pay the redemption price of the bonds or notes.

(b) Money in the CERCLA cost recovery account, including interest on the money in the account, that is not transferred to the CERCLA match debt service fund must be retained in the CERCLA cost recovery account as long as any principal of, premium, if any, or interest on the CERCLA bonds or notes authorized in 75-10-623, the proceeds of which were applied, in whole or in part, to costs associated with the cost recovery, remains unpaid or the payment of the costs associated with cost recovery has not been provided for in a manner that would cause the defeasance of bonds.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 75, chapter 10, part 6, and the provisions of Title 75, chapter 10, part 6, apply to [section 5].

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved April 25, 2003

CHAPTER NO. 497

[HB 12]

AN ACT DEFINING "ENERGY COST SAVINGS"; CLARIFYING DEBT SERVICE FOR APPROPRIATIONS OF ENERGY COST SAVINGS; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2004 AND 2005; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; AMENDING SECTIONS 90-4-602 AND 90-4-614, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-602, MCA, is amended to read:

"90-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "Energy cost savings" means the savings in utility costs to a state agency as a result of an energy conservation program.

~~(6)~~*(7)* "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system."

Section 2. Section 90-4-614, MCA, is amended to read:

"90-4-614. Appropriation of energy cost savings. (1) In preparing the executive budget each biennium, the governor shall include for each state agency participating in the state energy conservation program:

(a) an estimate of the energy cost savings expected for that agency in each year of the biennium; and

(b) a projection of the debt service on energy conservation program bonds that should be apportioned to that agency in each year of the biennium. *Debt service is zero after the term of bond repayment.*

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act the following:

(a) authority for each participating state agency to transfer funds in an amount equal to the agency's projected debt service to the energy conservation program account established in 90-4-612; and

(b) authority for each participating state agency to transfer funds to the long-range building program fund in an amount equal to the difference between the estimated energy cost savings to the agency and the projected debt service apportioned to that agency.

(3) The current level utility appropriations of state agencies participating in the energy conservation program must be reduced by the sum of the amounts appropriated in subsections (2)(a) and (2)(b).

(4) Each participating state agency shall transfer upon request of the department the amounts appropriated in accordance with subsection (2)."

Section 3. Appropriation of bond proceeds. There is appropriated from bond proceeds authorized by Chapter 50, Laws of 1999, Chapter 240, Laws of 2001, and [section 5] $400,000 to the department of environmental quality to fulfill its duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

Section 4. Approval of energy conservation projects — definition. (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves for fiscal years 2004 and 2005 the following energy conservation projects:

(a) Mitchell building, department of administration, Helena, Montana;

(b) Spratt building, department of public health and human services, Warm Springs, Montana;

(c) health science building, University of Montana-Missoula, Montana;

(d) Montana mental health and nursing care center, department of public health and human services, Lewistown, Montana;

(e) men's prison, department of corrections, Deer Lodge, Montana; and

(f) Kalispell and Missoula headquarters buildings, department of fish, wildlife, and parks.

(2) In addition to the energy conservation projects referred to in subsection (1), the department of environmental quality may expend funds appropriated under [section 3] to respond to energy savings opportunities. Energy savings opportunities include coordination of energy improvement projects with the long-range building program capital improvement projects.

(3) For purposes of this section, an "energy savings opportunity" means an opportunity to improve energy use that will provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 5], the department of environmental quality may fund projects that would be proposed as part of the state building energy conservation package for fiscal years 2006 and 2007.

Section 5. Bond authorization. (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed $2.5 million for fiscal years 2004 and 2005 for the projects approved in [section 4] and to fulfill the duties imposed by 90-4-605 and 90-4-607, as provided in [section 3]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill the duties authorized by 90-4-605 and 90-4-607, and to fund the projects approved in [section 4]. For the purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of environmental quality and may be used for the purposes authorized in this section without further budgetary authorization.

Section 6. Two-thirds vote required. Because [section 5] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for enactment of [section 5].

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved April 24, 2003

CHAPTER NO. 498

[HB 18]

AN ACT INCREASING THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; MAKING PERMANENT THE USER

SURCHARGE AND THE ACCOUNT ESTABLISHED FOR COURT INFORMATION TECHNOLOGY; AMENDING SECTION 3-1-317, MCA, SECTION 4, CHAPTER 361, LAWS OF 1995, AND SECTION 1, CHAPTER 71, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-317, MCA, is amended to read:

"3-1-317. ~~(Temporary)~~ User surcharge for court information technology — exception. (1) Except as provided in subsection (2), all courts of original jurisdiction shall impose:

(a) on a defendant in criminal cases, a ~~$5~~ *$10* user surcharge upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;

(b) on the initiating party in civil and probate cases, a ~~$5~~ *$10* user surcharge at the commencement of each action, proceeding, or filing; and

(c) on each defendant or respondent in civil cases, a ~~$5~~ *$10* user surcharge upon appearance.

(2) If a court determines that a defendant in a criminal case or determines pursuant to 25-10-404 that a party in a civil case is unable to pay the surcharge, the court may waive payment of the surcharge imposed by this section.

(3) The surcharge imposed by this section is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the department of revenue for deposit in the account established in 3-5-904 for state funding of court information technology.~~(Terminates June 30, 2003 — sec. 1, Ch. 71, L. 1999.)~~"

Section 2. Section 4, Chapter 361, Laws of 1995, is amended to read:

"**Section 4. Effective date — ~~termination date.~~** ~~(1)~~ [This act] is effective July 1, 1995.

~~(2) [This act] terminates June 30, 1999.~~"

Section 3. Section 1, Chapter 71, Laws of 1999, is amended to read:

"**Section 1.** Section 4, Chapter 361, Laws of 1995, is amended to read:

"**Section 4. Effective date — ~~termination date.~~** ~~(1)~~ [This act] is effective July 1, 1995.

~~(2) [This act] terminates June 30, 1999~~ *2003.*""

Section 4. Effective date. [This act] is effective June 28, 2003.

Section 5. Termination. [This act] terminates June 30, 2005.

Ap proved April 25, 2003

CHAPTER NO. 499

[HB 100]

AN ACT GENERALLY REVISING THE LAWS RELATING TO GAME BIRDS AND SHOOTING PRESERVES; REVISING THE GENERAL DEFINITION

OF "UPLAND GAME BIRDS" BY REMOVING QUAIL AND SPECIFYING RING-NECKED PHEASANTS; CONFORMING THE DEFINITION OF "GAME BIRDS" IN THE GAME BIRD FARM STATUTES TO THE GENERAL DEFINITION OF "UPLAND GAME BIRDS"; PROVIDING THAT POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF CAPTIVE-REARED MIGRATORY WATERFOWL IS NOT PROHIBITED; CONFORMING THE LAW GOVERNING VIOLATION OF CLOSED SEASON ON CERTAIN GAME BIRDS TO THE DEFINITION OF "UPLAND GAME BIRDS"; REVISING THE FEES FOR SHOOTING PRESERVE LICENSES; REVISING THE KINDS OF BIRDS THAT MAY BE HUNTED IN SHOOTING PRESERVES; ESTABLISHING MINIMUM AGE, NUMBER, AND MARKING REQUIREMENTS FOR RELEASED BIRDS; AUTHORIZING THE DEPARTMENT TO IMPOSE RESTRICTIONS ON NEW SHOOTING PRESERVE LICENSES; REVISING REGISTRATION BOOK REQUIREMENTS FOR SHOOTING PRESERVE OPERATORS; AMENDING SECTIONS 87-2-101, 87-3-111, 87-3-402, 87-4-503, 87-4-522, 87-4-524, 87-4-526, AND 87-4-901, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in ~~this chapter, chapter 3, and~~ 87-1-102, *chapter 3, and this chapter,* unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) *(a)* "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include*:*

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(7) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves~~; however, the open season on mourning doves is restricted to the open season on upland game birds as defined in subsection (15)~~.

(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(12) "Person" means individuals, associations, partnerships, and corporations.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ~~quail,~~ *ring-necked* pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 2. Section 87-3-111, MCA, is amended to read:

"87-3-111. (Temporary) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport *all or part of* any game fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof~~ *that is* protected by the laws of this state, whether ~~belonging to the same or a different species from that native to the state~~ *taken in Montana or outside* of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of *all or part of* any legally taken fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof~~;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed *upland* game birds, *migratory game birds*, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed;

(d) the possession, transportation, sale, or purchase of the bones of an elk, antelope, moose, or deer that has been lawfully killed or that has died of natural causes; ~~or~~

(e) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601~~.~~*; or*

(f) the possession, transportation, sale or purchase of captive-reared migratory waterfowl.

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

(4) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)

87-3-111. (Effective July 1, 2003) Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties. (1) It is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport *all or part of* any game fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof~~ *that is* protected by the laws of this state, whether ~~belonging to the same or a different species from that native to the state~~ *taken in Montana or outside* of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of *all or part of* any legally taken fish, *upland* game bird, migratory game bird, game animal, or fur-bearing animal ~~or part thereof~~;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed *upland* game birds, *migratory game birds,* game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed; ~~or~~

(d) the possession, transportation, sale, or purchase of the bones of an elk or deer that has been lawfully killed or that has died of natural causes~~.~~*; or*

(e) the possession, transportation, sale, or purchase of captive-reared migratory waterfowl.

(3) It is unlawful for a person to possess or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations.

(4) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102."

Section 3. Section 87-3-402, MCA, is amended to read:

"87-3-402. Unlawful to violate closed season on certain game birds. It is unlawful for any person to hunt or attempt to hunt ~~any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey~~ *an upland game bird* until the commission provides an open season on ~~any quail, Chinese or Mongolian pheasant (commonly called ring-necked pheasant), Hungarian partridge, chukar partridge, sage grouse, sharp-tailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey~~ *that upland game bird. The open season on mourning doves is restricted to the open season on upland game birds*."

Section 4. Section 87-4-503, MCA, is amended to read:

"87-4-503. Fees. Fees for shooting preserve licenses or permits ~~shall~~ *must* be ~~$50 per~~ *$100 for each* year for the first ~~160~~ *320* acres of shooting preserve area, plus *$40* ~~$20 per~~ *for each* year for each additional *160 acres and any fraction of 160 acres* ~~160 acres or parts thereof~~ ."

Section 5. Section 87-4-522, MCA, is amended to read:

"87-4-522. Game hunted in preserve. (1) Game ~~which~~ *that* may be hunted under this part ~~shall~~ *must* be confined to artificially propagated *ring-necked* pheasants *with no color mutations*, ~~quail,~~ chukar partridges, ~~turkeys,~~ *Merriam's turkeys, Hungarian partridges,* and ~~such~~ other species ~~as the~~ *authorized by the* department ~~may add from time to time~~.

(2) A minimum ~~number of stock~~ *of 100 birds* ~~of each species to be hunted on a~~ *cumulative of all species authorized for an individual* shooting preserve ~~shall~~ *must* be released *each year* on the licensed area during the shooting preserve season. ~~The minimum number of stock of each species to be released shall be determined by the department before the commencement of the season.~~

(3) Artificially propagated upland game birds released on a shooting preserve during the shooting preserve season must be at least 14 weeks of age and must be marked prior to release in a manner that distinguishes them from wild upland game birds."

Section 6. Section 87-4-524, MCA, is amended to read:

"87-4-524. Preserve operators to establish shooting restrictions. *(1)* Except for required compliance with the game recovery restriction provided in 87-4-523, shooting preserve operators *licensed prior to July 1, 2003*, may establish their own shooting limitations and restrictions on the age, sex, and number of each species that may be taken by each person.

(2) The department may impose restrictions on a shooting preserve license issued after July 1, 2003, in an area that supports existing native upland game bird species if the department determines that the restrictions are necessary to protect native populations. The restrictions must be based on sound biological principles."

Section 7. Section 87-4-526, MCA, is amended to read:

"87-4-526. ~~Registration of shooters~~ *Shooting preserve records.* *(1)* Each shooting preserve operator shall maintain a registration book listing*:*

(a) the names, addresses, and ~~hunting license~~ *automated licensing system* numbers of all shooters;

(b) the date on which ~~they~~ *the shooters* hunted;

(c) the amount of game and the species taken; ~~and~~

(d) the tag numbers affixed to each carcass*; and*

(e) the number of wild upland game birds that were taken and tagged.

(2) An accurate record ~~likewise~~ must be maintained of the total number, by species, of game raised ~~and/or~~ *or* purchased and the date and number of all species released. These records ~~shall~~ *must* be open to inspection by a delegated representative of the department at any reasonable time and ~~shall~~ *must* be the basis upon which the game-recovery limits in 87-4-523 ~~shall~~ *must* be determined."

Section 8. Section 87-4-901, MCA, is amended to read:

"87-4-901. Definitions. For purposes of this part, the following definitions apply:

(1) "Game bird farm" means an enclosed area upon which game birds may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game birds or parts of game birds as authorized under this part.

(2) "Game birds" means all birds defined as *upland* game birds in 87-2-101~~, except that the only pheasants included are ring-necked pheasants, and quail are not included~~."

Section 9. Effective date. [This act] is effective July 1, 2003.

Ap proved April 25, 2003

CHAPTER NO. 500

[HB 577]

AN ACT PROVIDING THAT EIGHT OR MORE EMPLOYERS WITH A TOTAL OF MORE THAN 500 EMPLOYEES MAY APPLY TO THE INSURANCE COMMISSIONER TO ORGANIZE A RECIPROCAL INSURER FOR THE PURPOSE OF PROVIDING WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND AMENDING SECTION 33-5-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-5-201, MCA, is amended to read:

"33-5-201. Organization of reciprocal insurer. (1) *(a)* Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer

and ~~make application~~ *apply* to the commissioner for a certificate of authority to transact insurance.

(b) Eight or more employers with a total of more than 500 employees may organize a domestic reciprocal insurer and apply to the commissioner for a certificate of authority to transact insurance for the purpose of providing workers' compensation coverage for their employees.

(2) The proposed attorney shall ~~fulfill the requirements of and shall execute and~~ file with the commissioner when applying for a certificate of authority a declaration setting forth:

(a) the name of the insurer;

(b) the location of the insurer's principal office, which ~~shall~~ *must* be the same as that of the attorney and ~~shall~~ *must* be maintained within this state;

(c) the kinds of insurance proposed to be transacted, *which in the case of a reciprocal insurer organized pursuant to subsection (1)(b) may only be workers' compensation coverage for employees*;

(d) the names and addresses of the original subscribers;

(e) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(f) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(g) the powers of the subscribers' advisory committee and the names and terms of office of the members ~~thereof~~ *of the committee*;

(h) that all ~~moneys~~ *money* paid to the reciprocal insurer ~~shall~~ *must*, after deducting ~~therefrom~~ any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(i) a copy of the subscribers' agreement;

(j) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted and that the insurer has received from each ~~such~~ subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate ~~theretofore~~ filed with and approved by the commissioner;

(k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by 33-5-401 is on hand; and

(l) a copy of each policy, endorsement, and application form ~~it then proposes to~~ *proposed for* issue or use.

(3) The declaration ~~shall~~ *must* be acknowledged by the attorney in the manner required for the acknowledgment of deeds."

Ap proved April 24, 2003

CHAPTER NO. 501

[HB 588]

AN ACT RESTRICTING MIDTERM INCREASES IN RATES OR DECREASES IN COVERAGE ON CONTRACTS OF PROPERTY OR CASUALTY INSURANCE UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 33-15-1101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-15-1101, MCA, is amended to read:

"33-15-1101. Purpose — applicability. (1) The purpose of this part is to protect the public with regard to insurance transactions that involve cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance by:

(a) regulating the grounds for midterm cancellation of an insurance policy;

(b) *except as provided in [section 2],* prohibiting midterm increases in premiums;

(c) increasing the opportunity for insureds to shop for replacement or substitute insurance;

(d) reducing the opportunity for breach of contract, misrepresentation by omission or untimely disclosure, and unfair discrimination among insureds; and

(e) increasing the opportunity for insurance producers to compete freely.

(2) This part applies to those forms of insurance defined in 33-1-206 and 33-1-210, except to the extent they conflict with chapter 23 of this title.

(3) This part does not limit the activities that may constitute undefined unfair trade practices prohibited by 33-18-1003. The commissioner may apply other provisions of this code to insurance transactions involving cancellation, renewal, nonrenewal, or premium increases on contracts of property or casualty insurance. Policies may provide terms more favorable to insureds than are required by this part. The rights provided by this part are in addition to and do not prejudice any other rights that the insured may have under common law, statutes, or rules."

Section 2. Limitation on midterm premium increases. (1) In any case involving property or casualty insurance that is subject to this part, if the insured has prepaid the premium for the insurance policy for a specified period, the insurer may not unilaterally increase the rate charged or decrease the coverage provided for the period for which the premium has been paid unless:

(a) there is a change in risk during that period because of the addition or removal of persons or property that was included in the rate at last renewal;

(b) the risk was misrepresented by the insured; or

(c) the insured requests a policy change that increases the rate because of that specific request.

(2) This section does not prohibit the cancellation of a policy for any other reason permitted by the policy or by law during an initial policy period not to exceed 60 days.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 15, part 11, and the provisions of Title 33, chapter 15, part 11, apply to [section 2].

Ap proved April 25, 2003

CHAPTER NO. 502

[HB 735]

AN ACT REVISING THE JOB REGISTRY FOR STATE EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION, OR REDUCTION IN FORCE; AMENDING SECTION 2-18-1203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-1203, MCA, is amended to read:

"2-18-1203. General protection ~~— job register — seniority preference~~. (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature is entitled to:

~~(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation.~~

~~(b)~~*(a)* access to any job retraining and career development programs provided by the state through the ~~Job Training Partnership Act~~ service delivery areas dislocated worker programs *under the Workforce Investment Act of 1988, 29 U.S.C. 2801, et seq.*, provided that the employee begins participating in a program within 1 year after the elimination of the employee's position; and

(b) inclusion in a special job register from which all agencies may attempt to hire employees prior to seeking applications from the general public. Nothing in this section requires an agency to attempt to hire employees from the special job register prior to seeking applications from the general public. An employee's eligibility to participate in the job register terminates 2 years from the effective date of the employee's layoff or 2 years from the date of the employee's completion of job training provided under subsection (1)(a), whichever is later.

~~(c) inclusion in a special job register from which all agencies, except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104, shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment. An employee's eligibility to participate in the job register terminates 2 years from the effective date of the employee's layoff or 2 years from the date of the employee's completion of job training provided under subsection (1)(b), whichever is later.~~

~~(2) (a) An agency attempting to hire from the job register shall consider the employee's qualifications and length of state service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.~~

~~(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy.~~

~~(3)~~*(2)* Each state agency shall pay to the department of labor and industry a set amount that is equal to the department's average cost of providing the retraining and development services for state employees in the previous fiscal

year for each involuntarily terminated state employee who requests access to any job training and career development program provided by the department."

Section 2. Effective date. [This act] is effective July 1, 2003.

Ap proved April 25, 2003

CHAPTER NO. 503

[HB 741]

AN ACT STATUTORILY ESTABLISHING THE MONTANA CONSENSUS COUNCIL; ATTACHING THE COUNCIL TO THE DEPARTMENT OF ADMINISTRATION FOR ADMINISTRATIVE PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana consensus council — purpose — composition — administration — executive director. (1) There is a Montana consensus council.

(2) The council shall promote fair, effective, and efficient processes for building agreement on natural resource and other public policy issues that are important to Montanans.

(3) (a) The council is governed by a board of directors who shall represent a diversity of viewpoints.

(b) The board shall act as a trustee on behalf of the citizens of Montana by:

(i) defining what benefits are provided by the council and for whom and at what cost they are provided;

(ii) setting broad policies to achieve the council's desired outcomes; and

(iii) monitoring the performance of the executive director's progress toward achieving the desired outcomes.

(4) The board consists of eight members appointed as follows:

(a) four members appointed by the governor;

(b) two members, one of whom is appointed by the president of the senate and the other by the speaker of the house of representatives; and

(c) two members, one of whom is appointed by the minority leader of the senate and the other by the minority leader of the house of representatives.

(5) All members shall serve 2-year terms.

(6) A vacancy on the board must be filled in the manner of the original appointment.

(7) The board shall employ an executive director and prescribe the executive director's salary and duties.

(8) The council is attached to the department of administration for administrative purposes only.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved April 24, 2003

CHAPTER NO. 504

[SB 95]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD ABUSE AND NEGLECT AND ADOPTION; PROVIDING THAT VOLUNTARY SURRENDER OF A CHILD SOLELY BECAUSE OF INABILITY TO ACCESS PUBLICLY FUNDED SERVICES IS NOT ABANDONMENT; REVISING DEFINITIONS; REVISING APPEAL PROVISIONS; PROVIDING 20 DAYS WITHIN FILING OF AN INITIAL PETITION FOR A SHOW CAUSE HEARING; PROVIDING FOR LONG-TERM CUSTODY AS A DISPOSITION; PROVIDING THAT A DISPOSITION THAT REQUIRES AN EXPENDITURE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE MADE UNLESS THE COURT FINDS AFTER A HEARING THAT THE EXPENDITURE IS REASONABLE AND RESOURCES ARE AVAILABLE; PROVIDING EXCEPTIONS IF NECESSARY FOR THE FEDERAL INDIAN CHILD WELFARE ACT; PROVIDING FOR AN EXTENSION OF TIMEFRAMES AS AN ALLOWED STIPULATION; PROVIDING FOR PLACEMENT OF A CHILD WITH A NONCUSTODIAL PARENT WITH NO FURTHER DEPARTMENTAL OBLIGATION; PROVIDING THAT AGENCIES ALLOWED TO PLACE CHILDREN IN ADOPTION MUST BE LICENSED IN MONTANA; ALLOWING WAIVER OF A POSTPLACEMENT EVALUATION FOR ADOPTION BY AN EXTENDED FAMILY MEMBER; PROVIDING FOR RELEASE OF CERTAIN ADOPTION INFORMATION NECESSARY TO ASSIST AN ADOPTEE TO BECOME ENROLLED IN OR A MEMBER OF AN INDIAN TRIBE; PROVIDING FOR RELEASE OF HEALTH CARE INFORMATION IN CHILD ABUSE AND NEGLECT PROCEEDINGS; PROVIDING DEFINITIONS OF YOUTH RESIDENTIAL SERVICES; PROVIDING FOR LICENSURE OF KINSHIP FOSTER HOMES AND YOUTH SHELTER CARE FACILITIES; ELIMINATING THE REQUIREMENT FOR REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-103, 41-3-113, 41-3-205, 41-3-301, 41-3-422, 41-3-427, 41-3-432, 41-3-434, 41-3-437, 41-3-438, 41-3-442, 41-3-445, 41-3-604, 41-3-607, 41-3-609, 41-3-611, 41-3-1008, 42-1-103, 42-3-212, 42-6-102, 42-6-109, 50-16-535, 50-16-536, 50-16-603, 50-16-605, 52-2-115, 52-2-602, 52-2-603, 76-2-411, AND 76-2-412, MCA; AND REPEALING SECTION 41-3-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ~~ensure that all youth are afforded an adequate physical and emotional environment to promote normal development~~ *provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection*;

~~(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;~~

~~(c)~~*(b)* achieve these purposes in a family environment*and preserve the unity and welfare of the family* whenever possible;

~~(d) preserve the unity and welfare of the family whenever possible;~~

~~(e)~~*(c)* ensure that there is no forced removal of a child from the family based solely on an ~~unsubstantiated~~ allegation of abuse or neglect *unless the department has reasonable cause to suspect that the child is at imminent risk of harm*;

~~(f)~~*(d)* recognize that a child is entitled to assert the child's constitutional rights;

~~(g)~~*(e)* ensure that all children have a right to a healthy and safe childhood in a ~~nurturing~~ permanent ~~family or in the closest possible substitute~~ *placement*;

~~(h) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;~~

~~(i) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority or a petition for immediate protection and emergency protective services and to require that a judge may not issue an order granting a petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted;~~ and

~~(j)~~*(f)* ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) *(a)* "Abandon", "abandoned", and "abandonment" mean:

~~(a)~~*(i)* leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

~~(b)~~*(ii)* willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

~~(c)~~*(iii)* that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

~~(d)~~*(iv)* the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

~~(b) a person providing care in a day-care facility;~~

(b) a person providing care in a day-care facility;

~~(c)~~*(c)* an employee of a public or private residential institution, facility, home, or agency; or

~~(d)~~*(d)* any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual *physical or psychological* harm to a ~~child's health or welfare~~ *child*;

(ii) substantial risk of *physical or psychological* harm to a ~~child's health or welfare~~ *child*; or

(iii) abandonment.

(b) The term includes actual *physical or psychological* harm *to a child* or substantial risk of *physical or psychological* harm *to a child* by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute *physical or psychological* harm to a ~~child's health or welfare~~ *child*.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group ~~conference~~ *decisionmaking meeting*" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

~~(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

~~(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;~~

~~(b) commits or allows to be committed sexual abuse or exploitation of the child;~~

~~(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;~~

~~(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;~~

~~(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or~~

~~(f) abandons the child.~~

~~(12)~~*(11)* "Limited emancipation" means a status conferred on a youth by a court in accordance with ~~41-3-438~~ *41-1-501* under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(13)~~*(12)* "Parent" means a biological or adoptive parent or stepparent.

~~(14)~~*(13)* "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

~~(15)~~*(14)* "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

~~(16)~~*(15)* "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme

pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

~~(17)~~*(16)* "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both*, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child*.

(17) (a) "Physical or psychological harm to a child" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child's welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(18) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

(19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(20) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(23) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social

work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(24) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(25) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 3. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction ~~and venue~~. (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) ~~The~~ *Either the* county where a youth is located *or a county where the youth's parent or guardian resides* has initial jurisdiction over a youth alleged to be a youth in need of care.~~Venue may be transferred to the county of residence of the youth's parent or guardian.~~"

Section 4. Section 41-3-113, MCA, is amended to read:

"41-3-113. Appeals. *(1)* Appeals of court orders or decrees made under this part ~~shall~~ *must* be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from~~; however, the~~ *and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The* supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise."

Section 5. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group ~~conference~~ *decisionmaking meeting* for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's court-appointed attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 6. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having ~~legal~~ *physical* custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents~~ *arrangements acceptable to the agency for the care of the child have been made by the parents.*

(4) ~~A~~ *Except as provided in the federal Indian Child Welfare Act, if applicable, a* show cause hearing must be held within ~~10~~ *20* days~~, excluding weekends and holidays,~~ of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(5) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(4)~~*(6)* The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 7. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

~~(iv)~~*(v)* termination of the parent-child legal relationship, as provided in 41-3-607;

~~(v)~~*(vi)* appointment of a guardian pursuant to 41-3-444;

~~(vi)~~*(vii)* a determination that preservation or reunification services need not be provided; or

~~(vii)~~*(viii)* any combination of the provisions of subsections (1)(a)(i) through ~~(1)(a)(vi)~~ *(1)(a)(vii)* or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

~~(iii)~~*(iv)* clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) *(a)* Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of ~~all petitions~~ *the initial petition and a petition to terminate the parent-child legal relationship* at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group ~~conference~~ *decisionmaking meeting*, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) ~~Orders~~ *If appropriate, orders* issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 8. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services — order — service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as

provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless ~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment*. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 9. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing — order. (1) (a) ~~A~~ *Except as provided in the federal Indian Child Welfare Act, a* show cause hearing must be conducted within ~~10~~ *20* days~~, excluding weekends and holidays,~~ of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of

the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 10. Section 41-3-434, MCA, is amended to read:

"41-3-434. Stipulations. Subject to approval by the court, ~~a parent~~ *the parties* may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care; ~~or~~

(3) the disposition*; or*

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445."

Section 11. Section 41-3-437, MCA, is amended to read:

"41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~*, stipulation by the parties pursuant to 41-3-434,* and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care ~~and ascertains, as far as possible, the cause~~. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the *affected* youth is admissible ~~according to the Montana Rules of Evidence~~ *according to the Montana Rules of Evidence*.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(2), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court ~~shall~~ *may* make ~~written~~ *oral* findings*, and following the adjudicatory hearing, the court shall make written findings* on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing *that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined*;

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 12. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays ~~in the notification of parties~~, *stipulation by the parties pursuant to 41-3-434*, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's *custodial* parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

~~(b)~~*(c)* grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

~~(c)~~*(d)* transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

~~(d)~~*(e)* order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(e)~~*(f)* order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 13. Section 41-3-442, MCA, is amended to read:

"41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody~~, not to exceed a total of 6 months,~~ *, not to exceed 6 months,* upon a showing that*:*

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; *or*

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) termination of the parent-child legal relationship and either:

(i) permanent legal custody with the right of adoption; or

(ii) appointment of a guardian pursuant to 41-3-607;

(c) *long-term custody when the child is in a* planned ~~alternative~~ permanent ~~placement~~ *living arrangement* pursuant to 41-3-445;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) dismissal.

~~(3)~~*(5)* The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

~~(4)~~*(6)* If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

~~(5)~~*(7)* If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

~~(6)~~*(8)* In implementing the policy of this section, the child's health and safety are of paramount concern.

~~(7)~~*(9)* A petition requesting temporary legal custody must be served as provided in 41-3-422."

Section 14. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed *in either an adoptive or a guardianship placement*, the court shall*conduct a hearing and* make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless~~the department is notified and a court hearing is set in a timely manner on the proposed expenditure~~ *the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment*. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) *long-term custody if the child is in* a planned permanent living arrangement ~~for a child if the evidence demonstrates~~ *established* by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 15. Section 41-3-604, MCA, is amended to read:

"41-3-604. When petition to terminate parental rights required. (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for ~~a planned permanent living arrangement~~ *long-term custody* pursuant to 41-3-445, or a petition to dismiss must be filed."

Section 16. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(2)~~*(4)* At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

~~(3)~~*(5)* A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

~~(4)~~*(6)* There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 17. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding *established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act and if applicable,* that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected ~~the~~ *a* child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred."

Section 18. Section 41-3-611, MCA, is amended to read:

"41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any ~~other~~ *permanent* placement proceedings held pursuant to ~~41-3-610~~ *41-3-445*."

Section 19. Section 41-3-1008, MCA, is amended to read:

"41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional ~~review~~ hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section."

Section 20. Section 42-1-103, MCA, is amended to read:

"42-1-103. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a ~~public or nonprofit entity that is licensed by any jurisdiction of the United States and that~~ *child placement agency licensed by the state of Montana pursuant to Title 52, chapter 8, that* is expressly empowered to place children preliminary to a possible adoption.

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual."

Section 21. Section 42-3-212, MCA, is amended to read:

"42-3-212. Court waiver for relatives. In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the court may waive the requirement of a preplacement *and postplacement* evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. ~~A postplacement evaluation must be conducted during the pendency of a proceeding for adoption.~~"

Section 22. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records — nonidentifying information — consensual release. (1) The department or *an* authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; ~~and~~

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122*; and*

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 23. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate — certificate of adoption. (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

(6) The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

Section 24. Section 50-16-535, MCA, is amended to read:

"50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed ~~his~~ *the patient's* physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for ~~his~~ *the patient's* health care or unless authorized under subsection ~~(1)(i)~~ *(1)(j)*;

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

~~(i)~~*(j)* a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

~~(j)~~*(k)* the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) ~~Nothing in this~~ *This* part ~~authorizes~~ *does not authorize* the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding ~~where~~ *in which* disclosure is otherwise prohibited by law."

Section 25. Section 50-16-536, MCA, is amended to read:

"50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535~~(1)(i)~~*(1)(j)*, the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) *of this section* to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535~~(1)(i)~~*(1)(j)*, that the requirements of subsection (1) *of this section* for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests,~~where~~ *when* authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

Section 26. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202~~. If~~ *or if* the health care information is~~required in a subsequent~~ *to be presented as evidence in a* court proceeding involving child abuse~~, the information may be disclosed only in camera and documents~~ *pursuant to Title 41, chapter 3. Documents* containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 27. Section 50-16-605, MCA, is amended to read:

"50-16-605. Judicial, legislative, and administrative proceedings — testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603*(6) and* (7)."

Section 28. Section 52-2-115, MCA, is amended to read:

"52-2-115. Department to accept custody of children ~~committed by courts~~. The department shall accept the ~~guardianship or~~ *physical* custody of children ~~committed by the courts to the department~~ *transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3,* and arrange for their care."

Section 29. Section 52-2-602, MCA, is amended to read:

"52-2-602. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.

(4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:

(a) a member of the child's extended family;

(b) a member of the child's or family's tribe;

(c) the child's godparents;

(d) the child's stepparents; or

(e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(4)~~*(5)* "Person" means any individual, partnership, voluntary association, or corporation.

~~(5)~~*(6)* "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

~~(6)~~*(7)* "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 52-2-627.

~~(7)~~*(8)* "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

~~(8)~~*(9)* "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

~~(9)~~*(10)* "Youth assessment center" has the meaning provided in 41-5-103.

~~(10)~~*(11)* "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, *kinship foster homes,* youth group homes, *youth shelter care facilities,* child-care agencies, transitional living programs, and youth assessment centers.

~~(11)~~*(12)* "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(12)~~*(13)* "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office,

department, or other appropriate social services agency has made other provisions for the children's care."

Section 30. Section 52-2-603, MCA, is amended to read:

"52-2-603. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, *kinship foster homes,* youth group homes, *youth shelter care facilities,* child-care agencies, and transitional living programs for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, *kinship foster homes,* youth group homes, *youth shelter care facilities,* child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to 41-3-444 and in accordance with eligibility criteria established by department rule."

Section 31. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ *that* does not provide skilled or intermediate nursing care;

(2) a youth foster home, *a kinship foster home, a youth shelter care facility, a transitional living program,* or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 32. Section 76-2-412, MCA, is amended to read:

***"76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities,* youth group homes, community residential facilities, and day-care homes to zoning.** (1) A foster *home, kinship foster home, youth shelter care facility,* or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving ~~8~~ *eight* or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services."

Section 33. Repealer. Section 41-3-610, MCA, is repealed.

Section 34. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 35. Directions to code commissioner. Whenever a term in 41-3-102 that has been amended appears in legislation enacted by the 2003

legislature, the code commissioner is directed to change it to an appropriate reference to the amended term.

Ap proved April 25, 2003

CHAPTER NO. 505

[SB 155]

AN ACT REVISING THE TAXATION OF CLASS EIGHT PROPERTY BY PROVIDING THAT THE COMPUTATIONS FOR DETERMINING WHETHER THE CLASS EIGHT RATE IS TO BE REDUCED ARE TO BE MADE AT LEAST 1 YEAR AND 2 MONTHS PRIOR TO THE AFFECTED TAX YEAR TO ALLOW FOR LEGISLATIVE ACTION; CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT TAX RATE IS TO BE REDUCED; AND AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TRANSITION PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income~~, in the last full year for which data is available,~~ is at least 2.85% from the ~~prior~~ *year prior to the base year to the base year* ~~year~~, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

~~(b)~~*(c)* The department shall calculate the percentage growth in subsection (5)(a) *by October 30 of each target year* by using the formula (W/CPI) - 1, where:

(i) W is the Montana wage and salary income for the ~~most current available~~ *calendar base* year divided by the Montana wage and salary income for the ~~year prior to the most current available~~ *calendar year prior to the base* year; and

(ii) CPI is the consumer price index for the ~~most current available~~ *calendar base* year used in subsection ~~(5)(b)(i)~~ *(5)(c)(i)* divided by the consumer price index for the year prior to the most current ~~available~~ *calendar year prior to the base* year ~~as~~ used in subsection ~~(5)(b)(i)~~ *(5)(c)(i)*.

~~(c)~~*(d)* For purposes of determining the percentage growth in subsection (5)(a), the department shall use *the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 (state annual) for the target year* ~~the~~ wage and salary data series~~referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements~~.

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 2. Effective date — transition. (1) [This act] is effective on passage and approval.

(2) The department of revenue shall perform the calculation in 15-16-138(5) for the tax year 2004 not later than [60 days after the effective date of this act].

Ap proved April 25, 2003

CHAPTER NO. 506

[SB 231]

AN ACT REPLACING THE REVISED UNIFORM PRINCIPAL AND INCOME ACT WITH THE MONTANA UNIFORM PRINCIPAL AND INCOME ACT; AND REPEALING SECTIONS 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, AND 72-34-416, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 33] may be cited as the "Montana Uniform Principal and Income Act".

Section 2. Definitions. As used in [sections 1 through 33], unless the context requires otherwise, the following definitions apply:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Fiduciary" means a personal representative or a trustee.

(3) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in [sections 13 through 27].

(4) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(5) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the trust requires it to be distributed or authorizes it to be distributed in the trustee's discretion.

(6) "Mandatory income interest" means the right of an income beneficiary to receive net income that the trust requires the fiduciary to distribute.

(7) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the accounting period, plus or minus transfers under this chapter to or from income during the accounting period.

Section 3. Allocation between principal and income — impartial exercise of discretion. (1) In allocating receipts and disbursements to or between principal and income, and with respect to any other matter within the scope of [sections 1 through 33], a fiduciary:

(a) shall administer a trust or decedent's estate in accordance with the trust or the will, even if there is a different provision in [sections 1 through 33];

(b) may administer a trust or decedent's estate by the exercise of a discretionary power of administration given to the fiduciary by the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by [sections 1 through 33] and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to a provision of [sections 1 through 33];

(c) shall administer a trust or decedent's estate in accordance with [sections 1 through 33] if the trust or the will does not contain a different provision or does not give the fiduciary a discretionary power of administration; and

(d) shall add a receipt or charge a disbursement to principal to the extent that the trust or the will and [sections 1 through 33] do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising a discretionary power of administration regarding a matter within the scope of [sections 1 through 33], whether granted by a trust, a will, or [sections 1 through 33], including the trustee's power to adjust under [section 4(1)], the fiduciary shall administer the trust or decedent's estate impartially, except to the extent that the trust or the will expresses an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with [sections 1 through 33] is presumed to be fair and reasonable to all beneficiaries.

Section 4. Adjustments between principal and income. (1) Subject to subsection (2), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(a) the trustee invests and manages trust assets under the prudent investor rule [section 3 of LC 1497];

(b) the trust describes the amount that must or may be distributed to a beneficiary by referring to the trust's income; and

(c) the trustee determines, after applying the rules in [section 3(1)] and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with [section 3(2)].

(2) A trustee may not make an adjustment between principal and income in any of the following circumstances:

(a) when it would diminish the income interest in a trust:

(i) that requires all of the income to be paid at least annually to a spouse; and

(ii) for which, if the trustee did not have the power to make the adjustment, an estate tax or gift tax marital deduction would be allowed, in whole or in part;

(b) when it would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) when it would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) when it would be made from any amount that is permanently set aside for charitable purposes under a will or trust, unless both income and principal are set aside;

(e) when possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) when possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or

(g) when the trustee is a beneficiary of the trust.

(3) Notwithstanding 72-33-611, if subsection (2)(e), (2)(f), or (2)(g) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the trust.

(4) A trustee may release the entire power conferred by subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income in either of the following circumstances:

(a) if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsections (2)(a) through (2)(f); or

(b) if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (2).

(5) A release under subsection (4) may be permanent or for a specified period, including a period measured by the life of an individual.

(6) A trust that limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the trust that it is intended to deny the trustee the power of adjustment provided by subsection (1).

(7) In deciding whether and to what extent to exercise the power to make adjustments under this section, the trustee may consider, but is not limited to considering, any of the following:

(a) the nature, purpose, and expected duration of the trust;

(b) the intent of the trustor;

(c) the identity and circumstances of the beneficiaries;

(d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;

(e) the assets held in the trust, the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the trustor;

(f) the net amount allocated to income under other statutes and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(g) whether and to what extent the trust gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; or

(i) the anticipated tax consequences of an adjustment.

(8) Nothing in [sections 1 through 33] or this section is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

Section 5. Notice of proposed action — objections by beneficiary — liability of trustee — proceedings. (1) A trustee may give a notice of proposed action regarding a matter governed by [sections 1 through 33] as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(3) A notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The notice of proposed action must state that it is given pursuant to this section and must state all of the following:

(a) the name and mailing address of the trustee;

(b) the name and telephone number of a person who may be contacted for additional information;

(c) a description of the action proposed to be taken and an explanation of the reasons for the action;

(d) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action; and

(e) the date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by [sections 1 through 33] if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(7) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

Section 6. Proceedings relating to adjustments — remedy. In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under [section 4], the sole remedy is to direct, deny, or revise an adjustment between principal and income.

Section 7. Application of [sections 1 through 33]. [Sections 1 through 33] apply to every trust or decedent's estate existing on or after [the effective date of this act], except as otherwise expressly provided in the trust or will or in [sections 1 through 33].

Section 8. Rules applicable after decedent's death or termination of income interest. After the decedent's death, in the case of a decedent's estate, or after an income interest in a trust ends, the following rules apply:

(1) If property is specifically given to a beneficiary, by will or trust, the fiduciary of the estate or of the terminating income interest shall distribute the net income and principal receipts to the beneficiary who is to receive the property, subject to the following rules:

(a) the net income and principal receipts from the specifically given property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether the amounts accrued or became due before, on, or after the decedent's death or an income interest in a trust ends and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed; and

(b) the fiduciary may not reduce income and principal receipts from the specifically given property on account of a payment described in [section 27] to the extent that the will or the trust requires payment from other property or to the extent that the fiduciary recovers the payment from a third person.

(2) The fiduciary shall distribute to a beneficiary who receives a pecuniary amount, whether outright or in trust, the interest or any other amount provided by the will, the trust, or 72-3-913 from the remaining net income determined under subsection (3) of this section or from principal to the extent that net income is insufficient.

(3) The fiduciary shall determine the remaining net income of the decedent's estate or terminating income interest as provided in [sections 1 through 33] and by doing the following:

(a) including in net income all income from property used to discharge liabilities;

(b) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on death taxes, except that the fiduciary may pay these expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of these expenses from income will not cause the reduction or loss of the deduction;

(c) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the trust, or Title 72, chapter 16, part 6.

(4) After distributions required by subsection (2), the fiduciary shall distribute the remaining net income determined under subsection (3) in the manner provided in [section 9] to all other beneficiaries.

Section 9. Beneficiary's portion of net income — maintenance of records — distribution date. (1) Each beneficiary described in [section 8(4)] is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution dates and without reducing the values by any unpaid principal obligations.

(2) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(3) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

Section 10. Beneficiary's entitlement to net income — assets subject to trust — assets subject to successive income interest — termination of income interest. (1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust at the following times:

(a) in the case of an asset that is transferred to a trust during the transferor's life, on the date it is transferred to the trust;

(b) in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate, on the date of the testator's death; or

(c) in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death, on the date of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Section 11. Allocation of income receipt or disbursement. (1) A trustee shall allocate an income receipt or disbursement other than one to which [section 8(1)] applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal, and the balance must be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of [sections 1 through 33]. Distributions to shareholders or other owners from an entity to which [section 13] applies are considered to be due on

the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Section 12. Undistributed income — definition — payment to beneficiary. (1) (a) For the purposes of this section, "undistributed income" means net income received before the date on which an income interest ends.

(b) The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal by the trust.

(2) Except as provided in subsection (3), on the date when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date or to the estate of a deceased mandatory income beneficiary whose death causes the interest to end the beneficiary's share of the undistributed income that is not disposed of under the trust.

(3) If immediately before the income interest ends, the beneficiary under subsection (2) has an unqualified power to revoke more than 5% of the trust, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(4) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment.

Section 13. Allocation of receipts to income or principal — entity defined. (1) For the purposes of this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or decedent's estate to which [section 14] applies, a business or activity to which [section 15] applies, or an asset-backed security to which [section 27] applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate to principal the following receipts from an entity:

(a) property other than money;

(b) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(c) money received in total or partial liquidation of the entity; and

(d) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) For purposes of subsection (3)(c):

(a) money is received in partial liquidation:

(i) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(ii) if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's yearend financial statements immediately preceding the initial receipt;

(b) money is not received in partial liquidation, nor may it be taken into account under subsection (4)(a)(ii), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

(5) A trustee may rely on a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Section 14. Allocation of amounts received from specified trusts or estates. A trustee shall allocate to income an amount received as a distribution of income from a trust or a decedent's estate, other than an interest in an investment entity, in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from the trust or estate.

Section 15. Separate accounting records for business or other activity. (1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or other activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and its other reasonably foreseeable needs, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or other activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business or other activity.

(3) Businesses and other activities for which a trustee may maintain separate accounting records include the following:

(a) retail, manufacturing, service, and other traditional business activities;

(b) farming;

(c) raising and selling livestock and other animals;

(d) managing rental properties;

(e) extracting minerals and other natural resources;

(f) timber operations; and

(g) activities to which [section 26] applies.

Section 16. Amounts allocated to principal. A trustee shall allocate to principal:

(1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) subject to any contrary rules in [sections 13 through 15], [sections 16 through 19], and [sections 20 through 27], money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in [section 29(1)(g)] or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts allocated to principal as provided in [sections 20 through 27].

Section 17. Amounts received from rental property allocation. Unless the trustee accounts for receipts from rental property pursuant to [section 15], the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Section 18. Interest on obligation to pay money — allocation. (1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(2) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or its value when it is otherwise acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when it is otherwise acquired must be allocated to income.

(3) This section does not apply to an obligation to which [section 21, 22, 23, 24, 26, or 27] applies.

Section 19. Life insurance policy proceeds — proceeds of contracts insuring against certain losses — allocation. (1) Except as otherwise provided in subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to [section 15], loss of profits from a business.

(3) This section does not apply to a contract to which [section 21] applies.

Section 20. Insubstantial allocation — allocation of entire amount to principal — exceptions. (1) If a trustee determines that an allocation between principal and income required by [section 21, 22, 23, 24, or 27] is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in [section 4(2)] applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in [section 4(3)] and may be released for the reasons and in the manner provided in [section 4(4) and (5)].

(2) An allocation is presumed to be insubstantial in either of the following cases:

(a) when the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

(b) when the value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

(3) Nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failure to make an allocation under this section.

Section 21. Payments characterized as interest or dividend — allocation to income — allocation of other payments — excess allocation to income in order to obtain estate tax marital deduction.(1) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(4) If, to obtain an estate tax marital deduction for a trust, a trustee allocates more of a payment to income than provided by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(5) This section does not apply to payments to which [section 22] applies.

Section 22. Receipts from liquidating assets — allocation. (1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to [section 21], natural resources subject to [section 23], timber subject to [section 24], a derivative or option subject to [section 26], an asset subject to [section 27], or any asset for which the trustee establishes a reserve for depreciation under [section 30].

(2) A trustee shall allocate to income 10% from a liquidating asset and the balance to principal.

Section 23. Receipts from mineral interests and other natural resources — allocation. (1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) if received as a nominal bonus, nominal delay rental, or nominal annual rent on a lease, a receipt must be allocated to income;

(b) if received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(c) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 15% must be allocated to principal and the balance to income; and

(d) if an amount is received from a working interest or any other interest in mineral or other natural resources not described in subsection (1)(a), (1)(b), or (1)(c), 15% of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 15% of the amount must be allocated to principal and the balance to income.

(3) [Sections 1 through 33] apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

Section 24. Receipts from sale of timber and related products — allocation. (1) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts as follows:

(a) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subsections (1)(a) and (1)(b);

(d) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subsection (1)(a), (1)(b), or (1)(c).

(2) In determining net receipts to be allocated under subsection (1), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) [Sections 1 through 33] apply whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

Section 25. Increasing income in order to maintain marital deduction. (1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets and if the amounts that the trustee transfers from principal to income under [section 4] and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income or convert it into productive property or exercise the power under [section 4(1)] within a reasonable time. The trustee may decide which action or combination of actions to take.

(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of a trust asset are principal without regard to the amount of income the asset produces during any accounting period.

Section 26. Transactions in derivatives — allocations of receipts and disbursements — options to buy or sell property — allocation of amounts received or paid. (1) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under [section 15] for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a trustor of the trust for services rendered, must be allocated to principal.

Section 27. Payments from collateral financial assets and payments in exchange for interest in asset-backed security — allocation. (1) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which [section 13 or 21] applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

Section 28. Disbursements from income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which [section 8(3)(b) or 8(3)(c)] applies:

(1) except as otherwise ordered by the court, one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) except as otherwise ordered by the court, one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) all recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Section 29. Disbursements from principal. (1) A trustee shall make the following disbursements from principal:

(a) except as otherwise ordered by the court, the remaining one-half of the disbursements described in [section 28(1) and (2)];

(b) except as otherwise ordered by the court, all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination and disbursements made to prepare property for sale;

(c) payments on the principal of a trust debt;

(d) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(e) premiums paid on a policy of insurance not described in [section 28(4)] of which the trust is the owner and beneficiary;

(f) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(g) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with

those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Section 30. Assets subject to depreciation — transfer from income to principal of portion of net cash receipts. (1) For purposes of this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

(2) A trustee may transfer from income to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, under generally accepted accounting principles, but may not transfer any amount for depreciation under this section in any of the following circumstances:

(a) as to the portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(b) during the administration of a decedent's estate; or

(c) if the trustee is accounting under [section 15] for the business or activity in which the asset is used.

(3) An amount transferred from income to principal need not be held as a separate fund.

Section 31. Transfer from income to principal in anticipation of principal disbursement. (1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which subsection (1) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(b) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(c) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(d) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(e) disbursements described in [section 29(1)(g)].

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (1).

Section 32. Payment of taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately as follows:

(a) from income to the extent that receipts from the entity are allocated to income;

(b) from principal to the extent that both of the following apply:

(i) receipts from the entity are allocated to principal; and

(ii) the trust's share of the entity's taxable income exceeds the total receipts described in subsection (3)(a) and subsection (3)(b)(i).

(4) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

Section 33. Adjustments between principal and income in certain cases. (1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(a) elections and decisions, other than those described in subsection (2), that the fiduciary makes from time to time regarding tax matters;

(b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(c) the ownership by a decedent's estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and as a result estate taxes paid from principal are increased and income taxes paid by a decedent's estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Section 34. Repealer. Sections 72-34-401, 72-34-402, 72-34-403, 72-34-404, 72-34-405, 72-34-406, 72-34-407, 72-34-408, 72-34-409, 72-34-410, 72-34-411, 72-34-412, and 72-34-416, MCA, are repealed.

Section 35. Codification instruction. [Sections 1 through 33] are intended to be codified as an integral part of Title 72, chapter 34, and the provisions of Title 72, chapter 34, apply to [sections 1 through 33].

Section 36. Coordination instruction. If Senate Bill No. 230 is not passed and approved, then [section 4(1)(a) of this act] is void.

Ap proved April 25, 2003

CHAPTER NO. 507

[SB 244]

AN ACT PROVIDING THAT A CONTRACT HOLDER OR EMPLOYEE OF A WATER USERS' ASSOCIATION THAT PAYS OPERATION OR MAINTENANCE COSTS ON A STATE-OWNED RESERVOIR MAY NOT BE REQUIRED TO PURCHASE A DAY-USE PERMIT TO ACCESS THAT RESERVOIR; REQUIRING THE ASSOCIATION TO ISSUE ANNUAL IDENTIFICATION CARDS TO ELIGIBLE CONTRACT HOLDERS AND EMPLOYEES OF WATER USERS' ASSOCIATIONS; AMENDING SECTION 23-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Identification of association contract holders and employees for free reservoir access. A water users' association that chooses to participate as provided in 23-1-105(6) is responsible for issuing annual identification cards to its contract holders and employees in order to facilitate the identification by department of fish, wildlife, and parks enforcement personnel of persons who are eligible for free reservoir day use pursuant to 23-1-105(6). The identification card must be issued to the contract holder or employee of the water users' association and may not be transferred or assigned to another entity.

Section 2. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in ~~subsection~~ *subsections* (2) *and (6)*. All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(1)(b)(i), for the purpose of managing state park visitor services revenue. The fund is to be

used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) A contract holder or employee of a water users' association regulated pursuant to Title 85, chapter 6, that is paying operation or maintenance costs on a state-owned reservoir may not be required to purchase any day-use permit to access the reservoir for which operation or maintenance costs are paid by the association if the contract holder or employee of the water users' association holds an identification card as provided in [section 1]. A water users' association contract holder or employee who wishes to access the reservoir for purposes other than day use is required to pay any applicable fees. The water users' association is responsible for issuing annual identification cards pursuant to [section 1]."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 6, part 1, and the provisions of Title 85, chapter 6, part 1, apply to [section 1].

Section 4. Coordination instruction. If Senate Bill No. 336 and [this act] are both passed and approved, then [this act] is void.

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved April 25, 2003

CHAPTER NO. 508

[SB 246]

AN ACT REVISING THE LAWS RELATED TO THE ANNEXATION OF PROPERTY INCLUDED IN A FIRE SERVICE AREA; REQUIRING A BOARD OF COUNTY COMMISSIONERS TO ALTER THE BOUNDARIES OF A FIRE SERVICE AREA TO EXCLUDE AN AREA THAT IS ANNEXED; REQUIRING THAT AN ANNEXING MUNICIPALITY BE NOTIFIED IN ORDER TO PREVENT THE PROPERTY OWNERS OF THE AREA TO BE ANNEXED FROM ASSUMING FINANCIAL RESPONSIBILITY TO BOTH THE MUNICIPALITY AND THE FIRE SERVICE AREA; AND AMENDING SECTIONS 7-33-2401 AND 7-33-2404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2401, MCA, is amended to read:

"7-33-2401. Fire service area — establishment — alteration — dissolution. (1) Upon receipt of a petition signed by at least 30 owners of real property in the proposed service area, or by a majority of the owners of real property if there are no more than 30 owners of real property in the proposed service area, the board of county commissioners may establish a fire service area within an unincorporated area not part of a rural fire district in the county to provide the services and equipment set forth in 7-33-2402.

(2) To establish a fire service area, the board shall:

(a) pass a resolution of intent to form the area, with public notice as provided in 7-1-2121 and written notice as provided in 7-1-2122;

(b) hold a public hearing no earlier than 30 or later than 90 days after passage of the resolution of intent;

(c) at the public hearing:

(i) accept written protests from property owners of the area of the proposed area; and

(ii) receive general protests and comments relating to the establishment of the fire service area and its boundaries, rates, kinds, types, or levels of service, or any other matter relating to the proposed fire service area; and

(d) pass a resolution creating the fire service area. The area is created effective 60 days after passage of the resolution unless by that date more than 50% of the property owners of the proposed fire service area protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the fire service area may establish different boundaries, establish a different fee schedule than proposed, change the kinds, types, or levels of service, or change the manner in which the area will provide services to its residents.

(4) The board of county commissioners may alter the boundaries or the kinds, types, or levels of service or dissolve a fire service area, using the ~~same~~ procedures ~~required for the creation of a fire service area~~ *provided in subsection (2). The board of county commissioners shall alter the boundaries of a fire service area to exclude any area that is annexed by a city or town, using the procedures provided in subsection (2).* Any existing indebtedness of a fire service area that is dissolved remains the responsibility of the owners of property within the area, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the area."

Section 2. Section 7-33-2404, MCA, is amended to read:

"7-33-2404. Financing of fire service area — fee on structures. (1) In the resolution creating the fire service area and by resolution as necessary after creation of the fire service area, the board of county commissioners shall establish a schedule of rates to be charged *to* owners of structures that are benefited by the services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and shall collect the assessments with the general taxes of the county. The assessments are a lien on the assessed property.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure equipment and buildings to house the equipment. The outstanding amount of the indebtedness may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the area, as ascertained by the last assessment for state and county taxes prior to the incurring of the indebtedness.

(5) If a fire service area is reduced or eliminated by annexation of all or a portion of the fire service area into a municipality, then the county commissioners or trustees of the fire service area shall notify the annexing municipality in order to prevent the property owners of the area to be annexed from assuming financial responsibility to both the municipality and the fire service area."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Ap proved April 25, 2003

CHAPTER NO. 509

[SB 247]

AN ACT ESTABLISHING A DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES THAT ESTABLISH CRITERIA THAT GUIDE THE DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; PROVIDING OBJECTIVES FOR THE DEFAULT SUPPLIER FOR DEFAULT SUPPLY PLANNING, PORTFOLIO MANAGEMENT, AND RESOURCE PROCUREMENT; REQUIRING THE DEFAULT SUPPLIER TO DEVELOP A PROCUREMENT PLAN; ESTABLISHING REQUIREMENTS FOR COMMENT BY THE PUBLIC AND THE COMMISSION ON A DEFAULT SUPPLIER PROCUREMENT PLAN; PROVIDING A PROCESS FOR DEFAULT SUPPLY PROCUREMENT FILINGS AND COMMISSION APPROVAL; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM FOR PRUDENTLY INCURRED ELECTRICITY SUPPLY COSTS; REQUIRING THE COMMISSION TO REQUIRE THE DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING THE DEFAULT SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; AMENDING SECTIONS 69-1-114 AND 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Default supply resource planning and procurement — duties of default supplier — objectives — commission rules. (1) The default supplier shall:

(a) plan for future default supply resource needs;

(b) manage a portfolio of default supply resources; and

(c) procure new default supply resources when needed.

(2) The default supplier shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

(a) provide adequate and reliable default supply services at the lowest long-term total cost;

(b) conduct an efficient default supply resource planning and procurement process that evaluates the full range of cost-effective electricity supply and demand-side management options;

(c) identify and cost-effectively manage and mitigate risks related to its obligation to provide default electricity supply service;

(d) use open, fair, and competitive procurement processes whenever possible; and

(e) provide default supply services at just and reasonable rates.

(3) By December 31, 2003, the commission shall adopt rules that guide the default supply resource planning and procurement processes used by the default supplier and facilitate the achievement of the objectives in subsection (2) by the default supplier. The rules must establish:

(a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:

(i) planning for future default supply resource needs;

(ii) managing the portfolio of default supply resources; and

(iii) procuring new default supply resources;

(b) standards for the evaluation by the commission of the reasonableness of a power supply purchase agreement proposed by the default supplier; and

(c) minimum filing requirements for an application by the default supplier for advanced approval of a proposed power supply purchase agreement.

Section 2. Default supply resource procurement plans — comment on plans. (1) The default supplier shall develop default supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission pursuant to [section 1].

(2) A default supply resource procurement plan must demonstrate the default supplier's achievement of the objectives provided in [section 1] and compliance with the rules adopted pursuant to [section 1].

(3) The commission shall:

(a) review the default supply resource procurement plan;

(b) provide an opportunity to the public to comment on the plan; and

(c) issue written comments that identify:

(i) any concerns of the commission regarding the default supplier's compliance with the rules adopted pursuant to [section 1]; and

(ii) ways to remedy any concerns.

Section 3. Default supply filings — commission processing and approval. (1) A default supplier may apply to the commission for advanced approval of a power supply purchase agreement that is:

(a) not executed; or

(b) executed with a provision that allows termination of the agreement if the commission does not find the agreement reasonable.

(2) (a) The commission shall issue an order on the default supplier's application for advanced approval of a power supply purchase agreement in a timely manner as provided in this subsection (2).

(b) In establishing an administrative procedure for reviewing an application for advanced approval, the commission shall consider any financing and market constraints and the due process rights of affected persons.

(c) Within 45 days of the default supplier's submission of an application for advanced approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain how the filing fails to comply with the objectives in [section 1] and the rules adopted pursuant to [section 1].

(d) The commission shall issue an order within 180 days of receipt of an adequate application unless it determines that extraordinary circumstances require additional time.

(e) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the default supplier's submission of an application for approval.

(3) (a) The commission may approve or deny, in whole or in part, an application for advanced approval of a power supply purchase agreement.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for advanced approval of a power supply purchase agreement.

(c) A commission order granting advanced approval of a power supply purchase agreement must include the following findings:

(i) advanced approval of all or part of the agreement is in the public interest;

(ii) the agreement resulted from a reasonable effort by the default supplier to comply with the objectives in [section 1] and the rules adopted pursuant to [section 1]; and

(iii) the price, quantity, duration, and other contract terms directly related to the price, quantity, and duration of the power supply purchase agreement are reasonable.

(d) The commission order may include other findings that the commission determines are necessary.

(e) A commission order that denies advanced approval must describe why the findings required in subsection (3)(c) could not be reached.

(4) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (3)(c), the commission may not subsequently disallow the recovery of costs incurred under the agreement based on contrary findings.

(5) If a default supplier does not apply for advanced approval of a power supply purchase agreement, the commission shall consider the prudence of the default supplier's resource procurement actions in the context of a default supplier's cost recovery filing pursuant to 69-8-210 or in a separate proceeding. The commission's decisions in these proceedings must be based on facts that were known or should reasonably have been known by the default supplier at the time of its procurement decisions.

(6) Nothing limits the commission's ability to subsequently, in any future cost recovery proceeding, inquire into the manner in which the default supplier has managed a power supply purchase agreement as part of its overall portfolio.

The commission may subsequently disallow default supply costs that result from the failure of a default supplier to reasonably administer power supply purchase agreements in the context of its overall default supply portfolio management and service obligations.

(7) The commission may engage independent consultants or advisory services to evaluate a utility's default supply resource procurement plans and proposed power supply purchase agreements. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, and risk management practices. The commission shall charge a fee to the default supplier to pay for the costs of consultants or advisory services. These costs are recoverable in default supply rates.

Section 4. Section 69-1-114, MCA, is amended to read:

"69-1-114. Fees. *(1)* Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute.

(2) ~~No~~ *Except for a fee assessed pursuant to [section 3(7)], no* fee set by the commission may exceed $500.

(3) All fees collected by the department under [section 3(7)] must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in [section 3(7)]."

Section 5. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities — electricity supply. ~~(1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.~~

~~(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3) If the transition period is extended, then the customers' distribution services provider shall:~~

~~(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or~~

~~(b) purchase electricity from the market; and~~

~~(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.~~ *(1) A public utility's distribution services provider shall provide default supply service.*

(2) The commission shall establish an electricity cost recovery mechanism that allows a default supplier to fully recover prudently incurred electricity supply costs, subject to the provisions of [sections 1 and 2]. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(3) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201.

(4) Notwithstanding any service options that the commission may require pursuant to subsection (3), a default supplier shall offer its customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.

~~(4)~~*(5)* If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [sections 1 through 3].

Section 7. Coordination instruction. If [this act] and House Bill No. 509 are both passed and approved, then [section 14 of House Bill No. 509], amending 69-8-210, is void.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [Sections 1 through 3] apply only to power supply purchase agreements for which the procurement process begins on or after [the effective date of this act].

Ap proved April 24, 2003

CHAPTER NO. 510

[SB 275]

AN ACT GENERALLY REVISING LAWS FOR THE COLLECTION OF JUDGMENTS AND FINES; REQUIRING THAT COLLECTION FEES BE ADDED TO THE AMOUNT OF THE JUDGMENT OR FINE BEING COLLECTED; INCREASING THE LENGTH OF A JUDGMENT LIEN FILED IN ANOTHER COUNTY AND A JUDGMENT LIEN RENDERED IN FEDERAL COURT FROM 6 YEARS TO 10 YEARS; REQUIRING EARNINGS WITHHELD FROM A JUDGMENT DEBTOR TO BE REMITTED TO THE SHERIFF OR LEVYING OFFICER WITHIN 5 DAYS OF THE DAY THE EARNINGS ARE WITHHELD; PROVIDING THAT FEES ASSESSED IN A MUNICIPAL COURT MAY NOT EXCEED THOSE FEES ASSESSED BY A JUSTICE'S COURT; EXPANDING THE LIABILITY FOR ISSUING A BAD CHECK TO INCLUDE A CONVERTED CHECK AND AN ELECTRONIC FUND TRANSFER; PROVIDING THAT MONEY PAID UNDER TITLE 53 TO PROVIDERS OF GOODS AND SERVICES IS NOT EXEMPT FROM LEVY OR OTHER LEGAL PROCEEDINGS; AND AMENDING SECTIONS 3-10-601, 25-9-302, 25-9-303, 25-13-402, 25-30-102, 27-1-717, 46-17-303, 46-19-102, AND 53-2-607, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-601, MCA, is amended to read:

"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Each justice's court shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in

which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) Except as provided in subsection (4), all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) Except as provided in 46-18-236(7), the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the department of revenue for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment. *The fee incurred by the justice's court must be added to the judgment amount.*"

Section 2. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another county — lien — expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in that county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in subsection (2), the lien continues for ~~6~~ *10* years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 3. Section 25-9-303, MCA, is amended to read:

"25-9-303. Filing of transcript of docket of federal court — lien — expiration. (1) A transcript of the original docket of a judgment that is rendered in the circuit or district court of the United States, ninth circuit, district of Montana, and that is certified by the clerk of court may be filed with the district court clerk of any county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in subsection (2), the lien continues for ~~6~~ *10* years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 4. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsection (6), execute the writ against the property of the judgment debtor ~~no~~ *not* later than 120 days after receipt of the writ by:

(i) levying on a sufficient amount of property, if there is sufficient property;

(ii) collecting or selling the things in action; and

(iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally serving the writ upon an officer or supervising employee of the entity or other department or person designated by the third party or by mail, as provided in subsection (1)(b)(ii).

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer, supervising employee of the third party, or other department or person designated by the third party. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ shall forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ ~~will~~ *must* be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but ~~no~~ *not* later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

(6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service through the expiration of the writ. *Earnings withheld from a judgment debtor must be remitted to the sheriff or levying officer within 5 days of the day the earnings are withheld.*

(b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ and notice.

(c) Except as provided in subsection (7), multiple levies served under this subsection (6) have priority according to the date and time of service upon the employer.

(d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same manner provided for in 25-13-404.

(7) ~~Nothing in this~~ *This* section is *not* intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 5. Section 25-30-102, MCA, is amended to read:

"25-30-102. Fees and fines — collection. (1) *(a)* The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(b) Fees assessed in municipal court may not exceed the fees authorized to be paid to a justice's court in 25-31-112.

(2) (a) The municipal court may contract with a private person or entity for the collection of any final judgment that requires a payment to the municipal court. *The fee incurred by the municipal court must be added to the judgment.*

(b) In the event that a private person or entity is retained to collect a judgment, the municipal court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment."

Section 6. Section 27-1-717, MCA, is amended to read:

"27-1-717. Issuing a bad check, *draft, converted check, electronic funds transfer, or order* or stopping payment — civil liability. (1) A person who issues a check, draft, *converted check, electronic funds transfer,* or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, *converted check, electronic funds transfer,* or order is issued, or the payee's assignee, if the check, draft, *converted check, electronic funds transfer,* or order is:

(a) dishonored for lack of funds or credit or because the issuer ~~has no~~ *does not have an* account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, *converted check, electronic funds transfer,* or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than $30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, *converted check,* or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, *converted check, electronic funds transfer,* or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of $100 or three times the amount for which the check, draft, *converted check, electronic funds transfer,* or order was issued. However, damages may not exceed the value of the check, draft, *converted check, electronic funds transfer,* or order by more than $500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

(7) This section applies to all checks, drafts, *converted checks, electronic funds transfers,* and orders, including those electronically presented for payment.

(8) Making partial payments of amounts owed under this section or entering into an agreement for paying in whole or in part amounts owed under this section does not waive any right that the payee or the payee's assignee may have under this section. Once a demand required under this section is made, the demand is not required to be repeated upon partial payment of amounts owed under this section."

Section 7. Section 46-17-303, MCA, is amended to read:

"46-17-303. Deposit of fines — collection. (1) Except as provided in subsection (2), all fines imposed and collected by ~~a city~~ *the* court must be paid to the *appropriate* treasurer of the county, city, or town~~, as the case may be,~~ within 30 days of receipt. The ~~city~~ judge shall file a copy of any receipt given for a

collected fine with the *appropriate* county, city, or town clerk~~, as the case may be~~.

(2) (a) The ~~city~~ court may contract with a private person or entity for the collection of any final judgment that requires a payment to the ~~city~~ court.

(b) In the event that a private person or entity is retained to collect a judgment, the ~~city~~ court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The ~~city~~ court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment. *The fee incurred by the court must be added to the judgment amount.*

(3) If the judgment is for a fine alone, execution may issue on the judgment for any unpaid interest accrued on the judgment, costs, and fees in collecting the fine as on a judgment in a civil case."

Section 8. Section 46-19-102, MCA, is amended to read:

"46-19-102. Execution of ~~fine~~ *judgment.* (1) If the judgment is for a fine alone, execution may issue on the judgment*, any unpaid interest accrued on the judgment, and costs and fees incurred in collecting the judgment* as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained and allowed a credit for each day of incarceration as provided in 46-18-403.

(3) (a) The court may contract with a private person or entity for the collection of any judgment.

(b) In the event that a private person or entity is retained to collect a judgment, the court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedures and postjudgment remedies in the private person's or entity's own name.

(c) The court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the court must be added to the judgment amount."

Section 9. Section 53-2-607, MCA, is amended to read:

"53-2-607. Assistance not assignable or subject to legal process — *exceptions.* *(1)* Except as otherwise provided in this title, assistance granted *to a needy person* under this title is not transferable or assignable at law or in equity and none of the money paid or payable under this title is subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(2) Money paid or payable under this title to a person or entity who is not a needy person but who receives the money for providing goods or services to a needy person is subject to execution, levy, attachment, garnishment, or other legal process."

Ap proved April 25, 2003

CHAPTER NO. 511

[SB 294]

AN ACT REVISING THE INTEREST RATE APPLIED TO THE REFUND OF PROPERTY TAXES OR FEES PAID UNDER PROTEST; PROVIDING THAT THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY MUST BE REMITTED TO THE STATE TREASURER; PROVIDING THAT A GOVERNING BODY OF A TAXING JURISDICTION MAY ACCESS PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; REQUIRING THE STATE TREASURER TO REFUND THE STATE SHARE OF PROTESTED PROPERTY TAXES OF CENTRALLY ASSESSED PROPERTY; AMENDING SECTION 15-1-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest. (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) ~~All~~ *(a) Except as provided in subsection (4)(b), all* property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special

protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the state treasurer.

(ii) The state treasurer shall deposit that portion of the funds levied pursuant to 15-10-107 in the state special revenue fund. The remainder of the funds must be deposited in the state general fund.

(5) *(a)* ~~The~~ *Except as provided in subsection (5)(b), the* governing ~~board~~ *body* of a taxing jurisdiction affected by the payment of taxes under protest ~~in the second and subsequent years that a tax protest remains unresolved~~ *in the second and subsequent years that a tax protest remains unresolved* may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled~~, except the amount paid by the taxpayer in the first year of the protest~~, *except the amount paid by the taxpayer in the first year of the protest*. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled~~, except the first-year protest amount~~, *except the first-year protest amount*.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

~~(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:~~

~~(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or~~

~~(ii) 6% a year.~~

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) *(i)* If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. *The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).*

(ii) For an adverse protest action against the state for centrally assessed property, the state treasurer shall refund the amount of protested taxes and interest as required in subsection (6)(b).

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, *including the state,* is allowed not more than ~~1 year~~ *1 year* from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the ~~greater of the rates~~ *rate* referred to in ~~subsections (6)(b)(i) and (6)(b)(ii)~~ *subsection (6)(b)* from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus ~~four~~ *4* percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, *except the state,* may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after October 31, 2000, except for refunds of property taxes made after October 31, 2000, and before [the effective date of this act].

Ap proved April 25, 2003

CHAPTER NO. 512

[SB 344]

AN ACT REDUCING THE MINIMUM NONFORFEITURE AMOUNT TO 1.5 PERCENT A YEAR INTEREST FROM 3 PERCENT A YEAR INTEREST WITH RESPECT TO CERTAIN ANNUITY CONTRACTS PROVIDING FOR FLEXIBLE CONSIDERATIONS; AMENDING SECTION 33-20-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-505, MCA, is amended to read:

"33-20-505. Minimum nonforfeiture amounts. (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract ~~shall~~ *must* be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments ~~shall~~ *must* be equal to an accumulation up to ~~such~~ *that* time at a rate of interest of ~~3%~~ *1.5%* a year of percentages of the net considerations ~~(as hereinafter defined)~~ paid prior to ~~such~~ *that* time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of ~~3%~~ *1.5%* a year and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by existing additional amounts credited by the company to the contract.

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount ~~shall~~ *must* be an amount not less than zero and ~~shall~~ *must* be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 ~~per~~ *for each* consideration credited to the contract during that contract year. The percentages of net consideration ~~shall~~ *must* be 65% of the net consideration for the first contract year and 87 1/2% of the net consideration for the second and later contract years. ~~Notwithstanding~~ *Regardless of* the provisions of the preceding sentence, the percentage ~~shall~~ *must* be 65% of the portion of the total net consideration for any renewal contract year ~~which~~ *that* exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.

(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts ~~shall~~ *must* be calculated on the assumption that consideration is paid annually in advance and ~~shall~~ *must* be defined *in the*

same manner as for contracts with flexible payments of consideration ~~which~~ *that* are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated ~~shall~~ *must* be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(b) The annual contract charge ~~shall~~ *must* be the lesser of $30 or 10% of the gross annual consideration.

(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts ~~shall~~ *must* be defined *in the same manner* as for contracts with flexible payments of consideration, except that the percentage of net consideration used to determine the minimum nonforfeiture amount ~~shall~~ *must* be equal to 90% and the net consideration ~~shall~~ *must* be the gross consideration less a contract charge of $75."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to annuity contracts that are entered into on or after July 1, 2003.

Section 4. Termination. [This act] terminates July 1, 2005.

Ap proved April 24, 2003

CHAPTER NO. 513

[SB 348]

AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH AND REGULATE BEHAVIORAL HEALTH INPATIENT FACILITIES; ALLOWING THE MONTANA STATE HOSPITAL TO DIRECT THAT A PERSON WITH MENTAL DISORDERS WHO HAS BEEN INVOLUNTARILY COMMITTED TO THE STATE HOSPITAL BE TRANSFERRED TO A BEHAVIORAL HEALTH INPATIENT FACILITY WHEN A BED IS AVAILABLE; REVISING HEARING PROVISIONS FOR EXTENSION OF A COMMITMENT; PERMITTING A COUNTY ATTORNEY TO HAVE A PERSON WHO APPEARS TO HAVE A MENTAL DISORDER AND IS IN IMMINENT DANGER OF DEATH OR BODILY HARM TRANSPORTED TO A BEHAVIORAL HEALTH INPATIENT FACILITY IF A BED IS AVAILABLE; PERMITTING TRANSFER OF PERSONS SUFFERING FROM MENTAL DISORDERS TO BE DIVERTED FROM DETENTION CENTERS TO BEHAVIORAL HEALTH INPATIENT FACILITIES IF A BED IS AVAILABLE; AMENDING SECTIONS 53-21-102, 53-21-120, 53-21-127, 53-21-128, 53-21-129, AND 53-21-138, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Commitment to behavioral health inpatient facilities — preference. (1) If a respondent is committed to the state hospital under 53-21-127 or a person in an emergency situation requires detention under 53-21-129 and a bed is available at a behavioral health inpatient facility, the Montana state hospital shall direct the person who is responsible for

transporting the individual to the appropriate facility to which the person shall transport the individual for admission.

(2) If a respondent is committed to or an individual requires emergency detention in a behavioral health inpatient facility, the facility must be notified and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before an individual may be transferred to the behavioral health inpatient facility under this section.

(3) A respondent who is committed to or an individual who is transferred to a behavioral health inpatient facility may be transferred to the state hospital for the remaining period of commitment in accordance with criteria established by the department by rule pursuant to [section 2]. A court order for commitment or transfer must include the transfer authority, and all conditions contained in the court order apply after a transfer.

(3) The court may not order commitment of the respondent or transfer of an individual to a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

Section 2. Department contract with behavioral health inpatient facilities — rulemaking authority — rates and transfer criteria. (1) The department may contract with one or more behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under this title.

(2) The department shall adopt rules:

(a) governing the number, geographic distribution, capacity, and qualifications of behavioral health inpatient facilities; and

(b) establishing criteria pursuant to subsection (3) for admission to a behavioral health inpatient facility or transfer of a patient from a behavioral health inpatient facility to the state hospital.

(3) The criteria for admission or transfer of an individual must reflect:

(a) individualized consideration of the patient's treatment needs and the safety of the public, including the prospects for the patient's successful transition to community care within the current period of commitment;

(b) the appropriateness of specialized programs or facilities at the state hospital; and

(c) the recommendations of the individual's treating professionals and state hospital staff.

(4) The department shall provide notice to the district courts of the designation of any mental health facility as a behavioral health inpatient facility, the facility's capacity, and the criteria for admission and transfer.

Section 3. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

~~(2)~~*(3)* "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

~~(3)~~*(4)* "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

~~(4)~~*(5)* "Court" means any district court of the state of Montana.

~~(5)~~*(6)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(6)~~*(7)* "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(7)~~*(8)* "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or *a* person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(8)~~*(9) (a)* "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

~~(a)~~*(i)* addiction to drugs or alcohol;

~~(b)~~*(ii)* drug or alcohol intoxication;

~~(c)~~*(iii)* mental retardation; or

~~(d)~~*(iv)* epilepsy.

~~(9)~~*(10)* "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, *a behavioral health inpatient facility,* a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

~~(10)~~*(11)* "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a professional counselor licensed under Title 37, chapter 23;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(11)~~*(12)* (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(12)~~*(13)* "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(13)~~*(14)* "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(14)~~*(15)* "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(15)~~*(16)* "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

~~(16)~~*(17)* "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(17)~~*(18)* "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(18)~~*(19)* "State hospital" means the Montana state hospital."

Section 4. Section 53-21-120, MCA, is amended to read:

"53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited. (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and *the* trial cannot be held within 7 days, *subject to the provisions in [section 1],* the individual may be sent to the state hospital *or a behavioral health inpatient facility* until *the* time of trial if arrangements can be made to return ~~him~~ *the person* to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 5. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) *subject to the provisions of [section 1],* commit the respondent to the state hospital *or to a behavioral health inpatient facility* for a period of not more than 3 months; or

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements, for a period of not more than 6 months.

(4) Except as provided in subsection (3)(b), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working

days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment as provided in subsection (3)(b)~~,~~ and may not require commitment at the state hospital *or at a behavioral health inpatient facility*.

(8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; and

(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

Section 6. Section 53-21-128, MCA, is amended to read:

"53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment to the state hospital *or a behavioral health inpatient facility* or the period of commitment to a community facility or program or a course of treatment provided for in 53-21-127, the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's

counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days, *not including Saturdays, Sundays, and holidays,* from the receipt of the request and notify the same people, including the professional person in charge of the patient. *When a hearing is requested less than 10 days prior to the termination of the previous commitment authority, the previous commitment is considered extended until the hearing is held. The notice of hearing must include a notice of this extension.* If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment, except *that* the patient is not entitled to *a* trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment as set forth in 53-21-127~~(3)~~. However, an order *extending the commitment period* may not affect the patient's custody for more than 6 months *and may not commit the patient to a behavioral health inpatient facility*. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Prior to the end of the period of commitment to a community facility or program or course of treatment, a respondent may request that the treating provider petition the district court for an extension of the commitment order. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition, an updated treatment plan, and a written statement by the respondent that an extension is desired. The extension procedure must follow the procedure required in subsections (1)(b) through (1)(d).

(3) Further extensions under subsection (1) or (2) may be obtained under the same procedure described in subsection (1). However, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

Section 7. Section 53-21-129, MCA, is amended to read:

"53-21-129. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital *or to a behavioral health inpatient facility, subject to [section 1] and subsection (4) of this section,* for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) ~~However, before~~ *Before* a person ~~is~~ *may be* transferred to the state hospital *or to a behavioral health inpatient facility* under this section, the state hospital *or the behavioral health inpatient facility* must be notified prior to transfer and shall state ~~that~~ *whether* a bed is available for the person. *If the Montana state hospital determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention, it shall direct the person to the appropriate facility to which the person must be transported for emergency detention.*"

Section 8. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain persons suffering from mental disorders from detention center. (1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) *subject to [section 1] and subsection (3) of this section,* transfer the inmate to a private mental health facility, *a behavioral health inpatient facility,* or *a* hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) The facility must be notified, and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before a person may be transferred under this section.

~~(3)~~*(4)* As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal

trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

~~(4)~~*(5)* A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

Section 9. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [sections 1 and 2].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective July 1, 2003.

Ap proved April 25, 2003

CHAPTER NO. 514

[SB 386]

AN ACT ELIMINATING THE APPLICABILITY OF THE MONTANA MAJOR FACILITY SITING ACT TO CERTAIN PIPELINES AND ASSOCIATED FACILITIES; AMENDING SECTION 17, CHAPTER 293, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, prior to 2001, the Montana Major Facility Siting Act applied to pipelines greater than 17 inches in inside diameter; and

WHEREAS, Chapter 293, Laws of 2001, amended the Montana Major Facility Siting Act so as to apply to those pipelines greater than 25 inches in inside diameter; and

WHEREAS, the applicability clause of Chapter 293, Laws of 2001, excluded pipelines 25 inches or less in inside diameter that were subject to a certificate of environmental compatibility on the day before the effective date of Chapter 293, Laws of 2001; and

WHEREAS, there is not any regulatory reason to continue the application of the Montana Major Facility Siting Act with respect to any pipeline 25 inches or less in inside diameter regardless of whether a pipeline was subject to a certificate of environmental compatibility issued under the Montana Major Facility Siting Act on or before April 19, 2001, and to do so would be to discriminate without reason between pipelines of the same or similar diameter; and

WHEREAS, the Legislature finds that it is appropriate to amend the applicability clause of Chapter 293, Laws of 2001, to make the substantive provisions of Chapter 293, Laws of 2001, apply to all pipelines 25 inches or less in inside diameter and to exempt from the Montana Major Facility Siting Act all, rather than some, pipelines 25 inches or less in inside diameter.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17, Chapter 293, Laws of 2001, is amended to read:

"**Section 17. Applicability.** ~~[This~~ *Subject to [section 3 of Senate Bill No. 386, 2003], [this* act] does not apply to any facility or associated facility under 75-20-104(8)(a), (8)(b), ~~(8)(d),~~ or (8)(f), as those subsections read on the day before [the effective date of this act], that was subject to a certificate of environmental compatibility on [the effective date of this act]."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. Section 17, Chapter 293, Laws of 2001, and [section 1 of this act] do not apply to reclamation bonds for pipelines and associated facilities held by the board of environmental review or the department of environmental quality until October 30, 2004.

Ap proved April 25, 2003

CHAPTER NO. 515

[SB 387]

AN ACT CONFORMING THE RETAIL TELECOMMUNICATIONS EXCISE TAX TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT OF 2000 AND AN AGREEMENT AMONG STATES FOR SOURCING OF OTHER TELECOMMUNICATIONS SERVICES; AMENDING SECTIONS 15-53-129 AND 15-53-130, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-53-129, MCA, is amended to read:

"15-53-129. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Call-by-call basis" means any method of charging for telecommunications services that measures the price by individual calls.

(2) (a) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in 47 CFR 20.3, as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

(b) The term does not include one-way radio communications as included in 47 CFR 20.3, as in effect on June 1, 1999.

~~(1)~~*(3) (a)* "Customer" or "purchaser" means, *except as provided in subsection (3)(b),* a person who acquires for consideration retail telecommunications services for use or consumption and not for resale.

(b) For purposes of mobile telecommunications services, the term means:

(i) the person or entity that contracts with the home service provider for mobile telecommunications services; or

(ii) if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services, but only for the purpose of determining the place of primary use.

(c) The term does not include:

(i) a reseller of mobile telecommunications services; or

(ii) a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(4) "Home service provider" means the facilities-based carrier or reseller that the customer contracts with for the provision of mobile telecommunications services.

(5) "Mobile telecommunications services" means commercial mobile radio service, as defined in 47 CFR 20.3, as in effect on June 1, 1999.

(6) "Place of primary use" means the street address for the premises where the customer's use of telecommunications services primarily occurs, which must be the residential street address or the primary business street address of the customer. For mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

(7) "Postpaid calling basis" means that telecommunications services are obtained by making a payment on a call-by-call basis, either through the use of a card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

(8) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and other associated services that are provided in connection with the use of the channel or channels.

(9) (a) "Reseller" means a provider who purchases mobile telecommunications services from another telecommunications services provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service.

(b) The term does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

~~(2)~~*(10) (a)* "Retail telecommunications" means*, except as provided in subsection (10)(b),* the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is ~~billed~~ *charged* to a customer with a Montana service address.

(b) For mobile telecommunications services, the term means the two-way transmission of voice, image, data, or other information that originates or terminates in a single state that is charged to a Montana service address.

(c) The term includes but is not limited to local exchange, long-distance, *private communications,* two-way paging, wireless ~~telephony~~ *telecommunications*, and related services*, regardless of whether the services are paid for on a call-by-call basis or postpaid calling basis*.

~~(3)~~*(11)* (a) "Sales price" means the consideration paid for the distribution, supply, furnishing, sale, transmission, or delivery of retail telecommunications services to the end-user customer.

(b) ~~Sales price~~ *The term* does not include:

(i) an amount added to the customer's bill because of a charge made pursuant to the tax imposed by this part;

(ii) charges added to a customer's bill under 10-4-201, 53-19-311, and 69-3-844;

(iii) federal excise taxes or other federally imposed charges or fees collected for and remitted to a federal government entity;

(iv) a charge for a dishonored check;

(v) a finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(vi) a charge for construction or relocation of facilities;

(vii) *charges for* the installation, repair, inspection, or servicing of equipment and wiring located on customer premises;

(viii) bad debt;

(ix) a charge added by a hotel, motel, or similar facility for telecommunications services used in placing calls for guests;

(x) charges paid by inserting coins in coin-operated telecommunications devices; and

(xi) charges for telecommunications services that have been prepaid by a prepaid calling card that enables the origination of calls by using an access number or authorization code.

~~(4)~~*(12) (a)* "Service address" means*, except as provided in subsection (12)(b)*:

~~(a)~~*(i)* the location ~~from where the retail telecommunications services originated or where the retail telecommunications services are received; or~~ *of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of the location to which the bill for the call is sent or the location from which the payment of the bill is received;*

~~(b)~~*(ii)* ~~where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed~~ *if the location in subsection (12)(a)(i) is not known, the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or, if the system used to transport the signal is not that of the seller, in information received by the seller from its service provider; or*

(iii) if the location in subsection (12)(a)(i) or (12)(a)(ii) is not known, the location of the customer's place of primary use.

(b) For mobile telecommunications services, the term means the location in Montana of the customer's place of primary use.

(13) "Serving carrier" means a facilities-based carrier providing mobile telecommunications services to a customer outside a home service provider's or reseller's licensed service area.

~~(5)~~*(14)* "Telecommunications services provider" means a person providing retail telecommunications services."

Section 2. Section 15-53-130, MCA, is amended to read:

"15-53-130. Imposition of retail telecommunications excise tax — rate. An excise tax of 3.75% is imposed on the sales price of retail telecommunications services. ~~The~~ *Subject to [sections 3 and 4], the* tax is

imposed on the purchaser and must be collected by the telecommunications services provider."

Section 3. Mobile telecommunications services. (1) Mobile telecommunications services provided in this state to a customer for which the charges are billed by or for the customer's home service provider are considered to be provided by the customer's home service provider.

(2) All charges for mobile telecommunications services that are considered to be provided by the customer's home service provider may be subject to tax in this state if the customer's place of primary use is located within this state, regardless of where the mobile telecommunications services originate, terminate, or pass through.

(3) The definitions and provisions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 116 through 126, are incorporated into this section by reference.

(4) (a) If a customer believes that an amount of tax or assignment of place of primary use or taxing jurisdiction included on a bill is erroneous, the customer shall notify the home service provider in writing. The customer shall include in the written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer, and any other information that the home service provider reasonably requires to process the request. Within 60 days of receiving a notice, the home service provider shall review its records and the electronic database or enhanced zip code used to determine the customer's taxing jurisdiction. If the review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to 2 years. If the review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.

(b) The procedures set forth in subsection (4)(a) are the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or seeking a refund of or other compensation for taxes erroneously collected by the home service provider, and a cause of action based upon a dispute arising from those taxes does not accrue, to the extent otherwise permitted by law, until a customer has reasonably exercised the rights and procedures set forth in this subsection (4).

Section 4. Telecommunications services other than mobile telecommunications services. (1) Except as provided in subsection (2), the sale of a telecommunications service paid for on a call-by-call basis is taxable in this state if the service address is located within the state.

(2) The sale of a telecommunications service paid for on a postpaid calling basis is taxable in this state if the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not that of the seller, the information received by the seller from its service provider is within the state.

(3) The sale of a private communications service is taxable in this state in the following manner:

(a) all charges related to a customer channel termination point located within the state are taxable within the state;

(b) all charges for service where all of the customer channel termination points are located entirely within the state are taxable within the state;

(c) charges for a segment of a channel between two taxpayer channel termination points, one located inside the state and one located outside the state, and for which the segment is separately charged are apportioned 50% to this state for taxation purposes; and

(d) charges for segments of a channel located in this state and one or more other states and for which the segments are not separately billed are apportioned to this state for taxation purposes based on the percentage determined by dividing the number of taxpayer channel termination points in this state by the total number of taxpayer channel termination points.

(4) In the case of a bundled transaction of telecommunications services, if the charges are attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services is subject to tax unless the provider can reasonably identify the portion of nontaxable services from its books and records kept in the regular course of business.

Section 5. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 53, part 1, and the provisions of Title 15, chapter 53, part 1, apply to [sections 3 and 4].

Section 6. Effective date. [This act] is effective July 1, 2003.

Section 7. Applicability. [This act] applies to bills issued on or after the first day of the first month after [the effective date of this act].

Section 8. Contingent termination. The attorney general shall certify to the code commissioner if a court of competent jurisdiction enters a final judgment on the merits that is no longer subject to appeal and that, based on federal law, substantially limits or impairs the essential elements of 4 U.S.C. 116 through 126. Upon certification, [this act] is void as of the date judgment was entered.

Ap proved April 25, 2003

CHAPTER NO. 516

[SB 402]

AN ACT CREATING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; REQUIRING RECORD RETENTION, SURETY BONDS, AND THE MAINTENANCE OF TRUST ACCOUNTS; PROHIBITING CERTAIN ACTIVITIES AND PROVIDING PENALTIES; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR SUSPENSION, REVOCATION, AND REINSTATEMENT OF LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title and purpose. (1) [Sections 1 through 22] may be cited as the "Montana Mortgage Broker and Loan Originator Licensing Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license residential mortgage brokers and loan originators to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

Section 2. License requirement. A person or entity may not act as a residential mortgage broker or loan originator after September 1, 2004, unless licensed under the provisions of [sections 1 through 22].

Section 3. Definitions. As used in [sections 1 through 22], the following definitions apply:

(1) "Bona fide third party" means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(2) "Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.

(3) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(4) "Designated manager" means a person employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker.

(5) "Entity" means a business organization, other than a sole proprietorship or an individual person, that provides mortgage broker services.

(6) "Lender" means an entity that funds or services a residential mortgage loan.

(7) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.

(8) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(9) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.

(10) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families located on real property purchased by the borrower with the loan provided by the lender.

(11) "Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower.

(12) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees.

Section 4. Exemptions. The provisions of [sections 1 through 22] do not apply to:

(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;

(2) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;

(3) a person or entity engaged solely in commercial mortgage lending;

(4) a political subdivision or governmental entity of the United States or any state of the United States; or

(5) a mortgage banker, except that a mortgage banker that also provides services as a mortgage broker for more than four mortgage loans in a calendar year must be licensed as a mortgage broker with respect to those mortgage broker services.

Section 5. Overall licensing requirements. All persons and entities desiring to conduct business as a mortgage broker or to work as a loan originator shall apply to the department for a license and pay a license fee under the provisions of [sections 1 through 22] on or after July 1, 2004. Except as provided in [section 8], applicants shall comply with all requirements of [sections 1 through 22], including but not limited to requisite work experience, successful completion of an examination, and completion of an application approved by the department. All licenses issued under this section are nontransferable and nonassignable.

Section 6. Experience requirements. (1) Except as provided in [section 8]:

(a) an individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a loan originator or in a related field; and

(b) an individual applying for a license as a loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field.

Section 7. Examination requirements. (1) Except as provided in [section 8], all individuals seeking a mortgage broker's license and individuals seeking a loan originator's license shall submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.

(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:

(a) knowledge of [sections 1 through 22];

(b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;

(c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments; and

(d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application.

Section 8. Exception to experience and examination requirements. A person providing services as a mortgage broker or an individual acting as a loan originator on or before December 31, 2002, must be licensed by the department in the same capacity as that person was operating on or before December 31, 2002. On or after July 1, 2004, the person or individual shall apply to the department for the appropriate license, pay the required fees, and have the application approved by the department. A person or individual entitled to licensure under this section is not subject to the experience requirements of [section 6] or the examination requirements of [section 7].

Section 9. Application for mortgage broker license. (1) An application for a mortgage broker license must include:

(a) the proposed location of the business, with a photograph of each location at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations.

(b) (i) the name and address of the sole proprietor;

(ii) the name and address of each partner; or

(iii) the name and address of any person that owns 5% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;

(c) evidence of an irrevocable letter of credit or surety bond required by [section 15];

(d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and

(e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.

(2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal

history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.

Section 10. Application for loan originator license — employment of loan originator. (1) An application for a loan originator license must include:

(a) the name and address of the applicant;

(b) evidence of the applicant's experience and knowledge of the mortgage industry; and

(c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.

(2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.

(3) A loan originator may transact business only for an employing mortgage broker licensed in accordance with the provisions of [sections 1 through 22]. Each original license issued to a loan originator must be provided to and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the loan originator's license must be displayed at the office where that loan originator principally transacts business.

(4) If the employment of a loan originator is terminated, the mortgage broker shall return the loan originator's license to the department within 5 business days after the termination. For a period of 6 months after the termination of employment, the loan originator may request the transfer of the license to another mortgage broker by submitting a relocation application to the department, along with a fee established by the department by rule. The return of the license of any loan originator to the department that is not transferred to another mortgage broker terminates the right of the loan originator to engage in any residential mortgage loan origination activity until department procedures have been followed to reinstate the license. The license of any loan originator

that has been returned to the department and not transferred within 6 months of termination of employment must be canceled.

Section 11. Fees — license renewal — disposition of fees. (1) An individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of $500. A loan originator shall pay an initial nonrefundable license application fee of $400. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(2) The license of a mortgage broker or loan originator is valid for a 1-year period and expires on June 30. Every licensee shall, on or before May 31 of the year, pay to the department a renewal fee in an amount set by the department by rule. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license.

(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in [section 12] have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.

(4) All fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of [sections 1 through 22].

Section 12. Continuing education requirements. All loan originators and all individual mortgage brokers shall complete and submit to the department evidence of at least 12 hours of continuing education every year at the time they submit their license renewal applications. The 12 hours of continuing education must be in courses or programs of study approved by the department and in areas established by the department by rule.

Section 13. In-state office requirement — records maintenance — advertising requirement. (1) A person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees shall maintain copies of residential mortgage loan files and trust account records at the Montana office location where services are provided. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana.

(2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of 5 years.

(3) A licensee or licensed entity shall disclose in any printed, published, televised, e-mail, or internet advertisement for the provision of services the name and address of the licensee and the number designated on the license issued to the licensee or licensed entity by the department.

Section 14. Requirement for designated manager. (1) A mortgage broker that is not a sole proprietorship shall designate to the department a licensed mortgage broker within its organization as the designated manager of the organization.

(2) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker shall designate another licensed mortgage broker as designated manager and shall submit information in writing to the department

establishing that the subsequent designated manager is in compliance with the provisions of [sections 1 through 22].

Section 15. Irrevocable letter of credit or surety bond — notice of legal action. (1) Each licensee other than a loan originator shall maintain at all times an irrevocable letter of credit or surety bond, naming the department as a beneficiary, in the amount of $25,000 for each location identified in the application for licensure. The department shall use the proceeds of the letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a licensee that violates the provisions of [sections 1 through 22].

(2) A mortgage broker or loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's or loan originator's knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, anyone having an ownership interest in a mortgage broker entity, or a loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.

Section 16. Prohibitions — required disclosure. (1) A mortgage broker or loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a lender, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions; or

(d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties.

(2) Prior to providing mortgage broker services to a borrower, the licensee, in addition to other disclosures required by [sections 1 through 22] and other state and federal laws, shall provide to the borrower at the time of application a written disclosure containing substantially the following language, which must be signed by the borrower:

"MORTGAGE LOAN ORIGINATION DISCLOSURE

(Name of licensee) is a licensed mortgage broker in Montana authorized to provide mortgage brokerage services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher.

SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:

(1) (name of licensee) is acting as an independent contractor and not as your agent;

(2) (name of licensee) enters into separate independent contractor agreements with various lenders; and

(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

Section 17. Trust accounts — fees other than bona fide third-party fees. (1) Every mortgage broker doing business in this state shall:

(a) maintain a trust account at a financial institution located in this state whose deposits or shares are insured, and the trust account funds may not be commingled with any other funds of the mortgage broker;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker receives unless the borrower pays the bona fide third party directly; and

(c) pay third-party fees to a bona fide third party from the mortgage broker's trust account unless the borrower pays the bona fide third party directly.

(2) A mortgage broker may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker has agreed to perform for the borrower are completed. A mortgage broker may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.

(3) The following fees must be paid directly by the borrower to the bona fide third party providing the services or must be deposited by the borrower, if applicable, into the mortgage broker's trust account for payment of services performed by the bona fide third party:

(a) credit report fees;

(b) notary fees;

(c) title search, appraisal, or survey fees;

(d) rate-lock fees not exceeding 3% of the mortgage loan amount; and

(e) fees paid directly by the borrower to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.

Section 18. Revocation, suspension, and reinstatement of licenses. (1) The department, upon giving the licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend or revoke a license if it finds that the licensee has violated any provision of [sections 1 through 22].

(2) The department may reinstate any suspended or revoked license upon a showing that the licensee has corrected all deficiencies.

Section 19. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of [sections 1 through 22]. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants and licensees and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) prescribing forms for applications;

(d) developing or approving tests to be given as a prerequisite for licensure;

(e) approval of programs for continuing education; and

(f) establishing fees for testing, continuing education programs, and license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of [sections 1 through 22].

(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of $300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may exchange information with federal regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor.

(b) Except as provided in subsection (5)(a), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all loan originators and designated managers and the name of their employing brokers.

Section 20. Access to records — witnesses. For the purpose of [sections 1 through 22], the department or the department's authorized representatives must be given free access to the offices and places of business and files of all

licensees. The department or the department's authorized representative may require the attendance of any person and examine that person under oath relative to mortgage loans or related business or relative to the subject matter of any examination, investigation, or hearing and may require the production of books, accounts, papers, or records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, or records, the department shall apply to the first judicial district court of Lewis and Clark County for an order requiring the evidence and testimony of witnesses and the production of books, accounts, papers, or records.

Section 21. Injunctions — receivers. (1) Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate [sections 1 through 22] or a rule adopted under [sections 1 through 22], the department may, in addition to all actions provided for in [sections 1 through 22] and without prejudice to those actions, seek an order requiring the person to desist or to refrain from the violation.

(2) An action may be brought by the department in the district court of the first judicial district, Lewis and Clark County, to enjoin the person from engaging in or continuing the violation or from doing any act or acts in furtherance of the violation. In any action, a preliminary or final injunction may be ordered as considered proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of [sections 1 through 22]. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

Section 22. Penalties. (1) A person who acts or offers to act in any capacity as a mortgage broker or loan originator without a license in this state or while a license is suspended or revoked is subject to the penalty provisions of subsections (3) and (5).

(2) Any person who violates a provision of [sections 1 through 22] or a rule adopted under [sections 1 through 22] is subject to the penalty provisions of subsection (3).

(3) For a first violation of subsection (1) or (2), the department may impose a fine of not less than $5,000 or more than $10,000. For a second or subsequent violation, the department may impose a fine of not less than $10,000 or more than $20,000. Each violation of the provisions of subsection (1) or (2) constitutes a separate offense.

(4) The fines must be deposited in the state general fund.

(5) A person practicing as a mortgage broker or loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than $250 or more than $1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense.

Section 23. Codification instruction. [Sections 1 through 22] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 22].

Section 24. Effective date. [This act] is effective on passage and approval.

Ap proved April 25, 2003

CHAPTER NO. 517

[SB 434]

AN ACT EXTENDING IMMUNITY TO PRIVATE RESPONSE TEAMS CONTRACTED BY THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR A LOCAL OR TRIBAL EMERGENCY RESPONSE AUTHORITY RESPONDING TO A HAZARDOUS MATERIAL INCIDENT; REMOVING GOVERNMENTAL IMMUNITY FOR BAD FAITH; AMENDING SECTION 10-3-1217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-1217, MCA, is amended to read:

"10-3-1217. Liability of persons and response team members rendering assistance. *(1)* ~~The state or a political subdivision of the state, the commission, the local emergency response authority, and the state hazardous material incident response team or, except for willful misconduct, gross negligence, or bad faith, an employee, representative, or agent of the state or a political subdivision of the state, the commission, the local emergency response authority, and the state hazardous material incident response team is~~ *The following are* not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material*:*

(a) the state or a political subdivision of the state;

(b) the commission;

(c) the local emergency response authority;

(d) the state hazardous material incident response team;

(e) a private emergency response team dispatched by the state, a political subdivision of the state, or a local or tribal emergency response authority for emergency response activities; and

(f) an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e), except for willful misconduct or gross negligence.

(2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss.

(3) A person becomes a member of the state hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 25, 2003

CHAPTER NO. 518

[SB 454]

AN ACT REVISING THE SCHEDULE OF BLOCK GRANTS FOR COUNTYWIDE SCHOOL RETIREMENT AND COUNTYWIDE SCHOOL TRANSPORTATION AS ESTABLISHED BY CHAPTER 574, LAWS OF 2001, AND MODIFIED BY CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AMENDING SECTIONS 26 AND 27, CHAPTER 13, SPECIAL LAWS OF AUGUST 2002; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26, Chapter 13, Special Laws of August 2002, is amended to read:

"**Section 26.** Section 245, Chapter 574, Laws of 2001, is amended to read:

"**Section 245. Countywide school retirement block grants.** (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school retirement in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Elementary Payment	FY 2002 High School Payment	FY 2003 Elementary Payment	FY 2003 High School Payment
Beaverhead	$86,692	$50,789	~~$87,351~~ *$55,503*	~~$51,175~~ *$41,981*
Big Horn	62,668	36,963	~~63,144~~ *95,018*	~~37,244~~ *33,837*
Blaine	61,160	10,193	~~61,624~~ ~~*46,318*~~ *46,437*	~~10,271~~ ~~*81,109*~~ *81,145*
Broadwater	0	92,686	0	~~93,390~~ *34,949*
Carbon	43,451	82,110	~~43,782~~ ~~*72,602*~~ *72,592*	~~82,734~~ ~~*58,957*~~ *69,522*
Carter	9,751	5,453	~~9,825~~ ~~*8,478*~~ *8,638*	~~5,495~~ ~~*6,155*~~ *6,244*
Cascade	349,056	192,848	~~351,709~~ ~~*282,266*~~ *280,363*	~~194,314~~ ~~*142,282*~~ *141,301*
Chouteau	75,384	41,034	~~75,957~~ ~~*58,455*~~ *60,978*	~~41,346~~ ~~*29,474*~~ *30,825*
Custer	78,925	36,930	~~79,525~~ *57,608*	~~37,211~~ *32,128*
Daniels	0	37,994	0	~~38,283~~ *36,083*
Dawson	85,568	38,722	~~86,219~~ *64,693*	~~39,016~~ *24,827*
Deer Lodge	39,980	17,059	~~40,284~~ ~~*34,455*~~ *35,062*	~~17,189~~ ~~*16,807*~~ *14,748*
Fallon	0	0	0	~~0~~ ~~*30,444*~~ *30,930*
Fergus	119,028	78,809	~~119,932~~ ~~*90,464*~~ *86,528*	~~79,408~~ ~~*55,527*~~ *52,925*
Flathead	558,861	296,410	~~563,108~~ *530,274*	~~298,662~~ *268,731*
Gallatin	383,035	181,743	~~385,946~~ *537,244*	~~183,125~~ *107,717*
Garfield	12,337	10,170	~~12,431~~ *12,100*	~~10,247~~ *4,620*
Glacier	79,924	34,016	~~80,532~~ *106,815*	~~34,275~~ *10,494*
Golden Valley	0	16,716	0	~~16,843~~ ~~*14,492*~~ *14,952*
Granite	14,074	48,026	~~14,180~~ ~~*12,523*~~ *12,758*	~~48,391~~ ~~*30,727*~~ *31,458*
Hill	142,867	82,538	~~143,953~~ ~~*59,593*~~ *130,460*	~~83,165~~ ~~*35,211*~~ *77,730*
Jefferson	116,679	59,523	~~117,565~~ ~~*143,901*~~ *143,931*	~~59,976~~ ~~*59,690*~~ *59,751*
Judith Basin	6,149	21,359	~~6,196~~ *4,744*	~~21,521~~ *30,198*
Lake	173,584	139,990	~~174,903~~ *156,485*	~~141,054~~ *103,365*
Lewis & Clark	344,112	211,726	~~346,728~~ ~~*370,958*~~ *370,732*	~~213,335~~ ~~*173,847*~~ *173,725*
Liberty	20,144	16,786	~~20,297~~ ~~*3,067*~~ *24,426*	~~16,914~~ ~~*31,953*~~ *20,813*
Lincoln	73,001	98,835	~~73,556~~ *61,499*	~~99,586~~ *87,710*
Madison	0	103,163	~~0~~ *4,891*	~~103,947~~ ~~*19,788*~~ *20,480*
Mccone	23,214	15,824	~~23,390~~ ~~*21,778*~~ *21,637*	~~15,945~~ ~~*14,004*~~ *13,906*
Meagher	13,654	10,678	~~13,758~~ ~~*9,250*~~ *10,682*	~~10,759~~ ~~*9,492*~~ *10,715*

Mineral	0	32,206	0	~~32,451~~ ~~33,292~~ *33,306*
Missoula	487,129	362,756	~~490,832~~ *587,637*	~~365,513~~ *357,669*
Musselshell	30,675	21,577	~~30,988~~ *48,959*	~~21,741~~ *41,250*
Park	154,192	81,696	~~155,364~~ *135,256*	~~82,317~~ *78,135*
Petroleum	0	16,897	0	~~17,026~~ ~~9,510~~ *12,393*
Phillips	10,502	95,084	~~10,582~~ ~~103,747~~ *103,759*	~~95,806~~ ~~54,728~~ *54,793*
Pondera	79,805	60,307	~~80,411~~ ~~18,821~~ *65,353*	~~60,765~~ *47,629*
Powder River	18,815	15,011	~~18,958~~ ~~0~~ *19,026*	~~15,125~~ ~~0~~ *8,573*
Powell	69,695	22,666	~~70,225~~ ~~71,420~~ *71,009*	~~22,838~~ ~~30,458~~ *30,326*
Prairie	0	26,791	0	~~26,995~~ *21,945*
Ravalli	85,333	169,769	~~85,981~~ ~~2,062~~ *20,867*	~~171,059~~ ~~40,316~~ *73,912*
Richland	83,671	30,302	~~84,307~~ ~~15,500~~ *12,477*	~~30,533~~ ~~26,650~~ *24,039*
Roosevelt	71,090	60,329	~~71,630~~ *96,278*	~~60,787~~ *61,038*
Rosebud	359,662	286,411	~~362,395~~ ~~475,055~~ *478,891*	~~288,588~~ ~~126,246~~ *129,268*
Sanders	203,863	127,694	~~205,413~~ *197,286*	~~128,665~~ ~~14,442~~ *117,375*
Sheridan	0	46,231	0	~~46,583~~ ~~47,628~~ *58,463*
Silver Bow	249,821	141,541	~~251,719~~ *193,304*	~~142,617~~ *119,358*
Stillwater	91,487	75,926	~~92,182~~ ~~91,185~~ *99,893*	~~76,503~~ ~~51,769~~ *58,767*
Sweet Grass	36,996	36,327	~~37,277~~ *24,214*	~~36,603~~ *12,316*
Teton	57,760	41,547	~~58,199~~ *45,217*	~~41,863~~ *40,769*
Toole	43,323	51,399	~~43,652~~ *36,109*	~~51,790~~ *73,362*
Treasure	0	18,947	0	~~19,091~~ *16,243*
Valley	15,824	90,532	~~15,944~~ ~~10,558~~ *6,751*	~~91,220~~ ~~143,204~~ *109,094*
Wheatland	20,946	12,103	~~21,105~~ *15,031*	~~12,195~~ *12,109*
Wibaux	0	14,585	0	~~14,696~~ *25,103*
Yellowstone	1,125,488	643,136	~~1,134,042~~ ~~1,070,887~~ *1,077,273*	~~648,024~~ ~~612,203~~ *615,945*
Total	6,269,374	4,650,865	~~6,317,022~~ ~~6,139,506~~ *6,326,685*	~~4,686,212~~ ~~3,723,973~~ *3,900,990*

(2) The average ~~amount~~ of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% *in fiscal year ~~2004~~ 2004 and* in each succeeding fiscal year.””

Section 2. Section 27, Chapter 13, Special Laws of August 2002, is amended to read:

“**Section 27.** Section 246, Chapter 574, Laws of 2001, is amended to read:

“**Section 246. Countywide school transportation block grants.** (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Payment	FY 2003 Payment
Beaverhead	$29,924	~~$30,151~~ *$26,197*
Big Horn	43,635	~~43,966~~ *52,920*
Blaine	3,727	~~3,756~~ ~~13,384~~ *13,433*
Broadwater	14,935	~~15,048~~ *21,769*
Carbon	23,493	~~23,671~~ *23,040*
Carter	8,675	~~8,741~~ ~~6,457~~ *6,592*
Cascade	84,382	~~85,024~~ ~~5,760~~ *43,722*

Chouteau	33,063	~~33,314~~ ~~*26,028*~~ *27,043*
Custer	7,069	~~7,123~~ *6,272*
Daniels	16,771	~~16,899~~ *12,993*
Dawson	21,356	~~21,518~~ *14,001*
Deer Lodge	14,392	~~14,502~~ ~~*14,482*~~ *12,532*
Fallon	20,447	~~20,603~~ ~~*25,422*~~ *25,428*
Fergus	58,765	~~59,211~~ ~~*30,799*~~ *29,415*
Flathead	89,846	~~90,529~~ *77,223*
Gallatin	81,262	~~81,879~~ *90,930*
Garfield	17,284	~~17,415~~ *7,135*
Glacier	37,740	~~38,027~~ *34,300*
Golden Valley	3,547	~~3,574~~ ~~*3,591*~~ *3,664*
Granite	8,153	~~8,215~~ ~~*6,726*~~ *6,858*
Hill	46,409	~~46,762~~ ~~*17,070*~~ *40,781*
Jefferson	36,329	~~36,605~~ ~~*34,792*~~ *34,817*
Judith Basin	16,878	~~17,007~~ *20,322*
Lake	69,756	~~70,286~~ *52,163*
Lewis & Clark	58,287	~~58,730~~ ~~*69,557*~~ *69,535*
Liberty	15,874	~~15,995~~ ~~*12,731*~~ *9,584*
Lincoln	50,388	~~50,771~~ ~~*0*~~ *22,795*
Madison	21,263	~~21,424~~ ~~*14,174*~~ *12,828*
Mccone	12,498	~~12,593~~ ~~*11,856*~~ *11,788*
Meagher	4,237	~~4,269~~ ~~*6,366*~~ *6,976*
Mineral	7,478	~~7,534~~ *9,038*
Missoula	93,969	~~94,683~~ *94,480*
Musselshell	12,945	~~13,043~~ *20,627*
Park	31,904	~~32,147~~ *32,394*
Petroleum	9,854	~~9,929~~ ~~*6,086*~~ *7,300*
Phillips	31,080	~~31,316~~ ~~*43,852*~~ *43,872*
Pondera	22,599	~~22,771~~ *18,308*
Powder River	21,304	~~21,465~~ ~~*0*~~ *21,795*
Powell	16,622	~~16,748~~ ~~*14,581*~~ *14,507*
Prairie	8,544	~~8,609~~ *4,809*
Ravalli	60,579	~~61,040~~ ~~*24,889*~~ *38,440*
Richland	32,995	~~33,246~~ ~~*30,868*~~ *29,315*
Roosevelt	25,740	~~25,935~~ *40,216*
Rosebud	97,820	~~98,564~~ ~~*89,433*~~ *90,850*
Sanders	71,581	~~72,125~~ ~~*173,489*~~ *69,930*
Sheridan	12,946	~~13,045~~ ~~*17,460*~~ *24,274*

Silver Bow	21,872	~~22,038~~ *18,381*
Stillwater	27,358	~~27,566~~ ~~*15,344*~~ *17,543*
Sweet Grass	14,996	~~15,110~~ *6,340*
Teton	28,202	~~28,416~~ *20,759*
Toole	17,208	~~17,339~~ *15,592*
Treasure	5,446	~~5,487~~ *5,073*
Valley	26,677	~~26,880~~ ~~*36,436*~~ *27,775*
Wheatland	9,142	~~9,212~~ *6,386*
Wibaux	6,198	~~6,246~~ *8,816*
Yellowstone	149,314	~~150,448~~ ~~*145,322*~~ *146,210*
Total	1,814,759	~~1,828,551~~ ~~*1,637,437*~~ *1,650,088*

(2) The average ~~amount~~ of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% *in fiscal year* ~~*2004*~~ *2004 and* in each succeeding fiscal year.""

Section 3. Codification instruction — direction to code commissioner. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 1 and 2].

(2) The code commissioner is directed to codify section 25, Chapter 13, Special Laws of August 2002, as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to that section.

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved April 25, 2003

CHAPTER NO. 519

[SB 480]

AN ACT CLARIFYING THAT DIVIDEND INCOME IS INCLUDED IN MONTANA ADJUSTED GROSS INCOME REGARDLESS OF WHETHER DIVIDEND INCOME IS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. (Temporary) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; ~~and~~

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period*; and*

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; and

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the

Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)

15-30-111. (Effective on occurrence of contingency) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26

U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; ~~and~~

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period*; and*

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection

(2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each

spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years commencing after December 31, 2002.

Ap proved April 25, 2003

CHAPTER NO. 520

[HB 277]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, OF THE MONTANA CONSTITUTION TO EXTEND TERM LIMITS FOR LEGISLATORS FOR AN ADDITIONAL 4 YEARS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IV, section 8, of The Constitution of the State of Montana is amended to read:

"Section 8. Limitation on terms of office. (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, state auditor, attorney general, or superintendent of public instruction;

(b) ~~8~~ *12* or more years in any ~~16-year~~ *24-year* period as a state representative;

(c) ~~8~~ *12* or more years in any ~~16-year~~ *24-year* period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate."

Section 2. Effective date. This amendment is effective on approval by the electorate.

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2004 by printing on the ballot the full title of this act and the following:

☐ FOR extending term limits for legislators to 12 years in a 24-year period.

☐ AGAINST extending term limits for legislators to 12 years in a 24-year period.

CHAPTER NO. 521

[HB 721]

AN ACT REVISING THE LAWS RELATING TO WATER'S-EDGE ELECTIONS FOR CORPORATE INCOME TAX PURPOSES; INCLUDING TAXABLE INCOME SHIFTED TO A TAX HAVEN IN THE APPORTIONMENT OF INCOME FOR THE PURPOSES OF A WATER'S-EDGE ELECTION; IDENTIFYING TAX HAVENS; PROVIDING THAT A PORTION OF THE TAX COLLECTIONS FROM WATER'S-EDGE CORPORATIONS BE ALLOCATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR FISCAL YEAR 2005; AMENDING SECTIONS 15-1-501, 15-31-121, 15-31-322, 15-31-323, 15-31-324, AND 15-31-326, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) *except as provided in 15-31-121,* all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes distributed to the general fund under 15-36-324;

(d) electrical energy producer's license taxes under chapter 51;

(e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 2. Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax — minimum tax — *distribution of revenue*. (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 is 6 3/4% of all net income for the ~~taxable~~ *tax* period.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 is 7% of all taxable net income for the ~~taxable~~ *tax* period.

(3) Each corporation subject to taxation under this part shall pay a minimum tax of not less than $50.

(4) For fiscal year 2005, the tax collected from water's-edge corporations must be deposited as follows:

(a) $375,000 in the state special revenue fund to the credit of the department of public health and human services for state matching funds to maximize federal funds for medicaid health services; and

(b) the balance in the state general fund."

Section 3. Section 15-31-322, MCA, is amended to read:

"15-31-322. Water's-edge election — *inclusion of tax havens.* *(1)* Notwithstanding any other provisions of law, a taxpayer subject to the taxes imposed under this chapter may apportion its income under this section. A return under a water's-edge election must include the income and apportionment factors of the following affiliated corporations only:

~~(1)~~*(a)* a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be included in a federal consolidated return as described in ~~sections~~ *26 U.S.C.* 1501 through 1505 ~~of the Internal Revenue Code~~ that has more than 20% of its payroll and property assignable to locations inside the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection (1)*(a)*, the 80% stock ownership requirements of ~~section~~ *26 U.S.C.* 1504 ~~of the Internal Revenue Code~~ must be reduced to ownership of over 50% of the voting stock directly or indirectly owned or controlled by an includable corporation.

~~(2)~~*(b)* domestic international sales corporations, as described in ~~sections~~ *26 U.S.C.* 991 through 994 ~~of the Internal Revenue Code~~, and foreign sales corporations, as described in ~~sections~~ *26 U.S.C.* 921 through 927 ~~of the Internal Revenue Code~~;

~~(3)~~*(c)* export trade corporations, as described in ~~sections~~ *26 U.S.C.* 970 and 971 ~~of the Internal Revenue Code~~;

~~(4)~~*(d)* foreign corporations deriving gain or loss from disposition of a United States real property interest to the extent recognized under ~~section~~ *26 U.S.C.* 897 ~~of the Internal Revenue Code~~;

~~(5)~~*(e)* a corporation incorporated outside the United States if over 50% of its voting stock is owned directly or indirectly by the taxpayer and if more than 20% of the average of its payroll and property is assignable to a location inside the United States*; or*

(f) a corporation that is in a unitary relationship with the taxpayer and that is incorporated in a tax haven, including Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Turks and Caicos Islands, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxemburg, Maldives, Marshall Islands, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, U.S. Virgin Islands, and Vanuatu.~~.~~

(2) The department shall report biennially to the revenue and transportation interim committee with an update of countries that may be considered a tax haven under subsection (1)(f)."

Section 4. Section 15-31-323, MCA, is amended to read:

"15-31-323. Apportionment factors — *inclusion of tax havens.* *(1)* For purposes of 15-31-322~~(1) and (5)~~*(1)(a) through (1)(e)*, the location of payroll and property is determined under the individual state's laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, apportionment is determined under this chapter.

(2) For the purposes of 15-31-322(1)(f), income shifted to a tax haven, to the extent taxable, is considered income subject to apportionment."

Section 5. Section 15-31-324, MCA, is amended to read:

"15-31-324. Water's-edge election period — consent — *change of election.* (1) A water's-edge election may be made by a taxpayer and is effective only if every affiliated corporation subject to the taxes imposed under this chapter consents to the election. Consent by the common parent of an affiliated group constitutes consent of all members of the group. An affiliated corporation that becomes subject to taxes under this chapter ~~subsequent to~~ *after* the water's-edge election is considered to have consented to the election. *The election must disclose the identity of the taxpayer and the identity of any affiliated corporation, including an affiliated corporation incorporated in a tax haven as set forth in 15-31-322(1)(f), in which the taxpayer owns directly or indirectly more than 50% of the voting stock of the affiliated corporation.*

(2) ~~Each~~ *Except as provided in subsections (3) and (4), each* water's-edge election must be for 3-year renewable periods~~, except as follows:~~.

~~(a) No water's-edge election may be made for an income year beginning before October 1, 1987.~~

~~(b)~~*(3)* A water's-edge election may be changed by a taxpayer ~~prior to~~ *before* the end of each 3-year period only with the permission of the department ~~of revenue~~. In granting a change of election, the department shall impose

reasonable conditions that are necessary to prevent the avoidance of tax or clearly reflect income for the election period prior to the change.

(4) A taxpayer subject to the provisions of 15-31-322(1)(f) who has a water's-edge election that is in effect for tax periods beginning both before and after [the effective date of this act] may rescind the election for any tax period beginning after [the effective date of this act]."

Section 6. Section 15-31-326, MCA, is amended to read:

"15-31-326. Domestic disclosure spreadsheet — *inclusion of tax havens.* *(1)* The department ~~of revenue~~ may require ~~taxpayers~~ *a taxpayer* making a water's-edge election to submit within 6 months after the taxpayer files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge corporate group and those of its United States affiliated corporations.

(2) The department may require a taxpayer subject to the provisions of 15-31-322(1)(f) to disclose the same information for tax havens as is required for states in subsection (1)."

Section 7. Applicability. [This act] applies to tax periods beginning after December 31, 2003.

Ap proved April 26, 2003

CHAPTER NO. 522

[HB 748]

AN ACT CLARIFYING AND REVISING THE LAWS RELATING TO THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES; CHANGING THE METHOD FOR DISTRIBUTING OIL AND NATURAL GAS PRODUCTION TAXES TO STATE FUNDS AND TO LOCAL TAXING UNITS; ESTABLISHING PERCENTAGE DISTRIBUTION AMOUNTS FOR LOCAL TAXING UNITS; PROVIDING A STATUTORY APPROPRIATION FOR THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES TO LOCAL TAXING UNITS; AMENDING SECTIONS 7-1-2111, 15-1-501, 15-36-304, 15-36-314, 15-36-315, 15-38-113, 15-38-202, 17-7-502, 75-10-743, 76-15-904, 82-11-135, 85-2-905, AND 90-2-1104, MCA; REPEALING SECTIONS 15-36-320 AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under [section 2] and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in

accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(3) (a) For tax year 2003 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	2003	2004	2005	2006 and succeeding tax years
Big Horn	45.03%	45.04%	45.04%	45.05%
Blaine	57.56%	57.84%	58.11%	58.39%
Carbon	50.24%	49.59%	48.93%	48.27%
Chouteau	56.67%	57.16%	57.65%	58.14%
Custer	103.63%	92.27%	80.9%	69.53%
Daniels	48.31%	49.15%	49.98%	50.81%
Dawson	56.32%	53.48%	50.64%	47.79%
Fallon	39.89%	40.52%	41.15%	41.78%
Fergus	112.2%	97.86%	83.52%	69.18%
Garfield	54.51%	51.66%	48.81%	45.96%
Glacier	76.56%	70.65%	64.74%	58.83%
Golden Valley	55.5%	56.45%	57.41%	58.37%
Hill	66.97%	66.15%	65.33%	64.51%
Liberty	63.32%	61.53%	59.73%	57.94%
McCone	58.75%	55.81%	52.86%	49.92%
Musselshell	57.06%	54.25%	51.44%	48.64%
Petroleum	67.8%	61.21%	54.62%	48.04%
Phillips	53.3%	53.54%	53.78%	54.02%
Pondera	104.14%	87.51%	70.89%	54.26%
Powder River	64.7%	63.44%	62.17%	60.9%
Prairie	38.43%	39.08%	39.73%	40.38%
Richland	45.23%	45.97%	46.72%	47.47%
Roosevelt	46.75%	46.4%	46.06%	45.71%
Rosebud	37.41%	38.05%	38.69%	39.33%
Sheridan	46.64%	47.09%	47.54%	47.99%
Stillwater	56.05%	55.2%	54.35%	53.51%
Sweet Grass	58.23%	59.24%	60.24%	61.24%
Teton	53.01%	50.71%	48.4%	46.1%
Toole	56.2%	56.67%	57.14%	57.61%
Valley	59.82%	57.02%	54.22%	51.43%
Wibaux	47.71%	48.19%	48.68%	49.16%
Yellowstone	50.69%	49.37%	48.06%	46.74%
All other counties	50.15%	50.15%	50.15%	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in [section 2].

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund;

(b) for the fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2005, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund;

(c) for the fiscal year beginning July 1, 2005, through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 5.90% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iv) all remaining proceeds to the state general fund; and

(d) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 7.13% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iii) all remaining proceeds to the state general fund.

Section 2. Distribution of taxes to taxing units — appropriation. (1) By the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under [section 1(3)] to each eligible county.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school

retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.

(8) The distribution to taxing units under this section is statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.

Section 3. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under ~~15-36-324(14)~~ *[section 2(7)]*;

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001; and

~~(h)~~*(i)* 6% of the taxable value of the county on January 1 of each tax year."

Section 4. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes distributed to the general fund under ~~15-36-324~~ *[section 1]*;

(d) electrical energy producer's license taxes under chapter 51;

(e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under ~~the operation of the Montana Alcoholic Beverage Code~~ *Title 16, chapters 1 through 4 and 6*.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 5. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in ~~15-36-324~~ *[sections 1 and 2]*.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) stripper well exemption production	0.5%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%

(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows~~, provided that~~ *if* the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows~~, provided that~~ *if* the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) *only* if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production. Stripper well exemption production is taxed as provided in subsection (5)(c) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $38 a barrel.

(d) For the purposes of subsection (6)(c), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

Section 6. Section 15-36-314, MCA, is amended to read:

"15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review — penalty and interest. (1) ~~When~~ *If* the department determines that the amount of the tax due, including the amount due for the local government severance tax, is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to ~~15-36-324(12)(a)~~ *[section 2]*.

(3) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216."

Section 7. Section 15-36-315, MCA, is amended to read:

"15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to ~~15-36-324~~ *[section 2]*, must be withheld from the current distribution made pursuant to ~~15-36-324~~ *[section 2]*.

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to ~~15-36-324~~ *[section 2]* and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to ~~15-36-324(12)(a)~~ *[section 2]*.

(4) Except as provided in subsection (5), interest must be allowed on overpayments at the same rate as is charged on unpaid taxes provided in 15-1-216 beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(5) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1."

Section 8. Section 15-38-113, MCA, is amended to read:

"15-38-113. Exemption from resource indemnity and ground water assessment tax. *(1)* A person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, is exempt from the resource indemnity and ground water assessment tax.

(2) A person who has paid the tax on oil and natural gas production under the provisions of Title 15, chapter 36, part 3, is exempt from the resource indemnity and ground water assessment tax."

Section 9. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund~~, including money payable into the fund under the provisions of 15-36-324 and 15-37-117,~~ must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. ~~Thereafter~~ *After the fund balance reaches $100 million*, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $1.2 million and for fiscal years beginning on or after July 1, 2005, $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905; and

(v) for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $350,000 and for fiscal years beginning on or after July 1, 2005, $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 25.5% and for fiscal years beginning on or after July 1, 2005, 30% of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 22% and for fiscal years beginning on or after July 1, 2005, 26% of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 45% and for fiscal years beginning on or after July 1, 2005, 35% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 7.5% and for fiscal years beginning on or after July 1, 2005, 9% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.)

15-38-202. (Effective July 1, 2009) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund~~, including money payable into the fund under the provisions of 15-36-324 and 15-37-117,~~ must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. ~~Thereafter~~ *After the fund balance reaches $100 million*, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection

(2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates June 30, 2014—sec. 5, Ch. 497, L. 1999.)

15-38-202. (Effective July 1, 2014)Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund~~, including money payable into the fund under the provisions of 15-36-324 and 15-37-117,~~ must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. ~~Thereafter~~ *After the fund balance reaches $100 million*, all net earnings, excluding unrealized gains and

losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(ii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iii) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 10. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; ~~15-36-324~~ *[section 2]*; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 11. Section 75-10-743, MCA, is amended to read:

"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) *funds received from the distribution of oil and natural gas production taxes pursuant to [section 1];*

(e) unencumbered funds remaining in the abandoned mines state special revenue account;

~~(e)~~*(f)* interest income on the account;

~~(f)~~*(g)* funds received from settlements pursuant to 75-10-719(7); and

~~(g)~~*(h)* funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) (a) ~~On August 21, 2002, $1,000 is transferred from the orphan share fund to the general fund.~~ If sufficient money remains in the orphan share fund on June 29, 2003, $999,000 must be transferred to the general fund.

(b) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without

partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. <eff> (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)"

Section 12. Section 76-15-904, MCA, is amended to read:

"76-15-904. Coal bed methane protection account — use. (1) There is a coal bed methane protection account in the state special revenue fund.

(2) ~~At the beginning of each fiscal year, there~~ *There* must be deposited in the account ~~a total of $400,000 of~~ the proceeds from the distribution of oil and natural gas production taxes, as provided in ~~15-36-324~~ *[section 1].*

(3) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(4) Subject to the conditions of subsection (5), money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

(5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.

(6) Money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905. (Subsection (2) terminates June 30, 2011—sec. 10, Ch. 531, L. 2001.)"

Section 13. Section 82-11-135, MCA, is amended to read:

"82-11-135. Money earmarked for board expenses. The state treasurer shall deposit all money distributed to the board under ~~15-36-324~~ *[section 1]* and collected under this chapter in the state special revenue fund. The money must be used for the purpose of paying all expenses of the board and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board's money in the state special revenue fund must be credited to the board."

Section 14. Section 85-2-905, MCA, is amended to read:

"85-2-905. Ground water assessment account. (1) There is a ground water assessment account within the special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate

opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, $366,000 of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and $300,000 of the interest earnings from the resource indemnity trust fund, as authorized by 15-38-202, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in which case an allocation may not be made and the proceeds must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by state government agencies and by local governments to carry out the purposes of this part;

(c) proceeds allocated to the account as provided in ~~15-36-324 and~~ 15-38-106; and

(d) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

Section 15. Section 90-2-1104, MCA, is amended to read:

"90-2-1104. Reclamation and development grants account. (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under provisions of 15-38-106;

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(d); and

(d) the oil and gas production tax as provided in ~~15-36-324 and 15-38-106~~ *[section 1]*.

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including salaries and expenses for personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded before funding of projects."

Section 16. Repealer. Sections 15-36-320 and 15-36-324, MCA, are repealed.

Section 17. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 36, part 3, and the provisions of Title 15, chapter 36, part 3, apply to [sections 1 and 2].

Section 18. Coordination instruction. If House Bill No. 584 and [this act] are both passed and approved, then [section 1 of this act] is amended to read:

"Section 1. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under [section 2] and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(3) (a) For tax year 2003 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002, is allocated to each county according to the following schedule:

	2003	2004	2005	2006 and succeeding tax years
Big Horn	45.03%	45.04%	45.04%	45.05%
Blaine	57.56%	57.84%	58.11%	58.39%
Carbon	50.24%	49.59%	48.93%	48.27%
Chouteau	56.67%	57.16%	57.65%	58.14%
Custer	103.63%	92.27%	80.9%	69.53%
Daniels	48.31%	49.15%	49.98%	50.81%
Dawson	56.32%	53.48%	50.64%	47.79%
Fallon	39.89%	40.52%	41.15%	41.78%
Fergus	112.2%	97.86%	83.52%	69.18%
Garfield	54.51%	51.66%	48.81%	45.96%
Glacier	76.56%	70.65%	64.74%	58.83%
Golden Valley	55.5%	56.45%	57.41%	58.37%
Hill	66.97%	66.15%	65.33%	64.51%
Liberty	63.32%	61.53%	59.73%	57.94%
McCone	58.75%	55.81%	52.86%	49.92%
Musselshell	57.06%	54.25%	51.44%	48.64%
Petroleum	67.8%	61.21%	54.62%	48.04%
Phillips	53.3%	53.54%	53.78%	54.02%
Pondera	104.14%	87.51%	70.89%	54.26%
Powder River	64.7%	63.44%	62.17%	60.9%
Prairie	38.43%	39.08%	39.73%	40.38%

Richland	45.23%	45.97%	46.72%	47.47%
Roosevelt	46.75%	46.4%	46.06%	45.71%
Rosebud	37.41%	38.05%	38.69%	39.33%
Sheridan	46.64%	47.09%	47.54%	47.99%
Stillwater	56.05%	55.2%	54.35%	53.51%
Sweet Grass	58.23%	59.24%	60.24%	61.24%
Teton	53.01%	50.71%	48.4%	46.1%
Toole	56.2%	56.67%	57.14%	57.61%
Valley	59.82%	57.02%	54.22%	51.43%
Wibaux	47.71%	48.19%	48.68%	49.16%
Yellowstone	50.69%	49.37%	48.06%	46.74%
All other counties	50.15%	50.15%	50.15%	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in [section 2].

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for the fiscal year ending June 30, 2003, to be distributed as follows:

(i) a total of $400,000 to the coal bed methane protection account established in 76-15-904; and

(ii) all remaining proceeds to the state general fund;

(b) for the fiscal year beginning July 1, 2003, through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund;

(c) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 2.95% to the orphan share account established in 75-10-743;

(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iv) all remaining proceeds to the state general fund."

Section 19. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax revenue derived from oil and natural gas production occurring after December 31, 2002.

Ap proved April 26, 2003

CHAPTER NO. 523

[SB 46]

AN ACT REMOVING THE REQUIREMENT THAT A COUNTY MUST ENTER INTO A CONTRACT FOR CERTAIN LARGE PURCHASES OR CONSTRUCTION CONTRACTS; AMENDING SECTION 7-5-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, a contract ~~must be entered into by a county~~ for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or ~~the~~ *for* construction, repair, or maintenance ~~of any building, road, or bridge~~ in excess of $50,000 ~~and~~ may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309, every contract subject to bidding must be let to the lowest ~~and best~~ responsible bidder."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 27, 2003

CHAPTER NO. 524

[SB 138]

AN ACT REVISING THE LAWS RELATING TO ALTERNATIVE ENERGY AND ENERGY CONSERVATION TAX POLICY; PROVIDING THAT GENERATION FACILITIES THAT HAVE 1 MEGAWATT OR GREATER CAPACITY POWERED BY AN ALTERNATIVE RENEWABLE ENERGY SOURCE ARE NOT EXEMPT FROM PROPERTY TAXES UNDER THE GENERAL PROPERTY TAX EXEMPTION LAWS BUT CONTINUE TO BE SUBJECT TO NEW AND EXPANDING INDUSTRY PROPERTY TAX INCENTIVES; REVISING THE DEDUCTION FOR ENERGY-CONSERVATION INVESTMENTS AND THE CREDITS FOR ENERGY-CONSERVING EXPENDITURES BY ELIMINATING THE TAX SAVING CEILING FOR THE DEDUCTION AND THE CARRYFORWARD PROVISION OF THE CREDIT; PROVIDING THAT PROPERTY PURCHASED UNDER THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT DOES NOT HAVE TO QUALIFY AS SPECIAL DEPRECIABLE PROPERTY UNDER THE INTERNAL REVENUE CODE OF 1954; AMENDING SECTIONS 15-6-225, 15-32-104, 15-32-109, AND

15-32-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-225, MCA, is amended to read:

"15-6-225. Energy equipment exemption. (1) ~~(a) Except as provided in subsection (1)(b), the machinery~~ *Machinery* and equipment used in *a* qualifying ~~generation facilities built and operated after July 1, 2001, are exempt from taxation.~~

~~(b) A~~ generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.

(2) (a) For the purposes of this section, "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property.

(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102."

Section 2. Section 15-32-104, MCA, is amended to read:

"15-32-104. Limitations on deduction and credit. Tax treatment under 15-32-103 and 15-32-109 is limited to~~:~~

~~(1) capital investments made after January 1, 1975;~~

~~(2)~~ persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development~~; and~~

~~(3) a ceiling of $100,000 in tax savings per year to any one person or firm~~."

Section 3. Section 15-32-109, MCA, is amended to read:

"15-32-109. Credit for energy-conserving expenditures. (1) Subject to the restrictions of ~~subsections~~ *subsection* (2) ~~and (3)~~, a resident individual taxpayer may take a credit against the taxpayer's tax liability under chapter 30 for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose, in an amount not to exceed $500.

(2) The credit ~~or the sum of the credits~~ under subsection (1):

(a) may not exceed the taxpayer's tax liability; and

(b) is subject to the provisions of 15-32-104.

~~(3) The credit allowed under this section may be used as a carryforward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year~~."

Section 4. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit — alternative energy systems. (1) An individual, corporation, partnership, or

small business corporation as defined in 15-30-1101 that makes an investment of $5,000 or more in ~~certain depreciable~~ property ~~qualifying~~ *that is depreciable* under ~~section 38 of~~ the Internal Revenue Code ~~of 1954, as amended,~~ for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce alternative energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures ~~that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and~~ that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

Section 5. Coordination instruction. (1) If House Bill No. 391 and [this act] are both passed and approved, then [section 2 of House Bill No. 391], amending 15-32-402, is void.

(2) If Senate Bill No. 146 and [this act] are both passed and approved then:

(a) [section 4 of Senate Bill No. 146], amending 15-32-402, is void; and

(b) the reference to 90-4-102 in [section 4 of this act], amending 15-32-402, is changed to 15-6-225.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001.

Ap proved April 26, 2003

CHAPTER NO. 525

[SB 320]

AN ACT ALLOWING A MUNICIPALITY TO ADJUST BASE TAXABLE VALUE IN CERTAIN CASES OF TAX INCREMENT FINANCING FOR

WHICH NO BONDS WERE ISSUED; AMENDING SECTION 7-15-4293, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4293, MCA, is amended to read:

"7-15-4293. Adjustment of base taxable value following change of law — *option if bonds not issued*. *(1)* If the base taxable value of an urban renewal area or an industrial district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue or its agents to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) In cases of tax increment financing districts that were created on or after January 1, 1998, and before July 1, 2001, for which bonds were not issued, a municipality may adjust the base taxable value to account for a loss of taxable value resulting from a statutory change if the municipality has given notice of and has held a hearing on the proposed change."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates June 30, 2003.

Ap proved April 26, 2003

CHAPTER NO. 526

[SB 384]

AN ACT ALLOWING A CITY OR TOWN TO EXTEND, RENEW, OR AMEND AN AGREEMENT FOR THE SUPERVISION OR OPERATION OF A PHYSICAL PLANT THAT PROVIDES WATER, SEWER, OR POWER SERVICES TO THE MUNICIPALITY WITHOUT PROCEEDING UNDER PUBLIC BIDDING PROCEDURES IN CERTAIN INSTANCES; AND AMENDING SECTION 7-5-4301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4301, MCA, is amended to read:

"7-5-4301. Power to enter and execute contracts. (1) ~~The~~ *A* city or town ~~council has power~~ *is authorized* to make any ~~and all~~ contracts necessary to carry into effect the *applicable* powers granted by this ~~code~~ *chapter* and to provide for the manner of executing the ~~same~~ *contracts*.

(2) (a) All necessary contracts for professional, technical, engineering, ~~and~~ *or* legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307. ~~Provided, however~~ *However*, contracts ~~wherein~~ *in which* the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, ~~and~~ *or* legal services must be awarded under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

(b) *(i) Except as provided in subsection (2)(b)(ii), supervision* ~~Supervision~~ over or operation of a physical plant that provides water, sewer, or power services to a municipality does not constitute a service excluded under the provisions of subsection (2)(a).

(ii) A city, town, or municipality may extend, renew, or amend a contract or series of contracts for the supervision or operation of a physical plant that provides water, sewer, or power services without proceeding under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307 if:

(A) one or more of the contracts were awarded to the entity in accordance with the competitive bidding procedures provided in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307; and

(B) the entity has provided the services to the city, town, or municipality for the immediately preceding 5-year period."

Ap proved April 26, 2003

CHAPTER NO. 527

[SB 399]

AN ACT ALLOWING A MUNICIPALITY OR COUNTY TO REQUEST THAT THE UNITED STATES DEPARTMENT OF TRANSPORTATION ESTABLISH RAILROAD CROSSING QUIET ZONES THROUGH WHICH LOCOMOTIVE HORNS AND BELLS ARE NOT ROUTINELY SOUNDED; REQUIRING THE MUNICIPALITY OR COUNTY TO DESCRIBE HOW REQUIRED SUPPLEMENTAL SAFETY MEASURES WILL BE IMPLEMENTED AT THOSE CROSSINGS; PROVIDING THAT A QUIET ZONE MAY NOT BE ESTABLISHED UNLESS CERTAIN PROCEDURES ARE FOLLOWED; ALLOWING A RAILROAD COMPANY TO PERMIT ITS TRAINS TO PASS THROUGH DESIGNATED QUIET ZONES WITHOUT SOUNDING THEIR HORNS AND BELLS; EXEMPTING A RAILROAD COMPANY AND EMPLOYEES FROM LIABILITY; AMENDING SECTIONS 61-8-347, 69-14-562, AND 69-14-610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Establishment of railroad quiet zones. (1) For the purposes of this section, "quiet zone" means a segment of a railroad within which is situated one or a number of consecutive railroad crossings at which locomotive horns and bells are not routinely sounded.

(2) A governing body of a municipality or a board of county commissioners may petition to the secretary of the United States department of transportation to establish quiet zones at railroad crossings that meet the requirements established in the rules adopted to implement 49 U.S.C. 20153(c). In developing the petition, the governing body of the municipality or the board of county commissioners shall consult with the railroad corporations that operate the rail lines through crossings that are within the proposed quiet zone. The petition must include how the municipality or county intends to implement the supplemental safety measures that are required by the United States department of transportation at railroad crossings within quiet zones.

(3) A quiet zone may not be established at a railroad crossing unless the governing body of a municipality or a board of county commissioners follows the

procedure provided in subsection (2) and receives the approval of the secretary of the United States department of transportation or the secretary's designee.

Section 2. Section 61-8-347, MCA, is amended to read:

"61-8-347. Obedience to signal indicating approach of train. (1) ~~Whenever any~~ *When a* person ~~driving~~ *operating* a vehicle approaches a railroad ~~grade~~ crossing under any of the circumstances stated in this section, the ~~driver~~ *operator* of ~~such~~ *the* vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of ~~such~~ *the* railroad~~,~~ and ~~shall~~ *may* not proceed until ~~he~~ *the operator* can do so safely. ~~The foregoing~~ *These* requirements ~~shall~~ apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the *presence or* immediate approach of a railroad train;

(b) a crossing gate is lowered or when a ~~human flagman~~ *flag person* gives or continues to give a signal of the approach or passage of a railroad train;

(c) a railroad train approaching within approximately 1,500 feet of the ~~highway~~ crossing emits a signal audible from ~~such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;~~ *that distance, except at crossings within quiet zones established under [section 1], indicating that the train is an immediate hazard because of its speed or nearness to the crossing; or*

(d) an approaching railroad train is plainly visible and is in hazardous proximity to ~~such~~ *the* crossing.

(2) ~~No person shall drive any~~ *A person may not operate a* vehicle through, around, or under any crossing gate or barrier at a railroad crossing while ~~such~~ *the* gate or barrier is closed or is being opened or closed."

Section 3. Section 69-14-562, MCA, is amended to read:

"69-14-562. Regulation of safety on railroads. (1) A railroad corporation within this state is guilty of a misdemeanor and upon conviction is subject to the penalties provided in subsection (2) if the corporation:

(a) neglects to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

(b) runs a train over an unsafe bridge, trestlework, or aqueduct;

(c) fails to have a locomotive in use by it equipped with a properly functioning horn and bell;

(d) *except as provided in [section 1],* permits a locomotive to approach a public highway, public road, or public railroad crossing without causing the locomotive horn and bell to be sounded at ~~a point 1,320 feet~~ *the distance* from the crossing *provided in 61-8-347*, the horn and bell to be sounded from the specified point until the crossing is reached. If the owner or permitholder of a private crossing makes a written request to the railroad corporation to have the locomotive horn and bell sounded at the private crossing, the railroad shall comply with the request. The owner or permitholder is not subject to any liability as a result of not making a request.

(e) willfully fails to make any report required by law.

(2) Upon conviction of the offenses provided in subsection (1), a railroad corporation is subject to a fine of:

(a) $1,000 for the first offense;

(b) $2,000 for the second violation of the same provision; and

(c) not less than $5,000 or more than $10,000 for subsequent violations of a provision for which it has twice been found guilty."

Section 4. Section 69-14-610, MCA, is amended to read:

"69-14-610. Effect of *railroad* crossing provisions on liability of railroad. *(1)* Nothing contained in 69-14-601 through 69-14-611 ~~shall in any way affect~~ *affects* the liability of ~~any~~ *a* railroad company for damage to persons or property injured at ~~any crossings~~ *a railroad crossing*.

(2) A railroad company or an employee of a railroad company may not be held liable for damages to persons or property injured at a railroad crossing that is within a quiet zone, as defined in [section 1], if the damages are alleged to arise from the locomotive's failure to sound its horn or bell at a railroad crossing that is within a quiet zone as provided in [section 1]."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 14, part 6, and the provisions of Title 69, chapter 14, part 6, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved April 26, 2003

CHAPTER NO. 528

[SB 464]

AN ACT REVISING LAWS GOVERNING FOOD ESTABLISHMENTS; REVISING FOOD ESTABLISHMENT LICENSURE FEES; PROVIDING FOR LICENSURE OF FOOD ESTABLISHMENTS OPERATED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE UNLESS THEY EMPLOY A FULL-TIME SANITARIAN; REQUIRING ANNUAL INSPECTIONS; ALLOWING INSPECTIONS MORE THAN ONCE A YEAR; REQUIRING TRAINING FOR INSPECTORS; AMENDING SECTIONS 50-50-102, 50-50-103, 50-50-202, 50-50-205, AND 50-50-301, MCA; AND PROVIDING DELAYED EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, perishable food dealer, or water hauler not regulated as a public water supply system as provided in Title 75, chapter 6.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) *(a)* "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption~~, but~~.

(b) The term does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only to its members.

(c) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.

(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(13) "Perishable food dealer" means a person or commercial establishment that is in the business of purchasing and selling perishable food to the public.

(14) "Person" means a person, partnership, corporation, association, cooperative group, *the state or a political subdivision of the state,* or other entity engaged in operating, owning, or offering services of an establishment.

(15) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(16) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (16)(a).

(17) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(18) *(a)* "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

Section 2. Section 50-50-103, MCA, is amended to read:

"50-50-103. Department authorized to adopt rules — *advisory council.* (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.

(3) The department shall use a food safety task force or advisory council to assist in the development of administrative rules or proposed legislation. The task force or advisory council must be composed of equal numbers of representatives of the food establishments and representatives of state and local government. Administrative rules and any legislation to be proposed by the department must be presented to the task force or advisory council prior to its proposal or introduction."

Section 3. Section 50-50-202, MCA, is amended to read:

"50-50-202. Establishments exempt from license requirement — farmer's market records. (1) Establishments owned or operated by the state or a political subdivision of the state *that employ a full-time sanitarian* are exempt from licensure but ~~must~~ *shall* comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) A license is ~~not~~ *not* required to operate ~~an~~ *an* establishment ~~if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year~~ *if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year*. An establishment ~~exempt from~~ *exempt from* licensure under this subsection ~~must~~:

(a) *must* be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(b) prior to each operation, *shall* register with the local health officer or sanitarian on forms provided by the department.

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person selling baked goods or preserves at a farmer's market.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

Section 4. Section 50-50-205, MCA, is amended to read:

"50-50-205. License fee — late fee — preemption of local authority — exception. (1) *(a)* ~~For~~ *Except as provided in subsection (1)(b), for* each license issued, the department shall collect a fee of ~~$60~~ *$75*. It shall deposit ~~85%~~ *88%* of the fees collected under this section into the local board inspection fund account created in 50-2-108, ~~7.5%~~ *6%* of the fees into the general fund, and ~~7.5%~~ *6%* of the fees into the account provided for in 50-50-216.

(b) For each license issued to an establishment that does not have more than two employees working at any one time, the department shall collect a fee of $60, which must be deposited in accordance with the percentages provided in subsection (1)(a).

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in ~~subsection~~ *subsection* (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

(4) The fees in subsections (1) ~~and (2)~~ *and (2)* may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108."

Section 5. Section 50-50-205, MCA, is amended to read:

"50-50-205. License fee — late fee — preemption of local authority — exception. (1) *(a)* ~~For~~ *Except as provided in subsection (1)(b), for* each license issued, the department shall collect a fee of ~~$60~~ *$90*. It shall deposit ~~85%~~ *90%* of the fees collected under this section into the local board inspection fund account created in 50-2-108, ~~7.5%~~ *5%* of the fees into the general fund, and ~~7.5%~~ *5%* of the fees into the account provided for in 50-50-216.

(b) For each license issued to an establishment that does not have more than two employees working at any one time, the department shall collect a fee of $60, which must be deposited in accordance with the percentages provided in subsection (1)(a).

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of the licensee's current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

(4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108."

Section 6. Section 50-50-301, MCA, is amended to read:

"50-50-301. Health officers and sanitarians to make investigations and inspections — *training requirements.* *(1)* State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments *once a year* and make reports

to the department as required under rules adopted by the department. *An inspection may be conducted more often than once a year.*

(2) A person conducting an inspection must be certified and have completed a food safety training program, such as the program administered by the national restaurant association educational foundation or its equivalent."

Section 7. Effective dates. (1) [Sections 1 through 4, 6, and 8 and this section] are effective January 1, 2004.

(2) [Section 5] is effective January 1, 2005.

Section 8. Termination. [Section 4] terminates December 31, 2004.

Ap proved April 26, 2003

CHAPTER NO. 529

[SB 478]

AN ACT CHANGING THE WAY THAT A POLITICAL SUBDIVISION MAY EXEMPT A PROPERTY TAX MILL LEVY FOR PREMIUM CONTRIBUTIONS FOR GROUP BENEFITS FROM THE PROPERTY TAX LIMITATION LAW; CHANGING THE OPERATIVE DATES; PROVIDING THAT THE HEARING ON THE EXEMPTION MUST COMPLY WITH NOTICE AND HEARING REQUIREMENTS; REQUIRING THAT THE EXEMPT MILL LEVY OR DOLLAR AMOUNT BE LISTED SEPARATELY ON THE PROPERTY TAX NOTICE; AMENDING SECTIONS 2-9-212 AND 2-18-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-212, MCA, is amended to read:

"2-9-212. Political subdivision tax levy to pay premiums. (1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) ~~The~~ *If a political subdivision made contributions for group benefits under 2-18-703 on or before July 1, 2001, the* increase in ~~a~~ *the* political subdivision's property tax levy for the political subdivision's premium contributions for group benefits under 2-18-703 beyond the amount of contributions in effect ~~on July 1, 1999,~~ *at the beginning of the last fiscal year* is not subject to the mill levy calculation limitation provided for in 15-10-420. *Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a). If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.*

(b) ~~Prior~~ *Each year prior* to implementing a levy under subsection (2)(a), *after notice of the hearing given under 7-1-2121 or 7-1-4127,* a public hearing must be held regarding any proposed increases.

(c) A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a)."

Section 2. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$295 a month for the period from July 2001 through December 2001, $325 a month for the period from January 2002 through December 2002, and~~ $366 a month for January 2003 and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is ~~$325 a month for the period from July 2001 through June 2002 and~~ $366 a month ~~for the period from July 2002 through June 2003 and for each succeeding month~~. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on ~~July 1, 1999,~~ *the first day of the last fiscal year* is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 3. Transition. A levy made prior to [the effective date of this act] under 2-9-212(2) may not be included as a levy in a previous year in determining

the amount of property taxes that a governmental entity may assess under the provisions of 15-10-420(1)(a). If a levy made prior to [the effective date of this act] under 2-9-212(2) decreased or was no longer levied, the difference between that levy and the next year levy may not be carried forward for imposition in a subsequent year under 15-10-420(1)(b).

Section 4. Coordination instruction. If House Bill No. 13 is passed and approved, then the amendments contained in 2-18-703(2) in [section 2 of this act] are void.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [Section 3] applies retroactively, within the meaning of 1-2-109, to levies made after December 31, 1998.

Ap proved April 26, 2003

CHAPTER NO. 530

[HB 283]

AN ACT DIRECTING THE ATTORNEY GENERAL TO PREPARE A PROACTIVE OPINION OF STATE OPTIONS REGARDING DELISTING AND POSSIBLE LITIGATION SCENARIOS RELATED TO RECOVERY OF DAMAGES AND COSTS ASSOCIATED WITH WOLF REINTRODUCTION IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Attorney general to analyze state delisting options and possible litigation scenarios for recovery of damages and costs associated with wolf reintroduction. Pursuant to 2-15-501(9), the attorney general is directed to analyze the state's options related to delisting and, in cooperation with the department of fish, wildlife, and parks, prepare a proactive legal opinion for possible litigation scenarios regarding recovery of damages and costs incurred by the state of Montana that are associated with wolf reintroduction.

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 29, 2003

CHAPTER NO. 531

[HB 722]

AN ACT IMPOSING A UTILIZATION FEE ON RESIDENT BED DAYS OF INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE FEE AND DEPOSIT 70 PERCENT OF THE FEE IN A STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF FINANCING, ADMINISTERING, AND PROVIDING HEALTH AND HUMAN SERVICES; PROVIDING FOR THE DEPOSIT OF THE REMAINDER OF THE FEE IN THE STATE GENERAL FUND; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) "Intermediate care facility" or "facility" means an intermediate care facility for the mentally retarded [licensed pursuant to section 5 of Senate Bill No. 113].

(4) (a) "Quarterly revenue" means all revenue received during a calendar quarter by a facility operating in Montana for providing for client care.

(b) For facilities operated by the state, the term means total expenditures for the quarter.

(5) "Report" means the report of resident bed days required in [section 3].

(6) "Resident" means an individual obtaining care in an intermediate care facility.

(7) "Resident bed day" means each 24-hour period that a resident in an intermediate care facility is present in the facility and receiving care or in which a bed is held for a resident while the resident is on temporary leave from the facility. The term includes all benefit days as defined for medicare reporting purposes in section 242.1 of Publication 12, the Skilled Nursing Facility Manual, published by the centers for medicare and medicaid services, regardless of the source of payment.

(8) "Utilization fee" or "fee" means the fee required to be paid for each resident bed day in an intermediate care facility, as provided in [section 2].

Section 2. Utilization fee for resident bed days. (1) Each calendar quarter, an intermediate care facility shall pay to the department a utilization fee for each resident bed day calculated as provided in subsection (2).

(2) The utilization fee is 5% of the intermediate care facility's quarterly revenue divided by the resident bed days for the quarter.

(3) In accordance with the provisions of 15-1-501, all proceeds of the utilization fee, including penalty and interest, must be deposited as follows:

(a) 30% in the state general fund; and

(b) 70% in an account in the state special revenue fund established pursuant to [section 14] to the credit of the department of public health and human services to finance, administer, and provide health and human services.

Section 3. Reporting, collection, and deposit of fee. (1) An intermediate care facility shall report to the department, following the end of each calendar quarter, the facility's quarterly revenue and the number of resident bed days in the facility during the quarter. The report, in a form prescribed by the department, is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the utilization fee required to be paid under [section 2]. The department shall deposit the utilization fee pursuant to [section 2(3)].

(2) At the end of each calendar quarter, the department of public health and human services shall provide the department with a list of intermediate care facilities.

Section 4. Audit — records. (1) The department may audit the records and other documents of any intermediate care facility to ensure that the proper utilization fee has been paid.

(2) The department may require an intermediate care facility to provide records and other documentation, including books, ledgers, and registers, necessary for the department to verify that the proper amount of the utilization fee has been paid.

(3) An intermediate care facility shall maintain and make available for inspection by the department sufficient records and other documentation to demonstrate the number of resident bed days in the facility. The facility shall maintain these records for a period of at least 5 years from the date a report is due.

Section 5. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the quarter for which a report is filed unless the notice of additional utilization fee proposed to be assessed is mailed within 5 years from the date the report was filed. For the purposes of this section, a report filed before the last day prescribed for filing is considered filed on the last day. If, before the expiration of the period prescribed for assessment of the utilization fee, the intermediate care facility consents in writing to an assessment after the 5-year period, the utilization fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be paid or allowed with respect to the calendar quarter for which a report is filed after 5 years from the last day prescribed for filing the report or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the intermediate care facility files a claim or the department has determined the existence of the overpayment and has approved the refund or credit. If the intermediate care facility has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit is filed or a credit or refund is allowed in the event a claim is filed is automatically extended.

Section 6. Penalty and interest for delinquent fee. If the fee for any intermediate care facility is not paid on or before the due date of the report as provided in [section 3], penalty and interest, as provided in 15-1-216, must be added to the fee.

Section 7. Estimated fee on failure to file. (1) For the purpose of ascertaining the correctness of any report or for the purpose of making an estimate of resident bed day use of any intermediate care facility about which information has been obtained, the department may:

(a) examine or cause to have examined by any designated agent or representative any books, papers, records, or memoranda bearing upon the matters required to be included in the report;

(b) require the attendance of any officer or employee of the facility rendering the report or the attendance of any other person in the premises having relevant knowledge; and

(c) take testimony and require production of any other material for its information.

(2) Based on the information provided for in subsection (1), the department shall calculate a fee to be imposed on a facility and shall notify the facility of the amount of the fee pursuant to [section 8].

Section 8. Deficiency assessment. (1) If the department determines that the amount of fees due is greater than the amount disclosed by the report, it shall mail to the intermediate care facility a notice of the additional fees proposed to be assessed. Within 30 days after the mailing of the notice, the intermediate care facility may file with the department a written protest against the proposed additional fees, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its fee liability. If a protest is not filed, the amount of the additional fees proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department shall reconsider the proposed assessment and, if the intermediate care facility has requested it, shall grant the intermediate care facility an oral hearing. After consideration of the protest and the evidence presented at an oral hearing, the department's action upon the protest is final when it mails notice of its action to the intermediate care facility.

(2) When a deficiency is determined and the fees become final, the department shall mail notice and demand to the intermediate care facility and the fees become due and payable at the expiration of 10 days from the date of the notice and demand. Interest on any deficiency assessment accrues from the date specified in [section 3] for payment of the fees. A certificate by the department of the mailing of the notices specified in this section is prima facie evidence of the computation and levy of the deficiency in the fees and of the giving of the notices.

Section 9. Closing agreements. (1) The director of the department or any person authorized in writing by the director may enter into an agreement with any intermediate care facility relating to the liability of the intermediate care facility with respect to the fees imposed by [sections 1 through 13] for any period.

(2) An agreement under this section is final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(a) the agreement may not be reopened or modified as to matters agreed upon by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

Section 10. Credit for overpayment — interest. (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the intermediate care facility and the balance must be refunded to the intermediate care facility or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in 15-1-216, from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the intermediate care

facility to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) Interest is not allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $5.

(4) A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by [sections 1 through 13] is not considered an overpayment with respect to which interest is allowable.

Section 11. Warrant for distraint. If the utilization fee is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

Section 12. Relation to other taxes and fees. The utilization fee imposed under [section 2] is in addition to any other taxes and fees required by law to be paid by an intermediate care facility.

Section 13. Rulemaking authority. The department may adopt rules necessary to implement and administer [sections 1 through 13].

Section 14. State special revenue account. There is a prevention and stabilization account in the state special revenue fund provided for in 17-2-102. Money in the account must be used by the department of public health and human service to finance, administer, and provide health and human services.

Section 15. Appropriation. The following money is appropriated to the department of public health and human services:

(1) from the general fund for the payment of the utilization fees created in [section 2]:

Fiscal year 2003	$426,018
Fiscal year 2004	$917,585
Fiscal year 2005	$922,466

(2) from the state special revenue account in [section 14] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	$298,213
Fiscal year 2004	$642,039
Fiscal year 2005	$645,726

(3) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	$1,114,118
Fiscal year 2004	$2,364,548
Fiscal year 2005	$2,394,823

Section 16. Codification instruction. (1) [Sections 1 through 13] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 14].

Section 17. Contingent voidness. (1) If federal law or policy is amended so that the utilization fees collected pursuant to [sections 1 through 13] may not be considered as the state's share in claiming federal financial participation under the medicaid program, then [this act] is void as of the effective date of the change in federal law or policy.

(2) If the federal government refuses to participate in or denies approval of any plan for medicaid payments to intermediate care facilities on grounds that it considers the payments to be reimbursement to facilities for payment of the utilization fees, then [this act] is void as of the date of receipt by the department of public health and human services of notice of an official determination of the refusal or denial.

(3) If [this act] becomes void under the provisions of this section, all fees due or received or collected by the department of revenue prior to the date upon which the act becomes void must be paid and deposited in accordance with [section 2] and a person or party may not receive a refund of any fees received or collected by the department of revenue prior to the date upon which [this act] becomes void.

(4) The department of revenue or the department of public health and human services, as appropriate, shall notify the code commissioner of the occurrence of any of the contingencies provided for in subsections (1) through (3) and the effective date of the contingency.

Section 18. Coordination instruction. (1) If Senate Bill No. 113 is passed and approved, then the code commissioner shall change the reference to "immediate care facility for the mentally retarded" in [this act] to "immediate care facility for the developmentally disabled".

(2) If Senate Bill No. 113 is not passed and approved, then the bracketed language in [this act] is void.

(3) If House Bill No. 727 is passed and approved, [section 15 of this act] is void and the following money is appropriated to the department of public health and human services:

(a) from the general fund for the payment of the utilization fees created in [section 2]:

Fiscal year 2003	$426,018
Fiscal year 2004	$833,971
Fiscal year 2005	$798,486

(b) from the state special revenue account in [section 14 of this act] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	$298,213
Fiscal year 2004	$583,780
Fiscal year 2005	$558,940

(c) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2003	$1,114,118
Fiscal year 2004	$2,176,598
Fiscal year 2005	$2,046,753

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Ap proved April 29, 2003

CHAPTER NO. 532

[HB 743]

AN ACT INCLUDING BED DAYS AT THE MONTANA MENTAL HEALTH NURSING CARE CENTER IN THE NURSING FACILITY UTILIZATION FEE; PROVIDING FOR THE DISPOSITION OF UTILIZATION FEES FROM THE MONTANA MENTAL HEALTH NURSING CARE CENTER; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-60-101 AND 15-60-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-60-101, MCA, is amended to read:

"15-60-101. (Temporary) Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Bed day" means each 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a), regardless of the source of payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present for less than a 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of public health and human services as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes*:*

(a) nursing facilities, whether they are:

~~(a)~~*(i)* operated as nonprofit or for-profit facilities;

~~(b)~~*(ii)* freestanding or part of another health care facility; or

~~(c)~~*(iii)* publicly or privately operated*; and*

(b) the Montana mental health nursing care center provided for in 53-21-411.

(5) "Report" means the report of bed days required in 15-60-201.

(6) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

Section 2. Section 15-60-210, MCA, is amended to read:

"15-60-210. (Temporary) Disposition of fee. *(1)* ~~All~~ *Except as provided in subsection (2), all* proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 15-1-501, be deposited in the general fund.

(2) Utilization fees, including penalties and interest, collected from the Montana mental health nursing care center must be allocated as follows:

(a) 30% to the state general fund; and

(b) 70% to the prevention and stabilization account in the state special revenue fund established pursuant to [section 14 of House Bill No. 722] to the credit of the department of public health and human services to finance, administer, and provide health and human services. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

Section 3. Appropriation. The following money is appropriated to the department of public health and human services:

(1) from the general fund for the payment of the utilization fees provided for in 15-60-102:

Fiscal year 2004	$71,540
Fiscal year 2005	71,540

(2) from the state special revenue account in [section 14 of House Bill No. 722] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004	$ 50,078
Fiscal year 2005	50,078

(3) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004	$186,713
Fiscal year 2005	183,377

Section 4. Contingent appropriation. If House Bill No. 705 is passed and approved, [section 3 of this act] is void and the following money is appropriated to the department of public health and human services:

(1) from the general fund for the payment of the utilization fees provided for in 15-60-102:

Fiscal year 2004	$114,975
Fiscal year 2005	135,415

(2) from the state special revenue account in [section 14 of House Bill No. 722] for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004	$80,483
Fiscal year 2005	94,791

(3) from federal special revenue for the purposes of financing, administering, and providing health and human services:

Fiscal year 2004	$300,076
Fiscal year 2005	347,108

Section 5. Coordination. If House Bill No. 722 is not passed and approved, then [sections 2 through 4 of this act] are void.

Section 6. Contingent voidness. If any of the contingencies contained in section 18, Chapter 746, Laws of 1991, occur, then [this act] is void.

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved April 29, 2003

CHAPTER NO. 533

[HB 767]

AN ACT GENERALLY REVISING MOTOR VEHICLE AND DRIVING RECORD LAWS; PROVIDING FOR SPECIAL MOTORCYCLE LICENSE PLATES; ESTABLISHING A FEE FOR THE SPECIAL MOTORCYCLE LICENSE PLATES AND REQUIRING THAT THE PROCEEDS BE USED FOR GRANTS TO NONPROFIT ORGANIZATIONS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF JUSTICE; STATUTORILY APPROPRIATING THE FEE PROCEEDS TO THE DEPARTMENT OF JUSTICE; REVISING LAWS GOVERNING THE RELEASE OF INFORMATION FROM DRIVING RECORDS BY THE DEPARTMENT OF JUSTICE, THE KIND OF INFORMATION THAT MAY BE RELEASED, AND THE FEES THAT MAY BE CHARGED; AMENDING SECTIONS 17-7-502, 61-11-105, 61-11-503, 61-11-509, AND 61-11-510, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special motorcycle license plates — department to design — fees — distribution. (1) A Montana resident who is the owner of a motorcycle or quadricycle titled and registered under this chapter and who pays the fee required under subsection (2) may be issued a set of special motorcycle license plates bearing a design created by the department. The design must recognize the efforts of one or more Montana-based nonprofit organizations that grant wishes to chronically or critically ill Montana children.

(2) A person requesting a set of special motorcycle license plates under this section shall pay to the county treasurer:

(a) an administrative fee of $5 upon initial issuance of the special license plates; and

(b) an annual donation fee of $20 upon initial issuance, renewal, or transfer of the special license plates.

(3) The county treasurer shall remit the fees required in subsection (2) to the department of revenue. For each set of plates issued, the department of revenue shall deposit $5 in the state general fund and $20 in an account in the state special revenue fund to be used by the department as provided in subsection (4).

(4) The department shall use the money deposited in the account in the state special revenue fund as provided in subsection (3) to provide grants, using criteria established by the department, to Montana-based nonprofit

organizations that grant wishes to Montana children who are chronically or critically ill.

(5) The department shall adopt rules to identify the entity or entities that may qualify for grants under this section and to establish the criteria that an entity must meet to receive grant funds.

(6) The account in the state special revenue fund provided for in subsection (3) is statutorily appropriated to the department, as provided in 17-7-502.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; *[section 1];* 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 3. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information — fees. (1) Subject to the ~~provisions of subsection (2)~~ *limitations of this section*, the department shall, upon request, furnish a person the individual Montana driving record of a *driver or* licensee, ~~showing~~ *containing* the following *data*:

(a) *the driver's or licensee's name, driver's license number, and date of birth;*

(b) driver's license status*, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee,* and *the license* expiration date;

~~(b)~~*(c)* convictions of the *driver or* licensee; and

~~(c)~~*(d)* traffic accidents in which the *driver or* licensee was involved.

(2) The department may not *enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.*

(3) The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

~~(3)~~*(4)* Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

~~(4)~~*(5) (a)* ~~A~~ *Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a* fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. *A fee of eight cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.*

(b) ~~All driving records~~ *An individual Montana driving record* must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

(6) In addition to the fees required in subsection (5) and 61-11-510(3), an individual Montana driving record or any report compiled from one or more individual Montana driving records that are electronically transmitted to a requester through a point of entry for electronic government services are subject to the convenience fee established under 2-17-1103.

(7) The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in electronic format to use a point of entry for electronic government services to obtain the record or data."

Section 4. Section 61-11-503, MCA, is amended to read:

"61-11-503. Definitions. As used in this part, the following definitions apply:

(1) "Disclose" means to engage in any practice or conduct that makes available or known, by means of any communication to another person,

organization, or entity, personal information contained in a motor vehicle record.

(2) "Express consent" means an affirmative authorization given in writing by a person to whom personal information pertains that specifically allows the department to release personal information to another person, organization, or entity. Consent may be conveyed electronically if the conveyance includes an electronic signature, as defined in 2-20-103, from the person to whom the personal information pertains.

(3) "Highly restricted personal information" means an individual's photograph or image, social security number, or medical or disability information.

(4) "Motor vehicle record" means any record maintained by the department that pertains to a driver's license, commercial driver's license, driving permit, motor vehicle title, motor vehicle registration, or identification card issued by the department.

(5) "Person" does not mean a state agency or local government entity.

(6) (a) "Personal information" means information that identifies a person, including a person's name, address, telephone number, social security number, ~~driver~~ *driver's license or* identification number, *date of birth,* photograph or image, and medical or disability information.

(b) The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, a person's driver's license or vehicle registration status, or a vehicle's insurance status.

(7) "Record" includes all books, papers, photographs, photostats, cards, film, tapes, recordings, electronic data, printouts, or other documentary materials, regardless of physical form or characteristics."

Section 5. Section 61-11-509, MCA, is amended to read:

"61-11-509. Permitted disclosure of personal information, excluding highly restricted personal information — specific uses. Upon application, proof of the identity of the person requesting a record, and payment of the fees required in 61-11-510 *and subject to the provisions of 61-11-105,* the department may disclose personal information, excluding highly restricted personal information, from a motor vehicle record to a person who represents that the use of the personal information will be limited to one or more of the following uses:

(1) in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(a) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(b) if the submitted information is not correct or is no longer correct, to obtain the correct information for the purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest against the individual;

(2) by a party in interest, or the agent of a party in interest, in a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, an

investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court;

(3) by an insurer or insurance support organization or a self-insured entity or its agents, employees, or contractors, in connection with the following arising under insurance policies:

(a) the investigation of claims;

(b) antifraud activities;

(c) ratemaking; or

(d) underwriting;

(4) by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license required under federal or state law;

(5) to conduct research activities and produce statistical reports and journalistic articles as long as the personal information is not published, disclosed to a third party, or used to contact individuals;

(6) to provide notice to the owners of towed, abandoned, or impounded vehicles;

(7) for use by any licensed private investigative agency or licensed security service for any purpose provided under this section;

(8) for use in activities pertaining to:

(a) motor vehicle or driver safety and theft;

(b) motor vehicle emissions;

(c) motor vehicle product alterations, recalls, or advisories;

(d) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and

(e) removal of nonowner records from the original owner records of motor vehicle manufacturers;

(9) for any other use that is specifically related to the operation of a motor vehicle or to public safety and that is authorized by state law; and

(10) for any use by a requester who demonstrates to the department that the requester has obtained the express consent of the person to whom the information pertains."

Section 6. Section 61-11-510, MCA, is amended to read:

"61-11-510. Prerequisites to disclosure. (1) Prior to the disclosure of personal information or highly restricted personal information, as provided in 61-11-507, 61-11-508, or 61-11-509, the department shall require the requester to complete and submit an application, in a form prescribed by the department, identifying the requester and specifying the statutorily recognized uses for which the personal information or highly restricted personal information is being sought.

(2) The department shall require the requester to provide identification acceptable to the department.

(3) (a) The department shall collect the appropriate fees paid by the requester and shall determine the amount of the fees in accordance with 61-3-101, 61-11-105, and this subsection (3), ~~or~~ *and* as appropriate, in

accordance with the terms of a contract between the department and the requester.

(b) The department shall ensure that fees established by policy or contract:

(i) recover the department's cost and expenses as provided in 2-6-110(2) and 61-3-101; ~~and~~

(ii) include an additional amount necessary to compensate the department for costs associated with developing and maintaining the database from which information is requested*; and*

(iii) incorporate, when applicable, the convenience fee established under 2-17-1103.

(c) Except as provided in *61-11-105(5)(b)* subsection (3)(d) *of this section*, the department shall charge a fee to any person, including a representative of a federal, state, or local government entity or member of the news media who requests information under this section.

(d) The department may not charge a fee for information requested by the governor's office of budget and program planning, the state tax appeal board, any legislative branch agency or committee, or any criminal justice agency, as defined in 44-5-103."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2003.

(2) [Section 1] is effective January 1, 2004.

Ap proved April 29, 2003

CHAPTER NO. 534

[SB 112]

AN ACT ASSISTING IN THE FUNDING OF MONTANA SEARCH AND RESCUE OPERATIONS; ASSESSING A SURCHARGE ON CERTAIN LICENSES AND DIRECTING THAT SURCHARGE PROCEEDS BE SPENT FOR COUNTY SEARCH AND RESCUE OPERATIONS AND TRAINING AND AS MATCHING FUNDS FOR THE PURCHASE OF EQUIPMENT BY LOCAL SEARCH AND RESCUE UNITS; CREATING A SEARCH AND RESCUE ACCOUNT, TO BE ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS, TO ASSIST IN FUNDING SEARCH AND RESCUE OPERATIONS; AMENDING SECTIONS 15-1-122, 23-2-517, 23-2-615, 23-2-616, 23-2-803, 87-1-601, AND 87-2-202, MCA; AND PROVIDING DELAYED EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of

search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122(3)(g);

(b) fund transfers pursuant to 87-1-601(9). These funds may be used only as provided in 87-1-601(9).

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of search and rescue missions conducted by a county sheriff's office at a maximum of $3,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of $2,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing county sheriff offices, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year; and

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance in verifying and processing claims for reimbursement, equipment, and training.

Section 2. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $75,000 in fiscal year 2003;

(b) $2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; ~~and~~

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112*; and*

(g) to the search and rescue account provided for in [section 1]:

(i) 50 cents a year for each vessel subject to the search and rescue surcharge in 23-2-517;

(ii) 50 cents a year for each snowmobile subject to the search and rescue surcharge in 23-2-615(1)(b) and 23-2-616(3); and

(iii) 50 cents a year for each off-highway vehicle subject to the search and rescue surcharge in 23-2-803.

~~(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.~~

~~(5)~~*(4)* For each fiscal year, ~~beginning with fiscal year 2002,~~ the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). ~~Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000.~~ Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

~~(6)~~*(5)* The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 3. Section 23-2-517, MCA, is amended to read:

"23-2-517. Fees for motorboats, sailboats, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons. (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length and age of the motorboat or sailboat as follows:

(a) The fee schedule for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, ~~$7.50~~ *$8, of which 50 cents is a search and rescue surcharge*;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, ~~$5.65~~ *$6.15, of which 50 cents is a search and rescue surcharge*; and

(iii) for a motorboat or sailboat 10 years of age or older, ~~$3.75~~ *$4.25, of which 50 cents is a search and rescue surcharge.*

(b) The fee schedule for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age,~~$15~~ *$15.50, of which 50 cents is a search and rescue surcharge*;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, ~~$11.25~~ *$11.75, of which 50 cents is a search and rescue surcharge*; and

(iii) for a motorboat or sailboat 10 years of age or older,~~$7.50~~ *$8, of which 50 cents is a search and rescue surcharge.*

(c) The fee schedule for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, ~~$32~~ *$32.50, of which 50 cents is a search and rescue surcharge*;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, ~~$24~~ *$24.50, of which 50 cents is a search and rescue surcharge*; and

(iii) for a motorboat or sailboat 10 years of age or older, ~~$16~~ *$16.50, of which 50 cents is a search and rescue surcharge.*

(d) The fee schedule for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $3 a foot or fraction of a foot, *plus an additional 50-cent search and rescue surcharge added to the total fee*;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $2.25 a foot or fraction of a foot, *plus an additional 50-cent search and rescue surcharge added to the total fee*; and

(iii) for a motorboat or sailboat 10 years of age or older, $1.50 a foot or fraction of a foot, *plus an additional 50-cent search and rescue surcharge added to the total fee.*

(e) The fee schedule for a motorboat or sailboat 19 feet in length or longer is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $4 a foot or fraction of a foot, *plus an additional 50-cent search and rescue surcharge added to the total fee*;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $3 a foot or fraction of a foot, *plus an additional 50-cent search and rescue surcharge added to the total fee*; and

(iii) for a motorboat or sailboat 10 years of age or older, $2 a foot or fraction of a foot, *plus an additional 50-cent search and rescue surcharge added to the total fee*.

(2) The owner of a personal watercraft shall pay a fee based on the age of the watercraft as follows:

(a) The fee for a personal watercraft less than 4 years of age is ~~$22~~ *$22.50, of which 50 cents is a search and rescue surcharge*.

(b) The fee for a personal watercraft 4 years of age or older is ~~$15~~ *$15.50, of which 50 cents is a search and rescue surcharge*.

(3) (a) Except as provided in subsection (3)(b), the age of a motorboat, sailboat, or personal watercraft is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motorboat, sailboat, or personal watercraft precedes the designated model year of the motorboat, sailboat, or personal watercraft and the motorboat, sailboat, or personal watercraft is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(4) The fee for a motorized canoe or a motorized rubber raft ~~is $7.50~~, regardless of its length or age, *is $8, of which 50 cents is a search and rescue surcharge.*

(5) The fee for a motorized pontoon ~~is $20~~, regardless of its length or age, *is $20.50, of which 50 cents is a search and rescue surcharge*."

Section 4. Section 23-2-615, MCA, is amended to read:

"23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the snowmobile; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of ~~$6~~ *$6.50, of which 50 cents is a search and rescue surcharge,* a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(5) All money collected by payment of fees under this section must be remitted to the department of revenue and deposited in the state general fund.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 5. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and decals — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration must be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application must contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information that the department of justice may require.

(3) The application must be accompanied by a decal-registration fee of ~~$6.50~~ *$7, of which 50 cents is a search and rescue surcharge,* and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that must contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal-registration fee and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of decal-registration fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund."

Section 6. Section 23-2-803, MCA, is amended to read:

"23-2-803. Fee in lieu of tax on off-highway vehicles — exception — disposition of fees. (1) There is a fee in lieu of tax on off-highway vehicles, other than off-highway vehicles constituting the inventory of a dealership licensed under 23-2-818, to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is ~~$19~~ *$19.50, of which 50 cents is a search and rescue surcharge.* In all other cases, the fee is ~~$9~~ *$9.50, of which 50 cents is a search and rescue surcharge*.

(b) Except as provided in subsection (1)(c), the age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(c) If the purchase year of an off-highway vehicle precedes the designated model year of the off-highway vehicle and the off-highway vehicle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(2) The county treasurer shall transfer all fees in lieu of tax collected on off-highway vehicles pursuant to this section to the state general fund."

Section 7. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in ~~subsection~~ *subsections* (7) *and (9)*, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source

must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) The money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in [section 1].

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in [section 1] to reimburse counties for the costs of those missions as provided in [section 1].

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) At the end of each fiscal year, any money remaining in the special revenue account after the transfers provided for in this section must be transferred to the general license account of the department."

Section 8. Section 87-2-202, MCA, is amended to read:

"87-2-202. (Temporary) Application — fee — expiration. (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~$4~~ *$4.25, of which 25 cents is a search and rescue surcharge.*

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~$7~~ *$7.25, of which 25 cents is a search and rescue surcharge.*

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access

enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates March 1, 2006—sec. 9, Ch. 216, L. 2001; bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)

87-2-202. (Effective March 1, 2006) Application — fee — expiration. (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~$4~~ *$4.25, of which 25 cents is a search and rescue surcharge.*

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~$7~~ *$7.25, of which 25 cents is a search and rescue surcharge.*

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of

public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 9. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [section 1].

Section 10. Effective dates. (1) [Sections 1 through 7, 9, and 10] are effective January 1, 2004.

(2) [Section 8] is effective March 1, 2004.

Ap proved April 29, 2003

CHAPTER NO. 535

[SB 414]

AN ACT PROVIDING AN EXTENDED SCHEDULE FOR APPLICANTS TO COMPLY WITH THE INCENTIVE PROGRAM FOR PRODUCTION OF GASOHOL; AMENDING SECTION 15-70-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of alcohol — written plan required — reservation of incentives — rules. (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) ~~was~~ *is to be* blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana ~~and has been~~ *to be* blended with gasoline for sale as gasohol; or

(iii) ~~was~~ *is to be* used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is 30 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol. Beginning July 1, 2010, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed $3 million in any consecutive 12-month period.

(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written *business* plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives *and has complied with the schedule provided for in subsection (6)*. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of *alcohol for use in* gasohol;

(b) the anticipated source of agricultural products used in the production of *alcohol for use in* gasohol; and

(c) the anticipated time, quantity, and duration of production of *alcohol for use in* gasohol.

(6) ~~(a) Except as provided in subsection (6)(b), the~~ *An applicant that has provided the department with a written business plan shall meet the following schedule to be able to receive alcohol tax incentive payments:*

(a) start building construction or remodeling within 24 months of the date on which the department received the business plan;

(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the business plan was received; and

(c) complete 100% of construction or remodeling of a production facility and be in production of alcohol for use in gasohol for distribution within 48 months of the date on which the business plan was received.

(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for receiving incentive payments.

(8) After the department has verified production, the department shall begin payments of the alcohol tax incentives based on actual production according to the terms of subsection (2).

(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. ~~Payment of the alcohol tax incentives must be based on actual production.~~

~~(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection (6) if the department determines that the alcohol distributor has not materially complied with the written plan.~~

~~(7)~~*(10)* A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection ~~(6)(a)~~ *(9)*.

~~(8)~~*(11)* The department shall prescribe rules necessary to carry out the provisions of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 29, 2003

CHAPTER NO. 536

[SB 442]

AN ACT PROVIDING FOR THE REGULATION OF EXOTIC WILDLIFE; PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS MAY ISSUE PERMITS FOR AUTHORIZING THE POSSESSION OR SALE OF CONTROLLED EXOTIC WILDLIFE AND CHARGE A REASONABLE FEE FOR THE PERMIT; PROVIDING FOR LISTS OF NONCONTROLLED, CONTROLLED, AND PROHIBITED EXOTIC WILDLIFE; ESTABLISHING A CLASSIFICATION REVIEW COMMITTEE TO ADVISE THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING THE IMPORTATION, POSSESSION, AND SALE OF EXOTIC WILDLIFE; PROVIDING EXCEPTIONS AND EXEMPTIONS FROM THE REGULATION OF EXOTIC WILDLIFE; PROVIDING AN AMNESTY PROGRAM FOR EXOTIC WILDLIFE POSSESSED AS OF JANUARY 1, 2004; AMENDING SECTIONS 87-5-701, 87-5-702, 87-5-704, 87-5-712, AND 87-5-716, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Regulation of exotic wildlife. (1) A person may not import into the state, possess, or sell any exotic wildlife unless:

(a) the importation, possession, or sale of the exotic wildlife is allowed by law or commission rule; and

(b) the person has obtained authorization for importation from the department of livestock pursuant to Title 81, chapter 2, part 7.

(2) The department may issue a permit for authorizing the possession or sale of controlled exotic wildlife and make the permit available to persons who wish to import, possess, or sell controlled exotic wildlife, subject to rules of the commission and the department. The department may charge a reasonable fee, as determined by department rule, for the issuance of the authorization permit.

Section 2. Noncontrolled exotic wildlife authorized for possession or sale. (1) The following noncontrolled exotic wildlife may not be released or transplanted in the state, but may be possessed or sold as pets in Montana without a permit:

(a) tropical and subtropical birds in the order Passeriformes, including but not limited to birds in the families:

(i) Sturnidae (mynahs);

(ii) Ramphastidae (toucans, toucanettes);

(iii) Fringillidae (siskins);

(iv) Estrildidae (finches);

(v) Emberizidae (cardinals);

(vi) Ploceidae (weavers);

(vii) Timaliidae (mesias);

(viii) Viduinae (wydahs);

(ix) Thraupidae (tanagers);

(x) Zosteropidae (zosterops);

(xi) Psittacidae (parrots);

(xii) Loriidae (lories); and

(xiii) Cacatuidae (cockatoos);

(b) nonnative species in the subfamily Phaisianae, except:

(i) chukar partridge (Alectoris chukar);

(ii) gray (Hungarian) partridge (Perdix perdix);

(iii) ring-necked pheasant (Phasianus colchicus); and

(iv) turkey (Meleagris gallopavo);

(c) all tropical fish, subtropical fish, marine fish, common goldfish (Carassius auratus), and koi (Cyprinus carpio) for use in residential and office aquariums;

(d) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of nonvenomous snakes not on the controlled or prohibited lists in the families:

(i) Boidae (boas);

(ii) Bolyeriidae (Round Island Boas);

(iii) Tropidophiidae (dwarf boas);

(iv) Pythonidae (pythons);

(v) Colubridae (modern snakes);

(vi) Acrochordidae (file and elephant trunk snakes);

(vii) Xenopeltidae (sunbeam snakes);

(viii) Aniliidae (pipe snakes);

(ix) Uropeltidae (shield-tailed snakes);

(x) Anomalepididae (blind snakes);

(xi) Leptotyphlopidae (blind snakes); and

(xii) Typhlopidae (blind snakes);

(e) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of nonvenomous lizards not on the controlled or prohibited lists, including but not limited to the following families or subfamilies:

(i) Agamidae (chisel-teeth lizards);

(ii) Amphisbaenidae (worm lizards);

(iii) Anelytropsidae (limbless lizards);

(iv) Anguidae (glass and alligator lizards);

(v) Anniellidae (legless lizards);

(vi) Chamaeleonidae (chameleons);

(vii) Cordylidae (girdle-tailed lizards);

(viii) Corytophanidae (casquehead lizards);

(ix) Crotaphytidae (collared and leopard lizards);

(x) Dibamidae (blind lizards);

(xi) Eublepharidae (eyelid geckos);

(xii) Feyliniidae (African snake skinks);

(xiii) Gekkonidae (geckos);

(xiv) Helodermatidae (beaded lizards and gila monsters);

(xv) Iguanidae (iguanas);

(xvi) Lacertidae (wall lizards);

(xvii) Lanthanotidae (earless monitor);

(xviii) Phrynosomatidae (earless, spiny, and horned lizards);

(xix) Polychrotidae (anoles);

(xx) Pygopodidae (snake lizards);

(xxi) Scincidae (skinks);

(xxii) Teiidae (whiptail);

(xxiii) Tropiduridae (neotropical ground lizards);

(xxiv) Varanidae (monitor lizard);

(xxv) Xantusiidae (night lizards); and

(xxvi) Xenosauridae (knob-scaled lizards);

(f) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of turtles with a carapace or shell length of more than 4 inches and not on the controlled or prohibited lists in the families:

(i) Carettochelyidae (New Guinea softshell turtles);

(ii) Chelidae (snake-necked turtles);

(iii) Chelydridae (snapping turtles);

(iv) Dermatemydidae (Central American river turtle);

(v) Emydidae (pond turtles);

(vi) Kinosternidae (mud turtles and musk turtles);

(vii) Pelomedusidae (hidden-necked turtles);

(viii) Platysternidae (big-headed turtle);

(ix) Testudinidae (tortoises); and

(x) Trionychidae (soft-shelled turtles);

(g) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of frogs and toads not on the controlled or prohibited lists in the families:

(i) Atelopodidae (harlequin frogs);

(ii) Bufonidae (true toads);

(iii) Centrolenidae (glass frogs);

(iv) Dendrobatidae (poison dart frogs);

(v) Hylidae (tree frogs);

(vi) Leptodactylidae (rain frogs);

(vii) Microhylidae (narrow-mouthed toads);

(viii) Pelobatidae (spadefoot toads);

(ix) Pelodytidae (old world spadefoot toads);

(x) Ranidae (true frogs, except bullfrogs, Rana catesbeiana);

(xi) Rhacophoridae (old world tree frogs); and

(xii) Rhinophrynidae (Mexican burrowing frog);

(h) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of limbless amphibians not on the controlled or prohibited lists in the families:

(i) Caeciliidae (caecilians);

(ii) Ichthyophiidae (fish caecilians);

(iii) Rhinatrematidae (beaked caecilians);

(iv) Scolecomorphidae (tropical caecilians); and

(v) Uraeotyphlidae (Indian caecilians); and

(i) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of salamanders not on the controlled or prohibited lists in the families:

(i) Ambystomatidae (mole salamanders);

(ii) Amphiumidae (amphiumas);

(iii) Cryptobranchidae (hellbenders);

(iv) Dicamptodontidae (giant salamanders);

(v) Hynobiidae (Asian salamanders);

(vi) Plethodontidae (woodland salamanders);

(vii) Proteidae (waterdogs);

(viii) Salamandridae (newts, except for rough-skinned newt, Taricha granulosa); and

(ix) Sirenidae (sirens).

(2) The commission may by rule authorize the possession or sale of other species of noncontrolled exotic wildlife that are not listed in subsection (1) if it is determined that the other species present minimal disease, ecological, environmental, safety, or health risks.

Section 3. Controlled exotic wildlife list. As provided in 87-5-704(3)(a), the commission, after a public hearing and recommendation from the classification review committee established in [section 4], may by rule adopt a list of controlled exotic wildlife that may be imported, possessed, or sold only pursuant to commission and department rules and department authorization.

Section 4. Classification review committee — composition, appointment, and duties. (1) The director shall appoint a classification review committee whose duty is to advise the commission regarding the importation, possession, and sale of exotic wildlife, including recommendations on animals to be placed on the noncontrolled, controlled, or prohibited exotic wildlife list.

(2) The classification review committee is composed of at least one representative from:

(a) the department;

(b) the department of public health and human services;

(c) the department of livestock;

(d) the department of agriculture;

(e) a business that breeds or exhibits exotic wildlife; and

(f) the general public who has an interest in fish or wildlife.

(3) Members of the classification review committee are not entitled to compensation or travel expenses as provided in 2-15-122.

Section 5. Exceptions and exemptions to possession and sale of exotic wildlife. (1) [Sections 1 through 5] do not apply to:

(a) an accredited zoological garden chartered by the state as a nonprofit corporation if the zoological garden establishes that the proposed facilities are adequate to provide secure confinement of the exotic wildlife in question; or

(b) domestic animals.

(2) The department shall institute and administer an amnesty program for exotic wildlife possessed by a person as of January 1, 2004, who is not in compliance with [sections 1 through 4]. Until January 1, 2005, a person who reports that person's noncompliance to the department may not be prosecuted for a violation based on the reported noncompliance. Possession authorization must be provided by the department for species possessed as of January 1, 2004, and the authorization may include any conditions and restrictions necessary to minimize risks.

Section 6. Section 87-5-701, MCA, is amended to read:

"87-5-701. Purpose. The legislature finds that in order to protect ~~the~~ *Montana's* native wildlife and plant species ~~of Montana and to protect the~~, *livestock, horticultural, forestry, and* agricultural production ~~of Montana~~, *and human health and safety,* it is necessary to ~~provide for the control of~~ *regulate* the importation for introduction and the transplantation or introduction of wildlife in the state *and to regulate the importation, transplantation, possession, and sale of exotic wildlife*. Serious threats, known and unknown, ~~to the well-being of native wildlife and plant species and to agricultural production, resulting~~ from the introduction of wildlife *and exotic wildlife* into ~~natural habitats,~~ *Montana* necessitate the ~~prohibition~~ *regulation* of the importation for introduction and the transplantation or introduction of wildlife ~~into natural habitats~~ *and regulation of the importation, transplantation, possession, and sale of exotic wildlife* unless it can be shown that no harm will result from ~~such~~ *the importation,* transplantation, *possession, sale,* or introduction. Any importation ~~for introduction or the~~, transplantation, *possession, sale,* or introduction permitted must be conducted in a manner to ~~assure~~ *ensure* that ~~the introduced or transplanted population~~ *wildlife or exotic wildlife* can be controlled if harm arises from unforeseen effects."

Section 7. Section 87-5-702, MCA, is amended to read:

"87-5-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Controlled exotic wildlife" means species placed on the controlled exotic wildlife list under [section 3] that may be imported, possessed, or sold only pursuant to commission and department rules and an authorization permit provided for in [section 1(2)].

(2) "Domestic animal" means an animal that, through long association with humans, has been bred to a degree that has resulted in genetic changes affecting color, temperament, conformation, or other attributes of the species to an extent that makes the animal unique and distinguishable from wild individuals of the species and that is readily controllable if accidently released into the wild. The

term includes livestock, as defined in 81-2-702, dogs, cats, rodents, Eurasian ferrets, and poultry.

(3) "Exotic wildlife" means a wildlife species that is not native to Montana.

~~(1)~~*(4)* "Feral" means the appearance ~~in a natural habitat~~ of an animal *and any offspring* that ~~has~~ *have* escaped ~~domestication~~ *captivity* and become wild.

~~(2)~~*(5)* "Importation" means the act of ~~bringing into the state any wildlife~~ *receiving, bringing or having brought, or shipping into the state for a person's temporary or permanent residence or domicile any wildlife from a location outside the state.*

~~(3)~~*(6)* "Introduction" means the release ~~of~~ *from captivity* or attempt to release *from captivity*, intentional or otherwise, wildlife from outside the state into ~~natural habitats of~~ *the wild within* the state.

(7) "Native wildlife" means a species or subspecies of wildlife that historically occurred in Montana and that has not been introduced by humans or has not migrated into Montana as a result of human activity.

~~(4) "Natural habitat" means any area in which the introduction of wildlife species may result in an uncontrolled, naturally reproducing population of that species becoming established.~~

(8) "Noncontrolled exotic wildlife" means animal species traditionally sold or kept as pets and includes animals listed in [section 2] or animals that are added to the list in [section 2] by commission rule.

(9) "Possession" means to own or have control over an animal for personal use or resale.

(10) "Prohibited exotic wildlife" means animal species placed on the list provided in 87-5-704(3)(a) that may not be imported, possessed, or sold.

~~(5)~~*(11)* "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from one place within the state into ~~natural habitats in~~ another part of the state.

~~(6)~~*(12) (a)* "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or the egg, *sperm, embryo,* or offspring ~~thereof~~ *of the wild animal.*

(b) The term does not include domestic animals."

Section 8. Section 87-5-704, MCA, is amended to read:

"87-5-704. Rulemaking. (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement [sections 1 through 5] regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in [section 2]. The department of livestock may not issue import

permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in [section 4].

(4) (a) The department may adopt rules regarding issuance of the authorization permit provided for in [section 1(2)], including the establishment of a reasonable fee for the permit.

(b) The department may adopt rules regarding the amnesty program provided for in [section 5(2)]."

Section 9. Section 87-5-712, MCA, is amended to read:

"87-5-712. Authority for commission to control importation, *possession, or sale* ~~generally~~ of certain wildlife species *and exotic wildlife*. The commission may, after public hearing *and recommendation by the classification review committee in [section 4]*, list by administrative rule wildlife species *or exotic wildlife* ~~prohibited from importation~~ *that may not be imported, possessed, or sold as pets* for captive breeding for research or commercial purposes ~~or~~, for the commercial pet trade, *or for any other reason. A wildlife species or exotic wildlife may be placed on the list only after* ~~if~~ the commission finds~~, based on scientific investigation,~~ that:

(1) the *exotic wildlife* ~~species, because of behavioral traits or other biological considerations,~~ would not be readily subject to control by ~~man~~ *humans* while in captivity*;*

(2) ~~or that~~ if released ~~into natural habitat~~ *from captivity, the exotic wildlife* would pose a substantial threat to native wildlife and plants or agricultural production*; or*

(3) the exotic wildlife would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage."

Section 10. Section 87-5-716, MCA, is amended to read:

"87-5-716. Consultation with~~the~~ departments of agriculture, *public health and human services,* and livestock. The commission and the department shall consult with the departments of agriculture, *public health and human services,* and livestock in all matters relating to the control of wildlife species *and exotic wildlife* that may have a harmful effect on agricultural production or livestock operations in the state *or that may pose a risk to human health or safety*."

Section 11. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 87, chapter 5, part 7, and the provisions of Title 87, chapter 5, part 7, apply to [sections 1 through 5].

Section 12. Effective date. [This act] is effective January 1, 2004.

Ap proved April 29, 2003

CHAPTER NO. 537

[SB 446]

AN ACT TEMPORARILY TRANSFERRING THE FLATHEAD BASIN COMMISSION FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATIVE PURPOSES; AMENDING SECTION 2-15-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-213, MCA, is amended to read:

"2-15-213. Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of 21 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff;

(b) one member who is the director of the department of natural resources and conservation or the director's designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service regional director for the Rocky Mountain region;

(h) one member appointed by the Flathead County conservation district board of supervisors;

(i) one member appointed by the Lake County conservation district board of supervisors;

(j) four ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of the interior, bureau of reclamation; and the holder of a license issued for the Flathead project under the Federal Power Act;

(k) two ex officio members who are the director of the department of environmental quality and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the ~~governor's office~~ *department of natural resources and conservation* for administrative purposes only."

Section 2. Instruction to code commissioner. The code commissioner shall renumber 2-15-213 through 2-15-215 as an integral part of Title 2, chapter 15, part 33, and make any corresponding changes to reflect the renumbering.

Section 3. Effective date. [This act] is effective July 1, 2003.

Section 4. Termination. [This act] terminates June 30, 2005.

Ap proved April 29, 2003

CHAPTER NO. 538

[SB 489]

AN ACT DESIGNATING U.S. INTERSTATE HIGHWAYS IN MONTANA AS THE "PURPLE HEART TRAIL"; AND AMENDING SECTION 60-2-242, MCA.

WHEREAS, on August 7, 1782, at his Newburgh, New York, headquarters, George Washington devised a badge of distinction to be worn by enlisted men and noncommissioned officers; and

WHEREAS, the badge, named the Badge of Military Merit and patterned in the "figure of a heart in purple cloth or silk edged with narrow lace or binding", was awarded for "any singularly meritorious action", permitted the wearer to pass guards and sentinels without challenge, and required the honoree's name and regiment to be inscribed in a Book of Merit; and

WHEREAS, after the Revolutionary War, no more American soldiers received the Badge of Military Merit; and

WHEREAS, the valiant efforts in 1927 by Army Chief of Staff General Charles P. Summerall to revive the Badge of Military Merit ultimately failed in Congress; and

WHEREAS, on January 7, 1931, Army Chief of Staff General Douglas MacArthur pursued a new medal that the War Department formally announced on February 22, 1932; and

WHEREAS, after the award was reinstated, recipients of a Meritorious Service Citation Certificate during World War I, along with other eligible soldiers, could exchange their award for the Purple Heart; and

WHEREAS, Army regulations at the time defined the conditions of the award as "a wound which necessitates treatment by a medical officer and which is received in action with an enemy, may in the judgment of the commander authorized to make the award be construed as resulting from a singularly meritorious act of essential service"; and

WHEREAS, the award of the Purple Heart still represents the thoughts reflected in George Washington's orderly book dated August 7, 1782: "The road to glory in a patriot army and a free country is thus open to all."

Be it enacted by the Legislature of the State of Montana:

Section 1. Purple heart trail. The purple heart trail is the U.S. interstate highway system in Montana.

Section 2. Section 60-2-242, MCA, is amended to read:

"60-2-242. Markers — commemorative highways. (1) As funds are available under subsection (2), the department may design and erect signs along

the commemorative highways designated in 60-1-202 through 60-1-207 *and [section 1]* identifying the routes and providing interpretive information.

(2) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsection (1) and may expend the money received for those purposes.

(3) For the purposes of subsection (2), private persons includes commonly recognized military veterans' organizations, including but not limited to the veterans of foreign wars, the American legion, the disabled American veterans, the Vietnam veterans of America, and the military order of the purple heart."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Ap proved April 29, 2003

CHAPTER NO. 539

[SB 491]

AN ACT AUTHORIZING THE USE OF THE RESEARCH AND COMMERCIALIZATION ACCOUNT FOR THE PAYMENT OF THE ADMINISTRATIVE COSTS INCURRED BY THE BOARD OF RESEARCH AND COMMERCIALIZATION TECHNOLOGY IN ADMINISTERING RESEARCH AND COMMERCIALIZATION PROJECTS; AMENDING SECTIONS 90-3-1001, 90-3-1002, AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-3-1001, MCA, is amended to read:

"90-3-1001. Purpose — definition. (1) The purpose of establishing a research and commercialization special revenue account in 90-3-1002 and 90-3-1003 is to:

(a) provide a predictable and stable source of funding for research and commercialization projects conducted in the state that demonstrates to both private and public sources, including federal research granting agencies, that Montana recognizes the important contributions that research and commercialization endeavors offer to the state's basic industries;

(b) expand and strengthen research efforts for the state's basic industries to increase their economic impact on the state's economy; ~~and~~

(c) expand research efforts into areas beyond the scope of the state's basic industries to diversify and strengthen the state's economic security through the creation of technology-based operations and long-term quality jobs*; and*

(d) pay costs of administering this part pursuant to 90-3-1003.

(2) As used in 90-3-1002 and 90-3-1003, "research and commercialization center" means the campuses of the university of Montana or Montana state university, tribal colleges, colleges of technology, community colleges, agricultural research centers, or a private laboratory or research center."

Section 2. Section 90-3-1002, MCA, is amended to read:

"90-3-1002. Research and commercialization account. (1) There is a research and commercialization special revenue account within the state treasury. The purpose of the account is to establish a permanent source of funding for research and commercialization projects to be conducted at research and commercialization centers in the state *and to pay the costs of administering those projects.*

(2) The research and commercialization account must be invested by the board of investments. Earnings on the account must be deposited in the account for distribution pursuant to 90-3-1003(3), (4), and (7)."

Section 3. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects to be conducted at research and commercialization centers located in Montana; ~~or~~

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana*; or*

(d) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

(5) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(6) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(7) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(8) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(9) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question."

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved April 29, 2003

CHAPTER NO. 540

[HB 259]

AN ACT INCREASING THE SPEED LIMIT TO 70 MILES AN HOUR ON U.S. HIGHWAY 93 BETWEEN THE CANADIAN BORDER AND REFERENCE MARKER 133 NORTHWEST OF WHITEFISH; AMENDING SECTION 61-8-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, 61-8-312, ~~and subsection (2) of this section,~~ *and subsection (2) of this section,* the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 miles an hour at all times and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime.

~~(2) The speed limit for vehicles traveling on U.S. highway 93 between the Canadian and Idaho borders is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.~~

(2) The speed limit for vehicles traveling on U.S. highway 93 between reference marker 133 northwest of Whitefish and the Idaho border is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.

(3) A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

(4) Subject to the maximum speed limits set forth in ~~subsections~~ *subsections* (1) ~~and (2)~~ *and (2)*, a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(5) When no special hazard exists that requires lower speed for compliance with ~~subsections~~ *subsections* (1) ~~and (2)~~ *and (2)*, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 is lawful, but a speed in excess of 25 miles an hour in an urban district is unlawful.

(6) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(7) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314."

Section 2. Effective date. [This act] is effective May 23, 2003.

Ap proved April 30, 2003

CHAPTER NO. 541

[HB 705]

AN ACT INCREASING THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR FUNDING INCREASES IN MEDICAID PAYMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-60-102, MCA, is amended to read:

"15-60-102. (Temporary) Utilization fee for bed days in nursing facilities. *(1)* A nursing facility in the state shall pay to the department ~~of revenue~~ a utilization fee *for each bed day in the facility in the following amounts:*

(a) in the amount of $2.80 ~~for each bed day in the facility~~*, which must be applied to maintain the price-based average payment rate to nursing facilities at the fiscal year 2003 base amount;*

(b) in fiscal year 2004, an additional amount of $1.70 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in [section 2]; and

(c) beginning July 1, 2004, an additional amount of $2.50 to be used to increase the price-based average payment rate to nursing facilities above the fiscal year 2003 base as provided in [section 2].

(2) The fees collected must be deposited *as follows:*

(a) the amounts collected as provided in subsection (1)(a), in the general fund*; and*

(b) the amounts collected as provided in subsections (1)(b) and (1)(c), in the account in the state special revenue fund as provided in [section 2].

(3) A nursing facility may not place a fee created in this section on a patient's bill. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

Section 2. State special revenue account. (1) There is a nursing facility utilization fee account in the state special revenue fund as provided in 17-2-102.

(2) All money collected under [section 1(1)(b) and (1)(c)] must be deposited in this account. Money in the account must be used by the department of public health and human services for the purpose of increasing the average price paid for medicaid nursing facility services above the fiscal year 2003 level under the price-based reimbursement system used to establish medicaid payment rates to nursing homes.

(3) Money remaining in this account at the end of a fiscal year may not be expended or transferred for any other purpose and is subject to appropriation by a subsequent legislature for purposes consistent with subsection (2).

Section 3. Appropriation. (1) The following money is appropriated to the department of public health and human services from the account in the state special revenue fund created in [section 2] to fund increases in medicaid payments to nursing facilities:

Fiscal Year 2004

State special revenue fund $3,499,484

Fiscal Year 2005

State special revenue fund $5,172,033

(2) The following money is appropriated to the department of public health and human services for increases in medicaid payments to nursing facilities:

Fiscal year 2004

Federal special revenue fund $ 9,404,218

Fiscal year 2005

Federal special revenue fund $13,587,608

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 60, part 2, and the provisions of Title 15, chapter 60, part 2, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2003.

Ap proved April 30, 2003

CHAPTER NO. 542

[SB 101]

AN ACT ALLOWING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO USE THE SERVICES OF VOLUNTEERS; REQUIRING WORKERS' COMPENSATION COVERAGE FOR THE VOLUNTEERS; AUTHORIZING REIMBURSEMENT OF CERTAIN EXPENSES OF THE VOLUNTEERS; AUTHORIZING THE COMMISSION TO SELL REAL AND PERSONAL PROPERTY; AUTHORIZING THE COMMISSION TO ESTABLISH TRUST FUNDS; AUTHORIZING THE COMMISSION TO OBTAIN FEDERAL MONEY AND REQUIRING THE DEPOSIT OF THE FEDERAL MONEY INTO THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; REQUIRING THE COMMISSION TO ESTABLISH A SUBCOMMITTEE OF COMMISSION MEMBERS AND MEMBERS OF THE MONTANA HISTORICAL SOCIETY BOARD; REQUIRING A MAJORITY VOTE OF THE SUBCOMMITTEE PRIOR TO SELLING PERSONAL PROPERTY FROM THE BOVEY ASSETS; REQUIRING THAT FUNDS RECEIVED FROM THE SALE OF PERSONAL PROPERTY FROM THE BOVEY ASSETS BE DEPOSITED IN A TRUST FUND; TRANSFERRING TITLE OF THE BOVEY ASSETS TO THE STATE OF MONTANA; AMENDING SECTIONS 22-3-1003 AND 22-3-1004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-1003, MCA, is amended to read:

"22-3-1003. Powers of commission — contracts — rules. (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) ~~Notwithstanding the~~ *The* provisions of Title 18~~,~~ *may not be construed as prohibiting* ~~the~~ contracts *under this section* ~~may be~~ *from being* let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the commission may not contract for the construction of a building, as defined in 18-2-101, in excess of $200,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks.

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds $200,000 without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) (i) Until the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.

(ii) Once the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

~~(c) It is the intent of the 57th legislature that no general fund money be provided for the operation and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.~~ *It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.*

(4) The commission may solicit funds from other sources, *including the federal government,* for the purchase, management, and operation of properties.

(5) (a) The commission may use volunteers to further the purposes of this part.

(b) The commission and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The commission shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and commission members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the commission only if the recommendation is supported by a majority of the members of the subcommittee.

~~(5)~~*(8)* The commission shall adopt rules establishing a policy for making acquisitions *and sales of real and personal property*. With respect to each acquisition *or sale*, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition *or sale* will create significant social and economic impacts to affected local governments and the state; ~~and~~

(f) whether the sale is supported by the director of the Montana historical society;

(g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and

~~(f)~~*(i)* other matters that the commission considers necessary or appropriate.

(9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.

~~(6)~~*(10)* Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition *or sale of real property* before a final decision to acquire *or sell* ~~a~~ *the* property is made. The commission shall approve proposals for acquisition *or sale of real property* and recommend the approved proposal to the board of land commissioners.

(11) The commission, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets owned by the commission. Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.

~~(7)~~*(12)* Prior to the convening of each regular session, the commission shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium*, including the acquisition or sale of any assets*."

Section 2. Section 22-3-1004, MCA, is amended to read:

"22-3-1004. Montana heritage preservation and development account. (1) *(a)* There is a Montana heritage preservation and development account in the state special revenue fund *and in the federal special revenue fund*.

(b) The Montana heritage preservation and development commission shall deposit any federal money that the commission obtains into the appropriate account provided for in this section.

(2) Money deposited in the ~~account~~ *accounts* must be used for:

(a) the purchase of properties in Virginia City and Nevada City;

(b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of preservation.

(3) The ~~account is~~ *accounts are* statutorily appropriated, as provided in 17-7-502, to the ~~Montana heritage preservation and development~~ commission to be used as provided in this section.

(4) ~~All~~ *Unless otherwise prohibited by law or agreement, all* interest earned on money in the ~~account~~ *accounts* must be deposited in the state special revenue fund to the credit of the commission."

Section 3. Transfer of title. Title to the real and personal property acquired by the 55th legislature and commonly referred to as the "Bovey assets" is transferred from the Montana historical society to the state of Montana.

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved April 30, 2003

CHAPTER NO. 543

[SB 325]

AN ACT REVISING THE RESTRICTIONS ON SUBDIVISION ACTIVITIES UNDER THE SANITATION IN SUBDIVISIONS LAWS; AMENDING SECTION 76-4-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-121, MCA, is amended to read:

"76-4-121. Restrictions on subdivision activities. A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until ~~the subdivision plat or certificate of survey subject to review under this part has been accepted for filing by the county clerk and recorder in accordance with 76-4-122 and recorded pursuant to Title 70, chapter 21~~*:*

(1) a certificate of subdivision approval has been issued pursuant to 76-4-125 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(2) the governing body has provided certification pursuant to 76-4-127 that the subdivision is within a jurisdictional area that has adopted a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal facilities and adequate storm water drainage; or

(3) the subdivision is otherwise exempt from review under 76-4-125."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved April 30, 2003

CHAPTER NO. 544

[SB 407]

AN ACT CREATING THE MONTANA ECONOMIC DEVELOPMENT TAX ACT; PROVIDING FOR A LIMITED SALES TAX AND USE TAX ON CERTAIN PROPERTY AND SERVICES; REDUCING INDIVIDUAL INCOME TAX RATES; ESTABLISHING A CAPITAL GAINS CREDIT; PROVIDING FOR COLLECTION OF THE LIMITED SALES TAX AND USE TAX;

PROVIDING FOR DISTRIBUTION OF THE LIMITED SALES TAX AND USE TAX REVENUE; CLARIFYING THE DEFINITION OF "CONSUMER PRICE INDEX" RELATING TO INDIVIDUAL INCOME TAX PROVISIONS; AMENDING INDIVIDUAL INCOME TAX EXEMPTIONS; LIMITING THE INDIVIDUAL INCOME TAX DEDUCTION FOR FEDERAL INCOME TAX PAID; AMENDING THE INDIVIDUAL INCOME TAX STANDARD DEDUCTION; ALLOWING RESIDENTS A CREDIT AGAINST INDIVIDUAL INCOME TAXES FOR THEIR SHARE OF TAXES IMPOSED AND PAID TO ANOTHER STATE OR COUNTRY BY A PARTNERSHIP OF WHICH THE RESIDENT IS A PARTNER; INCREASING THE CIGARETTE TAX FROM 18 CENTS TO 70 CENTS ON A PACK OF CIGARETTES AND REVISING THE DISTRIBUTION OF THE CIGARETTE TAX; ADJUSTING THE CIGARETTE INSIGNIA DISCOUNTS; INCREASING THE TAX ON TOBACCO PRODUCTS FROM 12.5 PERCENT TO 25 PERCENT; PROVIDING FOR A TAX ON EACH OUNCE OF MOIST SNUFF; ADJUSTING THE WHOLESALER'S DISCOUNT FOR TOBACCO PRODUCTS; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-103, 15-30-112, 15-30-121, 15-30-122, 15-30-124, 15-30-142, 16-11-111, 16-11-114, 16-11-119, 16-11-201, 16-11-202, AND 16-11-206, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as the "Montana Economic Development Tax Act".

Section 2. Definitions. For purposes of [sections 2 through 39], unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.

(3) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

(4) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(5) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.

(6) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).

(c) The term does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of $100 or 1% of the total required payments; or

(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

(7) (a) "Motor vehicle" means a light vehicle as defined in 61-1-139, a motorcycle as defined in 61-1-105, a motor-driven cycle as defined in 61-1-106, a

quadricycle as defined in 61-1-133, a motorboat or a sailboat as defined in 23-2-502, an off-highway vehicle as defined in 23-2-801 that:

(i) is rented for a period of not more than 30 days;

(ii) is rented without a driver, pilot, or operator; and

(iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(8) "Permit" or "seller's permit" means a seller's permit as described in [section 18].

(9) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

(10) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(11) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

(12) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(13) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.

(14) (a) "Sales price" applies to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) credit for any trade-in.

(b) The amount received for charges listed in subsections (14)(a)(iii) through (14)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) The term does not include:

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

(15) "Sales tax" and "use tax" mean the applicable tax imposed by [section 3].

(16) "Seller" means a person that makes sales, leases, or rentals of personal property or services.

(17) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(18) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business.

Section 3. Imposition and rate of sales tax and use tax — exceptions. (1) A sales tax of the following percentages is imposed on sales of the following property or services:

(a) 3% on accommodations and campgrounds;

(b) 4% on the base rental charge for rental vehicles.

(2) The sales tax is imposed on the purchaser and must be collected by the seller and paid to the department by the seller. The seller holds all sales taxes collected in trust for the state. The sales tax must be applied to the sales price.

(3) (a) For the privilege of using property or services within this state, there is imposed on the person using the following property or services a use tax equal to the following percentages of the value of the property or services:

(i) 3% on accommodations and campgrounds;

(ii) 4% on the base rental charge for rental vehicles.

(b) The use tax is imposed on property or services that were:

(i) acquired outside this state as the result of a transaction that would have been subject to the sales tax had it occurred within this state;

(ii) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales

tax had it occurred outside the exterior boundaries of an Indian reservation within this state;

(iii) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (1) or the use tax imposed by subsection (3)(a) but which transaction, because of the buyer's subsequent use of the property, is subject to the sales tax or use tax; or

(iv) rendered as the result of a transaction that was not initially subject to the sales tax or use tax but that because of the buyer's subsequent use of the services is subject to the sales tax or use tax.

(4) For purposes of this section, the value of property must be determined as of the time of acquisition, introduction into this state, or conversion to use, whichever is latest.

(5) The sale of property or services exempt or nontaxable under [sections 2 through 39] is exempt from the tax imposed in subsections (1) and (3).

(6) Lodging facilities and campgrounds are exempt from the tax imposed in subsections (1)(a) and (3)(a)(i) until October 1, 2003, for contracts entered into prior to [the effective date of this section] that provide for a guaranteed charge for accommodations or campgrounds.

Section 4. Presumption of taxability — value — rules. (1) In order to prevent evasion of the sales tax or use tax and to aid in its administration, it is presumed that:

(a) all sales by a person engaging in business are subject to the sales tax or use tax; and

(b) all property bought or sold by any person for delivery into this state is bought or sold for a taxable use within this state.

(2) In determining the amount of use tax due on the use of property or services, it is presumed, in the absence of preponderant evidence of another value, that value means the total amount of property or service or the reasonable value of other consideration paid for the use of the property or service, exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or service purchased, the use tax must be imposed on the reasonable value of the property or service purchased.

(3) The department shall adopt rules providing for the payment of the sales tax and use tax based on a rounding method.

Section 5. Separate statement of tax — no advertising to absorb or refund tax — rules. (1) If a person collects a tax in excess of the tax imposed by [section 3], both the tax and the excess tax must be remitted to the department.

(2) Except as provided in subsection (4), the sales tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines.

(3) A person may not advertise, hold out, or state to the public or to any customer that the tax imposed by [sections 2 through 39] will be absorbed or refunded.

(4) The department may adopt rules permitting sellers the option of stating sales tax based upon a percentage of taxable sales.

Section 6. Liability of user for payment of use tax. (1) A person within this state who uses property is liable to the state for payment of the use tax if the use tax is payable on the value of the property but has not been paid.

(2) The liability imposed by this section is discharged if the buyer has paid the use tax to the seller for payment to the department.

Section 7. Collection of sales tax and use tax — listing of business locations and agents — severability. (1) A person engaging in the business of selling property or services subject to taxation under [sections 2 through 39] shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) A person engaging in business within this state shall, before making any sales subject to [sections 2 through 39], obtain a seller's permit, as provided in [section 18], and at the time of making a sale, whether within or outside the state, collect the sales tax imposed by [section 3] from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

(3) The department may authorize the collection of the sales tax imposed by [section 3] by any retailer who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law. When authorized, the person shall collect the use tax upon all property and services that, to the person's knowledge, are for use within this state and subject to taxation under [sections 2 through 39].

(4) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under [sections 2 through 39] constitute a debt owed to this state by the person required to collect the sales tax and use tax.

(5) A person engaging in business within this state that is subject to [sections 2 through 39] shall provide to the department:

(a) the names and addresses of all of the person's agents operating within this state; and

(b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of business within this state.

(6) If any application of this section is held invalid, the application to other situations or persons is not affected.

Section 8. Nontaxable transaction certificate — requirements. (1) A nontaxable transaction certificate executed by a buyer or lessee must be in the possession of the seller or lessor at the time that a nontaxable transaction occurs.

(2) A nontaxable transaction certificate must contain the information and be in the form prescribed by the department.

(3) Only a buyer or lessee who has registered with the department and whose seller's permit is valid may execute a nontaxable transaction certificate.

(4) If the seller or lessor accepts a nontaxable transaction certificate within the required time and believes in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate is considered conclusive evidence that the sale is nontaxable.

Section 9. Nontaxable transaction certificate — form. (1) The department shall provide for a uniform nontaxable transaction certificate. A

purchaser shall use the certificate when purchasing goods or services for resale or for other nontaxable transactions.

(2) At a minimum, the certificate must provide:

(a) the number of the seller's permit issued to the purchaser as provided in [section 18];

(b) the general character of property or service sold by the purchaser in the regular course of business;

(c) the property or service purchased for resale;

(d) the name and address of the purchaser; and

(e) a signature line for the purchaser.

(3) The department shall adopt rules to provide procedures for application for and provision of a certificate to a person engaging in business within this state prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of this section] that has applied in a timely fashion is issued a certificate prior to [the applicability date of this section].

Section 10. Exemption — government agencies — exception. All sales by or uses by the United States or an agency or instrumentality of the United States are exempt from the sales tax and use tax.

Section 11. Exemption — isolated or occasional sale or lease of property. The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax.

Section 12. Nontaxability — sale of property for resale. The sale of property is nontaxable if:

(1) the sale is made to a buyer who delivers a nontaxable transaction certificate to the seller;

(2) the buyer resells the property either by itself or in combination with other property; and

(3) the subsequent sale is in the ordinary course of business and the property will be subject to the sales tax.

Section 13. Nontaxability — sale of service for resale. The sale of a service for resale is nontaxable if:

(1) the sale is made to a person who delivers a nontaxable transaction certificate;

(2) the buyer resells the service and separately states the value of the service purchased in the charge for the service in the subsequent sale; and

(3) the subsequent sale is in the ordinary course of business and subject to the sales tax.

Section 14. Nontaxability — lease for subsequent lease. The lease of property is nontaxable if:

(1) the lease is made to a lessee who delivers a nontaxable transaction certificate; and

(2) the lessee does not use the property in any manner other than for subsequent lease in the ordinary course of business.

Section 15. Nontaxability — use of property for leasing. The value of leased property is not considered in computing the use tax due if the person holding the property for lease:

(1) is engaged in a business that derives a substantial portion of its receipts from leasing or selling property of the type leased;

(2) does not use the property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and

(3) does not use the property in a manner incidental to the performance of a service.

Section 16. Nontaxability — nonprofits. The sale of property or of a service is nontaxable if the seller is an organization that has a tax-exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended.

Section 17. Credit — out-of-state taxes. If a sales, use, or similar tax has been levied by another state or a political subdivision of another state on property that was leased outside this state but that will be used or consumed in this state and the tax was paid by the current user, the amount of tax paid may be credited against any use tax due this state on the same property. The credit may not exceed the sales tax or use tax due this state.

Section 18. Seller's permit. (1) A person that wishes to engage in business within this state that is subject to [sections 2 through 39] shall obtain a seller's permit before engaging in business within this state.

(2) Upon an applicant's compliance with [sections 2 through 39], the department shall issue to the applicant a separate, numbered seller's permit for each location in which the applicant maintains an office or other place of business within Montana. A permit is valid until revoked or suspended but is not assignable. A permit is valid only for the person in whose name it is issued and for the transaction of business at the place designated. The permit must be conspicuously displayed at all times at the place for which it is issued.

(3) The department shall adopt rules to provide procedures for application for and provision of a seller's permit to a person engaging in business within this state that is subject to [sections 2 through 39] prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of this section] is issued a seller's permit prior to [the applicability date of this section]. The department may adopt rules providing for seasonal permits.

Section 19. Permit application — requirements — place of business — form. (1) (a) A person that wishes to engage in the business of making retail sales or providing services in Montana that are subject to [sections 2 through 39] shall file with the department an application for a permit. If the person has more than one location in which the person maintains an office or other place of business, an application may include multiple locations.

(b) An applicant who does not maintain an office or other place of business and who moves from place to place is considered to have only one place of business and shall attach the permit to the applicant's cart, stand, truck, or other merchandising device.

(2) Each person or class of persons required to file a return under [sections 2 through 39] is required to file an application for a permit.

(3) Each application for a permit must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the owner if the owner is a natural person or by a person authorized to sign the application if the owner is a corporation, partnership, limited liability company, or some other business entity.

Section 20. Revocation or suspension of permit — appeal. (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any permit held by a person that fails to comply with the provisions of [sections 2 through 39].

(2) The department shall provide dispute resolution on a proposed revocation or suspension pursuant to 15-1-211.

(3) If a permit is revoked, the department may not issue a new permit except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of [sections 2 through 39]. The department may require security in addition to that authorized by [section 27] in an amount reasonably necessary to ensure compliance with [sections 2 through 39] as a condition for the issuance of a new permit to the applicant.

(4) A person aggrieved by the department's final decision to revoke a permit, as provided in subsection (1), may appeal the decision to the state tax appeal board within 30 days after the date on which the department issued its final decision.

Section 21. Improper use of subject of purchase obtained with nontaxable transaction certificate — penalty. (1) If a purchaser that uses a nontaxable transaction certificate uses the subject of the purchase for a purpose other than one allowed as nontaxable under [sections 2 through 39], the use is considered a taxable sale as of the time of first use by the purchaser and the sales price is the price that the purchaser paid. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged. Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.

(2) A person that uses a certificate for property that will be used for a purpose other than the purpose claimed is subject to a penalty, payable to the department, of $100 for each transaction in which an improper use of a certificate has occurred.

(3) Upon a showing of good cause, the department may abate or waive the penalty or a portion of the penalty

Section 22. Commingling nontaxable certificate goods. If a purchaser uses a nontaxable transaction certificate with respect to the purchase of fungible goods and commingles these goods with fungible goods that were not purchased with a certificate but that are of such similarity that the identity of the goods in the commingled mass cannot be determined, sales from the mass of commingled goods are considered to be sales of the goods purchased with the certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the certificate.

Section 23. Liability for payment of tax — security for retailer without place of business — penalty. (1) Liability for the payment of the

sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A retailer that does not maintain an office or other place of business within this state is liable for the sales tax or use tax in accordance with [sections 2 through 39] and may be required to furnish adequate security, as provided in [section 27], to ensure collection and payment of the taxes. When authorized and except as otherwise provided in [sections 2 through 39], the retailer is liable for the taxes upon all property sold and services provided in this state in the same manner as a retailer who maintains an office or other place of business within this state. The seller's permit provided for in [section 18] may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer doing business within this state may not sell, solicit orders for, or deliver any property or services within Montana unless the principal, employer, or retailer possesses a seller's permit issued by the department. If an agent, canvasser, or employee violates the provisions of [sections 2 through 39], the person is subject to a fine of not more than $100 for each separate transaction or event.

Section 24. Returns — payment — authority of department. (1) Except as provided in subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by [sections 2 through 39] occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department. Each person engaged in business within this state or using property or services within this state that are subject to tax under [sections 2 through 39] shall file a return. A person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the date or dates set by the department.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a retailer required to collect the tax; and

(ii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by [sections 2 through 39] shall keep records, render statements, make returns, and comply with the provisions of [sections 2 through 39] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 2 through 39], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use

statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, or memoranda by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(5) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

Section 25. Credit for taxes paid on worthless accounts — taxes paid if account collected. (1) Sales taxes paid by a person filing a return under [section 24] on sales found to be worthless and actually deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent payment of the tax.

(2) Bad debts may be deducted within 12 months after the month in which the bad debt has been charged off for federal income tax purposes. "Charged off for federal income tax purposes" includes the charging off of unpaid balances due on accounts as uncollectible or declaring as uncollectible such unpaid balance due on accounts in the case of a seller who is not required to file federal income tax returns.

(3) If an account is subsequently collected, the sales tax must be paid on the amount collected.

(4) A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within a 12-month period defined by that bad debt.

(5) For purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first to interest, service charges, and any other charges and second to the price of the property or service and sales tax on the property or service, proportionally.

Section 26. Vendor allowance. (1) A person filing a timely return under [section 24] may claim a quarterly vendor allowance for each permitted location in the amount of 5% of the tax determined to be payable to the state, not to exceed $1,000 a quarter.

(2) The allowance may be deducted on the return.

(3) A person that files a return or payment after the due date for the return or payment may not claim a vendor allowance.

Section 27. Security — limitations — sale of security deposit at auction — bond. (1) The department may require a retailer to deposit, with the department, security in a form and amount that the department, by administrative rule, determines is appropriate. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed. The amount of security may be increased or decreased by the department, subject to the limitations provided in this section.

(2) (a) If necessary, the department may sell, at public auction, property deposited as security to recover any sales tax or use tax amount required to be collected, including interest and penalties.

(b) Notice of the sale must be served personally upon or sent by certified mail to the person that deposited the security.

(c) After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person that deposited the security.

(3) In lieu of security, the department may require a retailer to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(4) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under [sections 2 through 39].

Section 28. Examination of return — adjustments — delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 24] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211.

Section 29. Penalties and interest for violation. If a person fails to file a return on or before the due date or fails to pay a tax on or before a due date, the person must be assessed penalty and interest as provided in 15-1-216.

Section 30. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 2 through 39].

(b) If a tax imposed by [sections 2 through 39] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

Section 31. Interest on deficiency. Interest accrues on unpaid or delinquent taxes as provided in 15-1-216.

Section 32. Limitations. (1) Except in the case of a person that purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 2 through 39], a deficiency may not be assessed or collected with respect to a quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date that the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period to which consent was given.

Section 33. Refunds — interest — limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 2 through 39] must be filed within 5 years of the date that the return was due, without regard to any extension of time for filing.

(2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes under 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

(ii) the amount of overpayment and interest does not exceed $1.

Section 34. Administration — rules. The department shall:

(1) administer and enforce the provisions of [sections 2 through 39];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 2 through 39]; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 2 through 39].

Section 35. Revocation of corporate license — appeal. (1) If a corporation authorized to do business within this state and required to pay the taxes imposed under [sections 2 through 39] fails to comply with any of the provisions of [sections 2 through 39] or any rule of the department, the department may, for reasonable cause, certify to the secretary of state a copy of an order finding that the corporation has failed to comply with specific statutory provisions or rules.

(2) The secretary of state shall, upon receipt of the certification, revoke the certificate authorizing the corporation to do business within this state and may issue a new certificate only when the corporation has obtained from the department an order finding that the corporation has complied with its obligations under [sections 2 through 39].

(3) An order authorized in this section may not be made until the corporation is given an opportunity for dispute resolution as provided in 15-1-211.

(4) A final decision of the department may be appealed to the state tax appeal board.

Section 36. Taxpayer quitting business — liability of successor. (1)(a) All taxes payable under [sections 2 through 39] are due and payable immediately whenever a taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

(b) The taxpayer shall make a return and pay the taxes due within 10 days after the taxpayer quits business, sells, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

(2) Except as provided in subsection (4), a person that becomes a successor is liable for the full amount of the tax and shall withhold from the sales price payable to the taxpayer a sum sufficient to pay any tax due until the taxpayer produces either a receipt from the department showing payment in full of any tax due or a statement from the department that tax is not due.

(3) If a tax is due but has not been paid as provided in subsection (1)(b), the successor is liable for the payment of the full amount of tax. The payment of the tax by the successor is considered to be a payment upon the sales price, and if the payment is greater in amount than the sales price, the amount of the difference becomes a debt due to the successor from the taxpayer owing the tax under subsection (1).

(4) (a) A successor is not liable for any tax due from the person that the successor acquired a business or stock of goods from if:

(i) the successor gives written notice to the department of the acquisition; and

(ii) an assessment is not issued by the department against the former operator of the business within 6 months of receipt of the notice from the successor.

(b) If an assessment is issued by the department, a copy of the assessment must also be mailed to the successor, or if an assessment is not mailed to the successor, the successor is not liable for the tax due.

Section 37. Tax as debt. (1) The tax imposed by [sections 2 through 39] and related interest and penalties become a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(2) (a) This section applies to those corporate officers, directors, or shareholders required by the department to personally guarantee the payment of the taxes for their corporations.

(b) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the state the amounts imposed by [sections 2 through 39] and who fails to pay the tax is liable to the state for the amounts

imposed by [sections 2 through 39] and the penalty and interest due on the amounts.

Section 38. Information — confidentiality — agreements with another state. (1) (a) Except as provided in subsections (2) through (4), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under [sections 2 through 39] or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-303 or 15-31-511 for violating the confidentiality of individual income tax or corporation license information.

(2) (a) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of [sections 2 through 39], the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 2 through 39], the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

(4) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309.

Section 39. Sales tax and use tax proceeds. All money collected under [sections 2 through 39] must be deposited by the department into the general fund.

Section 40. Capital gains credit. An individual taxpayer is allowed a credit against the taxes imposed by 15-30-103 in an amount equal to 1% of the taxpayer's net capital gains for tax years 2005 and 2006 and 2% of the taxpayer's net capital gains for tax years beginning after 2006, as shown on the taxpayer's individual income tax return filed pursuant to 15-30-142. The credit allowed under this section may not exceed the taxpayer's income tax liability.

Section 41. Section 13-37-218, MCA, is amended to read:

"13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than ~~$1,000~~ *$2,400* in total combined monetary contributions from all political committees contributing to the candidate's campaign, and a candidate for the state house of representatives may receive no more than ~~$600~~ *$1,400* in total combined monetary contributions from all political committees contributing to the candidate's campaign. The limitations in this section must be multiplied by the inflation factor, as defined in 15-30-101, for the year in which general elections are held. The resulting figure must be rounded off to the nearest $50 increment. The commissioner shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this

section does not apply to contributions made by a political party eligible for a primary election under 13-10-601."

Section 42. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, *for all urban consumers (CPI-U)*, using the ~~1967~~ *1982-84* base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(9) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment

compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

(10) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June ~~1980~~ *2005*.

(11) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(12) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(13) "Knowingly" is as defined in 45-2-101.

(14) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(15) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(16) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(17) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust

indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(18) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(19) "Nonresident" means a natural person who is not a resident.

(20) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(21) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(22) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(23) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(24) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(25) "Purposely" is as defined in 45-2-101.

(26) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(27) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(28) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(29) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(30) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(31) ~~"Taxable year" or "tax year"~~ *"Tax year"* means the taxpayer's taxable year for federal income tax purposes.

(32) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

Section 43. Section 15-30-103, MCA, is amended to read:

"15-30-103. Rate of tax. (1) There ~~shall~~ *must* be levied, collected, and paid for each ~~taxable~~ *tax* year ~~commencing on or after December 31, 1968,~~ upon the taxable income of ~~every~~ *each* taxpayer subject to this tax, after making allowance for exemptions and deductions as ~~hereinafter~~ provided *in this chapter*, a tax on the ~~following~~ brackets of taxable income *as follows:*

(a) on the first $2,300 of taxable income or any part of that income, 1%;

(b) on the next $1,800 of taxable income or any part of that income, 2%;

(c) on the next $2,100 of taxable income or any part of that income, 3%;

(d) on the next $2,200 of taxable income or any part of that income, 4%;

(e) on the next $2,400 of taxable income or any part of that income, 5%;

(f) on the next $3,100 of taxable income or any part of that income, 6%;

(g) on any taxable income in excess of $13,900 or any part of that income, 6.9%.

~~as adjusted under subsection (2) at the following rates:~~

~~(a) on the first $1,000 of taxable income or any part thereof, 2%;~~

~~(b) on the next $1,000 of taxable income or any part thereof, 3%;~~

~~(c) on the next $2,000 of taxable income or any part thereof, 4%;~~

~~(d) on the next $2,000 of taxable income or any part thereof, 5%;~~

~~(e) on the next $2,000 of taxable income or any part thereof, 6%;~~

~~(f) on the next $2,000 of taxable income or any part thereof, 7%;~~

~~(g) on the next $4,000 of taxable income or any part thereof, 8%;~~

~~(h) on the next $6,000 of taxable income or any part thereof, 9%;~~

~~(i) on the next $15,000 of taxable income or any part thereof, 10%;~~

~~(j) on any taxable income in excess of $35,000 or any part thereof, 11%.~~

(2) ~~By~~ *By* November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that ~~taxable~~ *tax* year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that ~~taxable~~ *tax* year and ~~shall~~ *must* be used as the basis for imposition of the tax in subsection (1) of this section."

Section 44. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) ~~shall~~ *must* be allowed as deductions in computing taxable income.

(2) (a) An exemption of ~~$800~~ *$1,900* ~~shall be~~ *is* allowed for t~~axable years beginning after December 31, 1978, for the taxpayer~~ *all taxpayers*.

(b) An additional exemption of ~~$800~~ *$1,900* ~~shall be~~ *is* allowed ~~for taxable years beginning after December 31, 1978,~~ for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins, ~~has no~~ *does not have* gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of ~~$800~~ *$1,900* ~~shall be~~ *is* allowed ~~for taxable years beginning after December 31, 1978,~~ for the taxpayer if ~~he~~ *the taxpayer* has attained the age of 65 before the close of ~~his taxable~~ *the taxpayer's tax* year.

(b) An additional exemption of ~~$800~~ *$1,900* ~~shall be~~ *is* allowed ~~for taxable years beginning after December 31, 1978,~~ for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of ~~such taxable~~ *the tax* year and, for the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins, ~~has no~~ *does not have* gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of ~~$800~~ *$1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for~~ the taxpayer if ~~he~~ *the taxpayer* is blind at the close of ~~his taxable~~ *the taxpayer's tax* year.

(b) An additional exemption of ~~$800~~ *$1,900* ~~shall be~~ *is* allowed ~~for taxable years beginning after December 31, 1978,~~ for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins, ~~has no~~ *does not have* gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind ~~shall~~ *must* be made as of the close of the ~~taxable~~ *tax* year of the taxpayer, except that if the spouse dies during ~~such taxable~~ *the tax* year, ~~such~~ *the* determination ~~shall~~ *must* be made as of the time of ~~such~~ death.

(c) For purposes of this subsection (4), an individual is blind only if ~~his~~ *the person's* central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if ~~his~~ visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision ~~such~~ *to an extent* that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of ~~$800~~ *$1,900* ~~shall be~~ *is* allowed for ~~taxable years beginning after December 31, 1978, for~~ each dependent:

(i) whose gross income for the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins; or

(B) is a student.

(b) ~~No~~ *An* exemption ~~shall be~~ *is not* allowed under this subsection for ~~any~~ *a* dependent who has made a joint return with ~~his~~ *the dependent's* spouse for the ~~taxable~~ *tax* year beginning in the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the ~~taxable~~ *tax* year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution ~~which~~ *that* normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that ~~taxable~~ *tax* year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that ~~taxable~~ *tax* year and ~~shall~~ *must* be used in calculating the tax imposed in 15-30-103."

Section 45. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year, *not to exceed $5,000 for each taxpayer filing singly, head of household, or married filing separately or $10,000 if married and filing jointly*;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of age for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue

Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209, 81-7-118, or 81-7-201.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2)."

Section 46. Section 15-30-122, MCA, is amended to read:

"15-30-122. Standard deduction. (1) A standard deduction equal to 20% of adjusted gross income is allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under 15-30-121. The minimum standard deduction is ~~$665~~ *$1,580*, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~$1,500~~ *$3,560*, as adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on the federal income tax return, the minimum standard

deduction is ~~$1,330~~ *twice the amount of the minimum standard deduction for a single return*, as adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of ~~$3,000~~ *twice the amount of the maximum standard deduction for a single return,* as adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married must be made as of the last day of the tax year unless one of the spouses dies during the tax year, in which case the determination must be made as of the date of death.

(2) By November 1 of each year, the department shall multiply both the minimum and the maximum standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest $10. ~~The minimum and maximum standard deduction for joint returns and qualified head of household returns must be twice the amount of the minimum and maximum standard deduction for single returns.~~ The resulting adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

Section 47. Section 15-30-124, MCA, is amended to read:

"15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries. (1) Subject to the conditions provided in subsections (2) through (5), a resident of this state is allowed a credit against the taxes imposed by this chapter for:

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter; ~~and~~

(b) the resident's pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder*; and*

(c) the resident's distributive share, whether separately or nonseparately stated, of any income tax imposed by and paid to another state or country by a partnership of which the resident is a partner.

(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the taxpayer.

(3) The credit is not allowed if the other state or country allows residents of this state a credit against the taxes imposed by the other state or country for taxes paid or payable under this chapter.

(4) The allowable credit must be computed by a formula prescribed by the department.

(5) For the purposes of the credit under ~~subsection~~ *subsections* (1)(b) *and (1)(c)*:

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

(c) the credit applies only to taxes paid by the S. corporation *or partnership* on income taxable under this chapter."

Section 48. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) For both resident and nonresident taxpayers, each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than ~~$1,500~~ *$3,560*, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than ~~$3,000~~ *$7,120*, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by ~~$800~~ *$1,900*, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Section 49. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax — exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~18~~ *70* cents on each package containing 20 cigarettes. ~~and, when~~ *Whenever* packages contain other than 20 cigarettes, *there is* a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a ~~credit or~~ refund *or credit*. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Section 50. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(1) ~~6%~~ *1.66%* for the first 2,580 cartons or portion ~~thereof~~ *of 2,580 cartons* purchased in any calendar month;

(2) ~~4%~~ *1.11%* for the next 2,580 cartons or portion ~~thereof~~ *of 2,580 cartons* purchased in any calendar month; and

(3) ~~3%~~ *0.83%* for purchases in excess of 5,160 cartons in any calendar month."

Section 51. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. *(1)* Cigarette taxes collected under the provisions of 16-11-111 must*, in accordance with the provisions of 15-1-501,* be ~~allocated~~ *deposited* as follows:

~~(1)~~*(a)* ~~The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited~~ *8.3% or $2 million, whichever is greater,* in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes~~.~~*;*

~~(2) The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited in the state general fund.~~

~~(3)~~*(b)* ~~The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited~~ *4.3%* in the long-range building program account provided for in 17-7-205*; and*

(c) the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund."

Section 52. Section 16-11-201, MCA, is amended to read:

"16-11-201. Definitions. As used in this part, the following definitions apply, unless the context requires otherwise:

(1) *"Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.*

(2) "Retailer" means any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

~~(2)~~*(3)* "Sale" or "sell" means any transfer of tobacco products for a consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

~~(3)~~*(4)* "Tobacco product" means a substance other than cigarettes that is intended for human consumption and that contains tobacco.

~~(4)~~*(5)* "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or other reduction.

~~(5)~~*(6)* "Wholesaler" means any person who purchases tobacco products directly from the manufacturer or from any other person who purchases from the manufacturer and who acquires the products for sale to retail dealers."

Section 53. Section 16-11-202, MCA, is amended to read:

"16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax. (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail

consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. ~~Any~~ *A* person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of ~~12 1/2%~~ *25%* of the wholesale price*, to the wholesaler,* of all tobacco products*, other than moist snuff* ~~to the wholesaler~~*. The tax on moist snuff is 35 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package.* Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax."

Section 54. Section 16-11-206, MCA, is amended to read:

"16-11-206. Wholesaler's discount — disposition of taxes. The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a~~5%~~ *2.5%* defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

Section 55. Transition. (1) On or before June 30, 2003, each cigarette wholesale dealer, retail dealer, and vending machine operator shall file a report with the department of revenue in the form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on April 30, 2003.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesale dealer, retail dealer, and vending machine operator shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the dealer or operator at 12:01 a.m. on April 30, 2003, that exceeds the number of stamped cigarettes and cigarette tax insignia held in inventory by the cigarette wholesale dealer, retail dealer, or vending machine operator at the close of its most recently concluded income tax reporting year.

Section 56. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 57. Codification instruction. (1) [Section 1] is not intended to be codified.

(2) [Sections 2 through 39] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 2 through 39].

(3) [Section 40] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 40].

Section 58. Coordination instruction. If Senate Bill No. 470 is passed and approved, then [sections 40 through 46 and 48 of this act] are void.

Section 59. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 60. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 61. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 40 through 46 and 48] are effective January 1, 2005.

Section 62. Applicability. (1) [This act] applies to the sale of the following goods and services:

(a) cigarette and tobacco products sold on or after May 1, 2003;

(b) accommodation and campground charges under [section 3(1)(b) and (3)(a)(ii)] made on or after June 1, 2003; and

(c) base rental charges for rental vehicles under [section 3(1)(c) and (3)(a)(iii)] made on or after July 1, 2003.

(2) [Sections 40 and 42 through 45] apply to tax years beginning after December 31, 2004.

(3) [Section 47] applies retroactively, within the meaning of 1-2-109, to years beginning after December 31, 2002.

Ap proved April 30, 2003

CHAPTER NO. 545

[SB 408]

AN ACT PROVIDING AN ADJUSTMENT TO ADJUSTED GROSS INCOME FOR STATE INCOME TAX PURPOSES FOR LICENSED HEALTH CARE PROFESSIONALS WHO RECEIVE A LOAN REPAYMENT INCENTIVE TO PRACTICE IN CERTAIN AREAS IN MONTANA; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. (Temporary) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by

persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; and

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.<eff>

(9) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (9)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)

15-30-111. (Effective on occurrence of contingency) Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion

amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(9) (a) A taxpayer may exclude up to $5,000 from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to tax years beginning after December 31, 2002.

Ap proved April 30, 2003

CHAPTER NO. 546

[SB 429]

AN ACT GENERALLY REVISING THE PROVISIONS REGARDING REDISTRICTING; PROVIDING FOR CRITERIA; PROVIDING FOR THE USE OF DECENNIAL CENSUS DATA; PROVIDING FOR THE IMPLEMENTATION OF A SUCCESSFUL CONSTITUTIONAL AMENDMENT TO REVISE LEGISLATIVE REDISTRICTING TO CREATE A NONPARTISAN PROCESS TO ALLOW THE LEGISLATURE

OPPORTUNITIES TO APPROVE A PLAN; PROVIDING THAT IF A PLAN IS NOT APPROVED, A THREE-JUDGE PANEL APPOINTED BY THE SUPREME COURT SHALL APPROVE A PLAN; PROVIDING FOR A REDISTRICTING PLAN UPON ORDER BY THE COURT; AMENDING SECTION 1, CHAPTER 4, LAWS OF 2003, AND SECTIONS 5-1-101, 5-1-102, 5-1-106, 5-1-108, 5-1-109, AND 5-1-111, MCA; REPEALING SECTION 5-1-110, MCA; CONTINGENTLY REPEALING CHAPTER 3, LAWS OF 2003; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Redistricting criteria. (1) Subject to federal law, legislative and congressional districts must be established on the basis of population.

(2) In the development of legislative districts, a plan is subject to the Voting Rights Act and must comply with the following criteria, in order of importance:

(a) The districts must be as equal as practicable, meaning to the greatest extent possible, within a plus or minus 1% relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census. The relative deviation may be exceeded only when necessary to keep political subdivisions intact or to comply with the Voting Rights Act.

(b) District boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible. The number of counties and cities divided among more than one district must be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions must be divided before the less populous, unless the boundary is drawn along a county line that passes through a city.

(c) The districts must be contiguous, meaning that the district must be in one piece. Areas that meet only at points of adjoining corners or areas separated by geographical boundaries or artificial barriers that prevent transportation within a district may not be considered contiguous.

(d) The districts must be compact, meaning that the compactness of a district is greatest when the length of the district and the width of a district are equal. A district may not have an average length greater than three times the average width unless necessary to comply with the Voting Rights Act.

(3) A district may not be drawn for the purposes of favoring a political party or an incumbent legislator or member of congress. The following data or information may not be considered in the development of a plan:

(a) addresses of incumbent legislators or members of congress;

(b) political affiliations of registered voters;

(c) partisan political voter lists; or

(d) previous election results, unless required as a remedy by a court.

Section 2. Section 5-1-101, MCA, is amended to read:

"5-1-101. Commission to redistrict and reapportion — number of legislators. (1) In each session preceding each federal population census, a commission of ~~five~~ citizens, none of whom may be public officials, shall be selected *as provided in 5-1-102* to prepare the plans for redistricting and reapportioning the state into legislative and congressional districts.

(2) The plans for redistricting and reapportionment of legislative districts must be based on the number of members in the house of representatives and the senate to be determined in the legislative session before the census."

Section 3. Section 5-1-102, MCA, is amended to read:

"5-1-102. Composition of commission. (1) The majority and minority leaders of each house shall each designate one commissioner. A commissioner must be appointed from each district listed in subsection (2). The majority leader in the senate has first choice of the district from which the majority leader will select a commissioner, and the majority leader of the house has second choice. Within 20 days after their designation, the four commissioners ~~shall~~ *may* select ~~the~~ *a* fifth member, who*, if selected,* shall serve as the presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, ~~a majority of the supreme court shall select the fifth member~~ *the commission is composed of the four designated commissioners, who may alternate as presiding officer*.

(2) The commission districts are the following counties:

(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli;

(b) District 2: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park;

(c) District 3: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, and Pondera; and

(d) District 4: Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, Yellowstone, Carbon, Stillwater, and Sweet Grass."

Section 4. Section 5-1-106, MCA, is amended to read:

"5-1-106. Legislative services division to provide technical and clerical services. *(1)* The executive director of the legislative services division, under the direction of the commission, shall provide the technical staff and clerical services that the commission*, the legislature, or the panel provided for in 5-1-109* needs to prepare ~~its~~ districting and apportionment plans.

(2) The legislative services division shall obtain from the United States bureau of the census the population data needed for redistricting that the census bureau is required to provide this state under Public Law 94-171.

(3) The legislative services division shall gather information from interested parties in each of the regions and develop alternative plans for consideration by the commission. The commission shall select a plan to be presented for consideration at the regional public hearings."

Section 5. Section 5-1-108, MCA, is amended to read:

"5-1-108. Public ~~hearing~~ *hearings* on plans. (1) Before the commission files its final congressional redistricting plan with the secretary of state, the commission shall hold at least one public hearing on it.

(2) Before the commission submits its legislative redistricting plan to the legislature, it shall hold at least *four regional public hearings on a tentative plan and* one public hearing on the *entire* plan at the state capitol. *The commission shall hold the final public hearing at least 15 days but not more than 30 days prior to its submission to the legislature.*

~~(3) The commission may hold other hearings as it deems necessary.~~"

Section 6. Section 5-1-109, MCA, is amended to read:

"5-1-109. Submission of plan for legislative redistricting to legislature — *legislative action — judicial panel*. *(1)* The commission shall submit ~~its~~ *a nonpartisan* legislative redistricting plan, including a recommendation for assignment of holdover senators, to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available.

(2) Within 15 legislative days after submission, the legislature shall consider the legislative redistricting plan, including assignment of holdover senators, for approval by resolution without amendment, unless purely corrective in nature. If the plan is approved, it must be submitted to the secretary of state and it becomes law. If the plan is not approved, then the legislature shall direct the legislative services division to prepare a second nonpartisan plan based on information transmitted by both houses. Both houses shall specify the concerns to be addressed, if any, in the second plan, and the legislative services division shall issue a report stating how each concern was addressed or not addressed and the reasons for the action taken regarding each concern. The legislative services division shall prepare the second plan within time constraints that will allow both houses of the legislature sufficient time to take action on the plan within 21 legislative days of the first plan's rejection.

(3) If the second plan is approved, it must be submitted to the secretary of state and it becomes law. If the second plan is not approved, then the legislature shall direct the legislative services division to prepare a third nonpartisan plan based on information transmitted by both houses. Both houses shall specify the concerns to be addressed, if any, in the third plan, and the legislative services division shall issue a report stating how each concern was addressed or not addressed and the reasons for the action taken regarding each concern. The legislative services division shall prepare the third plan within the time constraints that will allow both houses of the legislature sufficient time to take action on the plan within 21 legislative days of the second plan's rejection. The third plan is subject to amendment by the legislature.

(4) If third plan is approved, it must be submitted to the secretary of state and it becomes law. If the third plan is not approved and submitted within 21 legislative days, the plans must be transmitted to a three-judge panel of district court judges who are appointed by the supreme court from three different judicial districts. The panel shall adopt a plan from any of the previous plans prepared or direct the legislative services division to prepare a nonpartisan legislative redistricting plan to be adopted within 45 calendar days of the third rejection. The panel shall file its final plan for legislative districts with the secretary of state and it becomes law.

(5) The legislature or the panel provided for in subsection (4) shall assign holdover senators as provided in [section 7] and submit the assignment as part of the final plan as provided in 5-1-109.

(6) A redistricting plan that has become law and that must be revised by order of a court must be revised by the legislative services division and presented to the legislature at the earliest opportunity to follow the process as provided in subsections (2) through (5)."

Section 7. Section 5-1-111, MCA, is amended to read:

"5-1-111. Final plan — dissolution of commission. (1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it ~~shall become~~ *becomes* law.

(2) ~~Within 30 days after receiving the legislative redistricting plan and the legislature's recommendations, the commission shall file its final legislative redistricting plan with the secretary of state and it shall become law.~~

~~(3) Upon filing both plans,~~ *Upon filing the congressional plan and submitting a legislative plan to the legislature, as provided in 5-1-109,* the commission ~~shall be~~ *is* dissolved."

Section 8. Section 1, Chapter 4, Laws of 2003, is amended to read:

"**Section 1. Assignment of holdover senators.** (1) In the session in which the legislative redistricting plan is submitted to the legislature for recommendations, the legislature~~, by joint resolution,~~ shall assign holdover senators to a district for the remainder of those senators' terms. The districting and apportionment commission may not assign holdover senators to districts for the remainder of those senators' terms *but may only make a recommendation*. The assignments must ~~occur after the~~ *be submitted as a part of the redistricting* plan ~~becomes law~~ *as provided in 5-1-109*.

(2) In making the assignments provided for in subsection (1), the legislature, if possible, shall assign a holdover senator to a district based upon the greatest percentage of population in the new district that ~~voted~~ *had the opportunity to vote* for the senator in the prior election and the senator's residence.

(3) For the purposes of this section, a holdover senator is a senator who is not required to seek election at the general election held immediately following the districting plan becoming law."

Section 9. Repealer. Section 5-1-110, MCA, is repealed.

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 1, part 1, and the provisions of Title 5, chapter 1, part 1, apply to [section 1].

Section 11. Coordination instruction — contingent repealer. (1) If [LC856] is not passed and approved at the general election to be held in November 2004, then [sections 2 through 9] in this act are void.

(2) If this act is passed and approved and [LC856] is passed and approved at the general election to be held in November 2004, then Chapter 3, Laws of 2003, is repealed.

(3) If this act is passed and approved and [LC856] is not passed and approved at the general election to be held in November 2004, then Chapter 3, Laws of 2003, is repealed.

Section 12. Applicability. [This act] applies to proceedings begun after [the effective date of this act] for the redistricting based on the 2010 decennial census.

Ap proved April 30, 2003

CHAPTER NO. 547

[SB 492]

AN ACT CLARIFYING THAT THE BOARD OF REGENTS, ON BEHALF OF THE UNIVERSITY SYSTEM UNITS, MUST APPROVE AN OPERATING BUDGET CONTAINING DETAILED REVENUE AND EXPENDITURES OF ALL MONEY APPROPRIATED IN THE GENERAL APPROPRIATIONS ACT;

PROVIDING THAT TRANSFERS BETWEEN UNITS MAY BE MADE ONLY WITH THE APPROVAL OF THE BOARD OF REGENTS AFTER APPROVAL OF THE OPERATING BUDGET; REQUIRING THAT TRANSFERS BE SUBMITTED TO THE OFFICE OF BUDGET AND PROGRAM PLANNING AND THE LEGISLATIVE FISCAL ANALYST; AMENDING SECTION 17-7-138, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds $1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than $25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and $25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the ~~commissioner of higher education for distribution by the~~ board of regents, ~~to~~ *on behalf of* the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. *The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents.*

Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds."

Section 2. Effective date. [This act] is effective July 1, 2003.

Section 3. Applicability. [This act] applies to university fiscal years beginning on or after July 1, 2003.

Ap proved April 30, 2003

CHAPTER NO. 548

[HB 736]

AN ACT ESTABLISHING A K-12 PUBLIC SCHOOL RENEWAL COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, public schools are the foundation of Montana, providing citizens with the tools they need to strengthen our state's way of life and extending the principles of liberty; and

WHEREAS, approximately 16,000 full-time and part-time public school teachers guide over 149,000 students in the state of Montana; and

WHEREAS, as prescribed by Article X, section 1, of the Montana Constitution, a fundamental goal of the State of Montana is to establish a system of quality education that will develop the full educational potential of each person; and

WHEREAS, it is consistently proven on national assessments that Montana's excellent educators instruct superior students, and this fine system should be strengthened; and

WHEREAS, the Board of Public Education, of which the Superintendent of Public Instruction and the Governor are members, is constitutionally charged with general supervision over the public school system and other public educational institutions as may be assigned by law; and

WHEREAS, the first step in developing a competitive economy is a quality education system producing a qualified workforce; and

WHEREAS, due to repeated adjustments, revisions, and court decisions, the statutes governing the education system in Montana are plagued by inconsistent language, conflicting provisions, confusing funding mechanisms, and overlapping organizational structures that make it difficult for educators, parents, the legal community, and the general public to understand; and

WHEREAS, in order for the State of Montana to provide for an effective and efficient system of free quality public elementary and secondary education, a comprehensive renewal of education in Montana would be in the best interests of all of the state; and

WHEREAS, the Governor of Montana, the Board of Public Education, the Superintendent of Public Instruction, and the Montana Legislature should convene a commission to examine the various options available for the renewal of public education in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. K-12 public school renewal commission. (1) There is a K-12 public school renewal commission established to propose changes and new provisions regarding the several components of K-12 public education in Montana, including but not limited to:

(a) the revenue available for public education;

(b) the structure of school district governance;

(c) the methods of funding public education;

(d) the role of the state government in public education; and

(e) the role of the federal government in public education.

(2) Core membership of the renewal commission must include the governor, the presiding officer of the board of public education, the superintendent of public instruction, the speaker of the house of representatives, the president of the senate, the minority leader of the house of representatives, and the minority leader of the senate. Core members may select a designee to represent the core member on the renewal commission.

(3) The governor, in consultation with the core membership, shall:

(a) identify no less than 10 and no more than 25 entities who shall designate a representative to serve on the renewal commission;

(b) appoint a representative from the juvenile corrections division of the department of corrections to serve on the renewal commission;

(c) request assistance from other legislative and executive branch agencies; and

(d) in addition to any legislative appropriation, accept donations for the purposes of carrying out the duties of the renewal commission required in this section.

(4) The members of the renewal commission appointed pursuant to subsection (3)(a) may be reimbursed for expenses.

(5) (a) The renewal commission shall submit a final report of its findings and recommendations to the education and local government interim committee by September 15, 2004.

(b) The renewal commission may recommend legislation to the 59th legislature based on the commission's findings.

(6) As used in this section, the term "K-12 public education" includes a state youth correctional facility, as defined in 41-5-103.

Section 2. Appropriation. There is appropriated $10,000 from the general fund to the board of public education for the biennium beginning July 1, 2003, to support the K-12 public school renewal commission.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved May 1, 2003

CHAPTER NO. 549

[SB 406]

AN ACT PROVIDING THAT A CORNER RECORD MAY BE FILED IN LIEU OF A CERTIFICATE OF SURVEY IN CERTAIN INSTANCES; REQUIRING THAT THE COUNTY CLERK PROVIDE AN INDEX; PROVIDING THAT PARCELS CREATED FOR RIGHTS-OF-WAY OR UTILITY SITES ARE EXEMPT FROM THE SUBDIVISION REVIEW PROCESS UNLESS THERE IS A SUBSEQUENT CHANGE IN LAND USE; PROVIDING GUIDANCE ON EXEMPTIONS THAT ARE CREATED TO PROVIDE SECURITY FOR MORTGAGES, LIENS, OR TRUST INDENTURES; AND AMENDING SECTIONS 70-22-105, 70-22-109, 76-3-201, AND 76-3-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-22-105, MCA, is amended to read:

"70-22-105. Filing permitted as to any corner or accessory. *(1)* A surveyor may file ~~such~~ *a* corner record ~~as~~ to any property corner, property controlling corner, reference monument, or accessory to a corner.

(2) The filing of a properly completed corner record, documenting survey data used to determine the position of the corner, may be filed in lieu of filing a certificate of survey, as provided in 76-3-404, for the following listed corners:

(a) a single, previously filed or recorded property corner;

(b) a property controlling corner;

(c) a reference monument; or

(d) an accessory to a corner."

Section 2. Section 70-22-109, MCA, is amended to read:

"70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner ~~shall~~ *must* receive the completed corner record and preserve it in a hardbound book. The books ~~shall~~ *must* be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed ~~shall~~ *must* be placed by the clerk near that same corner on a cross-index plat *for public land corners or on an index referenced to tract or lot number in a survey of record. The* ~~which the~~ clerk shall provide *an index* for ~~such a~~ *that* purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee."

Section 3. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) *subject to subsection (3),* is created to provide security for ~~construction~~ mortgages, liens, or trust indentures *for the purpose of construction, improvements to the land being divided, or refinancing purposes*;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes; ~~or~~

(g) is in a location over which the state does not have jurisdiction~~.~~*, or*

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable."

Section 4. Section 76-3-404, MCA, is amended to read:

"76-3-404. Certificate of survey. (1) *Except as provided in 70-22-105, within* ~~Within~~ 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether ~~he~~ *the surveyor* is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in ~~such~~ *the* map;

(c) discloses evidence to suggest alternate locations of lines or points; *or*

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of ~~such~~ *the* map without trigonometric calculations.

(2) A certificate of survey ~~will~~ *is* not ~~be~~ required for any survey ~~which~~ *that* is made by the United States bureau of land management, ~~or which~~ *that* is preliminary, or ~~which~~ *that* will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey ~~shall~~ *must* be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and ~~shall~~ *must* conform to monumentation and surveying requirements promulgated under this chapter."

Ap proved May 1, 2003

CHAPTER NO. 550

[SB 424]

AN ACT GENERALLY REVISING SCHOOL FINANCE; PROVIDING FOR ANNUAL INFLATION-RELATED ADJUSTMENTS TO THE BASE FUNDING PROGRAM AMOUNTS FOR SCHOOL DISTRICT BASIC ENTITLEMENTS AND PER-ANB ENTITLEMENTS; INCREASING THE BASIC AND PER-ANB ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2004 AND SUCCEEDING YEARS; INCREASING SCHOOL FACILITY ENTITLEMENTS; DEFINING "FACILITY GUARANTEED MILL VALUE PER ANB"; CHANGING THE WAY IN WHICH A SCHOOL DISTRICT OR COOPERATIVE CHARGES EMPLOYER CONTRIBUTIONS FOR RETIREMENT, SOCIAL SECURITY, AND UNEMPLOYMENT INSURANCE; TERMINATING THE COUNTYWIDE SCHOOL RETIREMENT BLOCK GRANTS; REVISING THE SCHEDULE FOR STATE AND COUNTY TRANSPORTATION REIMBURSEMENT; ELIMINATING WEIGHTED RIDERSHIP; ESTABLISHING THREE SEPARATE BLOCK GRANTS; ALLOWING THE COMBINED FUND BLOCK GRANT TO BE DEPOSITED IN ANY BUDGETED FUND OF THE DISTRICT; AMENDING SECTIONS 20-9-306, 20-9-366, 20-9-370, 20-9-371, 20-9-501, 20-9-542, 20-10-101, AND 20-10-141, MCA; AMENDING SECTIONS 25 AND 26, CHAPTER 13, LAWS OF 2002; REPEALING SECTIONS 20-10-127 AND 20-10-128, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements. (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements in each fiscal year of the ensuing biennium. The inflation factor is calculated as follows:

(a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and raise the resulting ratio to the power of one-third; and

(b) for the second year of the biennium, divide the consumer price index for July 1 of the current calendar year by the consumer price index for July 1 of the

calendar year 3 years prior to the current calendar year and raise the resulting ratio to the power of one-third.

(2) The present law base for the basic and per-ANB entitlements, calculated under Title 17, chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

(3) For the purposes of this section, "consumer price index" means the consumer price index, U.S. city average, all urban consumers, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

Section 2. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and ~~up to~~ 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$213,819~~ *$216,171* for each high school district;

(b) ~~$19,244~~ *$19,456* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$19,244~~ *$19,456* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$213,819~~ *$216,171* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,205~~ *$5,262* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,906~~ *$3,949* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,906~~ *$3,949* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,205~~ *$5,262* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 3. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement

budgeted in the general fund budget of a district, and ~~up to~~ 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$213,819~~ *$220,646* for each high school district;

(b) ~~$19,244~~ *$19,859* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$19,244~~ *$19,859* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$213,819~~ *$220,646* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$5,205~~ *$5,371* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,906~~ *$4,031* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,906~~ *$4,031* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$5,205~~ *$5,371* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 4. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through ~~20-9-369~~ *20-9-371*, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year BASE budget amount less direct state aid.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total ANB amount used to calculate the school districts' current year total per-ANB entitlement.

~~(3)~~*(4)* (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school ~~facility entitlement and~~ retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school

ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 5. Section 20-9-370, MCA, is amended to read:

"20-9-370. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) ~~$220~~ *$300* per ANB for an elementary school district;

(b) ~~$330~~ *$450* per ANB for a high school district; or

(c) ~~$270~~ *$370* per ANB for an approved and accredited junior high school or middle school.

(2) "State advance for school facilities" is the amount of state equalization aid distributed to an eligible district to pay the debt service obligation for a bond in the first school fiscal year in which a debt service payment is due for the bond.

(3) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) has a district mill value per ~~elementary~~ ANB that is less than the corresponding ~~statewide mill value per elementary ANB or a district mill value per high school ANB that is less than the corresponding statewide mill value per high school ANB~~ *facility guaranteed mill value per ANB*; and

(b) has a debt service obligation in the ensuing school year on bonds ~~for which the original issue was sold after July 1, 1991~~.

(4) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district."

Section 6. Section 20-9-371, MCA, is amended to read:

"20-9-371. Calculation and uses of school facility entitlement amount. (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/~~statewide~~ *facility guaranteed* mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on bonds that qualify under the provisions of 20-9-370(3).

(2) The state advance for school facilities for a district is determined as follows:

(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement in the ensuing school fiscal year for all outstanding bonded indebtedness on bonds sold in the debt service fund of the district ~~after July 1, 1991~~. The trustees may apply the state advance for school facilities to reduce the levy requirement in the current school fiscal year for debt service payments on bonds to which the state advance for school facilities applies."

Section 7. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement *costs and retirement* fund. (1) The trustees of a district *or the management board of a cooperative* employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems *as provided in subsection (2)(a).* The district's *or the cooperative's* contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's *or the cooperative's* contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's *or the cooperative's* contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's *or the cooperative's* contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments pursuant to 20-9-321; and

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

~~(2)~~*(3)* The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

~~(3)~~*(4)* When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under section 245, Chapter 574, Laws of 2001;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection ~~(8)~~ *(9)*, subtracting the money available for reduction of the levy requirement, as determined in subsection ~~(3)(a)~~ *(4)(a)*, from the budgeted amount for expenditures in the final retirement fund budget.

~~(4)~~*(5)* The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

~~(5)~~*(6)* The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

~~(6)~~*(7)* The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

~~(7)~~*(8)* The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

~~(8)~~*(9)* The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection ~~(4)(a)~~ *(5)(a)* by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

~~(9)~~*(10)* The levy for a community college district may be applied only to property within the district."

Section 8. Section 20-9-542, MCA, is amended to read:

"20-9-542. School flexibility account — distribution of funds. (1) There is a school flexibility account in the state special revenue fund. The superintendent of public instruction shall allocate the money in the account, including any interest earned on money allocated to the account, to each school district. Each school district's total allocation is the sum of the district K-12 public school funding amount, the district large K-12 public school funding amount, and the district student funding amount.

(2) In addition to funds allocated or appropriated to the school flexibility account, all money saved by the state if the actual statewide ANB in a given fiscal year is less than the statewide ANB projected by the legislature during the preceding legislative session must be deposited in the school flexibility account.

(3) A portion of the money in the school flexibility account may be expended by a district to alleviate certified staff shortages in the district or for retirement incentives only if a portion of the account is specified for that purpose in a general appropriation act."

Section 9. Section 20-10-101, MCA, is amended to read:

"20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Bus route" means a route approved by the board of trustees of a school district and by the county transportation committee.

(2) "Eligible transportee" means a public school pupil who:

(a) is 5 years of age or older and has not reached the age of 21 on or before September 10 of the current school year or who is a preschool child with a disability between the ages of 3 and 6;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries:

(i) resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; or

(ii) has transportation identified as a related service in an individualized education program as developed and implemented in accordance with the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(d) is considered to reside with a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) "Passenger seating position" means, as defined in 49 CFR 571.222, the space on a school bus allocated for one passenger.

(4) (a) "School bus" means, except as provided in subsection (4)(b), any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the department of justice's semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

(5) "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between the pupil's legal residence or an officially designated bus stop and the school designated by the trustees for the pupil's attendance; or

(b) "individual transportation" by which a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(6) "Transportation service area" means the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program.

~~(7) "Weighted ridership" means the sum of the passenger points assigned to the eligible transportees who are transported on a bus route.~~"

Section 10. Section 20-10-141, MCA, is amended to read:

"20-10-141. Schedule of maximum reimbursement by mileage rates. (1) The ~~following~~ mileage rates *in subsection (2)* for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on bus routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the

operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) *(a)* The rate ~~per~~ *for each* bus mile traveled must be determined in accordance with the following schedule ~~when the weighted ridership assigned to a bus route is not less than one-half of the rated capacity of the school bus~~:

~~(a)~~*(i)* ~~85~~ *95* cents ~~per bus mile~~ for a school bus with a rated capacity of not more than ~~45~~ *49* passenger seating positions;

(ii) $1.15 for a school bus with a rated capacity of 50 to 59 passenger seating positions;

(iii) $1.36 for a school bus with a rated capacity of 60 to 69 passenger seating positions;

(iv) $1.57 for a school bus with a rated capacity of 70 to 79 passenger seating positions; and

(v) $1.80 for a school bus with 80 or more passenger seating positions.

(b) ~~when the rated capacity is more than 45 passenger seating positions, an additional 2.13 cents per bus mile for each additional passenger seating position in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile~~ *Nonbus mileage, as provided in subsection (1), must be reimbursed at a rate of 50 cents a mile*.

~~(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).~~

~~(4) When the weighted ridership assigned to a bus route is less than one-half of the rated capacity of the school bus, the rate per bus mile traveled must be computed as follows:~~

~~(a) determine the weighted ridership assigned to the bus route;~~

~~(b) multiply the number determined in subsection (4)(a) by two; and~~

~~(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).~~

~~(5)~~*(3)* The rated capacity is the number of passenger seating positions of a school bus as determined under the policy adopted by the board of public education. If modification of a school bus to accommodate pupils with disabilities reduces the rated capacity of the bus, the reimbursement to a district for pupil transportation is based on the rated capacity of the bus prior to modification.

~~(6)~~*(4)* The number of pupils riding the school bus may not exceed the passenger seating positions of the bus."

Section 11. Section 25, Chapter 13, Laws of 2002, is amended to read:

"**Section 25.** Section 244, Chapter 574, Laws of 2001, is amended to read:

"**Section 244. School district block grants.** (1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state

land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate ~~a portion of~~ the block grant amount into each district's ~~fiscal year 2002~~ budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the ~~biennial~~ *fiscal year 2003* appropriation provided in [section 248(1)] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. ~~If the appropriation for block grants is greater than or less than the amount received by schools from the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.~~

(4) *(a)* ~~The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% *in fiscal year 2004 and* in each succeeding fiscal year.~~ *The block grant for the district general fund is equal to the average amount received in fiscal years 2002 and 2003 by the district general fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.*

(b) The block grant for the district transportation fund is equal to one-half of the average amount received in fiscal years 2002 and 2003 by the district transportation fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(c) (i) The combined fund block grant is equal to the average amount received in fiscal years 2002 and 2003 by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district.""

Section 12. Section 26, Chapter 13, Special Laws of August 2002, is amended to read:

"Section 26. Section 245, Chapter 574, Laws of 2001, is amended to read:

"Section 245. Countywide school retirement block grants. ~~(1)~~ The office of public instruction shall distribute one-half of the amount appropriated

for countywide school retirement in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Elementary Payment	FY 2002 High School Payment	FY 2003 Elementary Payment	FY 2003 High School Payment
Beaverhead	$86,692	$50,789	~~$87,351~~ *$55,503*	~~$51,175~~ *$41,981*
Big Horn	62,668	36,963	~~63,144~~ *95,018*	~~37,244~~ *33,837*
Blaine	61,160	10,193	~~61,624~~ *46,318*	~~10,271~~ *81,109*
Broadwater	0	92,686	0	~~93,390~~ *34,949*
Carbon	43,451	82,110	~~43,782~~ *72.602*	~~82,734~~ *58,957*
Carter	9,751	5,453	~~9,825~~ *8,478*	~~5,495~~ *6,155*
Cascade	349,056	192,848	~~351,709~~ *282,266*	~~194,314~~ *142,282*
Chouteau	75,384	41,034	~~75,957~~ *58,455*	~~41,346~~ *29,474*
Custer	78,925	36,930	~~79,525~~ *57,608*	~~37,211~~ *32,128*
Daniels	0	37,994	0	~~38,283~~ *36,083*
Dawson	85,568	38,722	~~86,219~~ *64,693*	~~39,016~~ *24,827*
Deer Lodge	39,980	17,059	~~40,284~~ *34,455*	~~17,189~~ *16,807*
Fallon	0	0	0	~~0~~ *30,444*
Fergus	119,028	78,809	~~119,932~~ *90,464*	~~79,408~~ *55,527*
Flathead	558,861	296,410	~~563,108~~ *530,274*	~~298,662~~ *268,731*
Gallatin	383,035	181,743	~~385,946~~ *537,244*	~~183,125~~ *107,717*
Garfield	12,337	10,170	~~12,431~~ *12,100*	~~10,247~~ *4,620*
Glacier	79,924	34,016	~~80,532~~ *106,815*	~~34,275~~ *10,494*
Golden Valley	0	16,716	0	~~16,843~~ *14,492*
Granite	14,074	48,026	~~14,180~~ *12,523*	~~48,391~~ *30,727*
Hill	142,867	82,538	~~143,953~~ *59,593*	~~83,165~~ *35,211*
Jefferson	116,679	59,523	~~117,565~~ *143,901*	~~59,976~~ *59,690*
Judith Basin	6,149	21,359	~~6,196~~ *4,744*	~~21,521~~ *30,198*
Lake	173,584	139,990	~~174,903~~ *156,485*	~~141,054~~ *103,365*
Lewis & Clark	344,112	211,726	~~346,728~~ *370,958*	~~213,335~~ *173,847*
Liberty	20,144	16,786	~~20,297~~ *3,067*	~~16,914~~ *31,953*
Lincoln	73,001	98,835	~~73,556~~ *61,499*	~~99,586~~ *87,710*
Madison	0	103,163	~~0~~ *4,891*	~~103,947~~ *19,788*
Mccone	23,214	15,824	~~23,390~~ *21,778*	~~15,945~~ *14,004*
Meagher	13,654	10,678	~~13,758~~ *9,250*	~~10,759~~ *9,492*
Mineral	0	32,206	0	~~32,451~~ *33,292*
Missoula	487,129	362,756	~~490,832~~ *587,637*	~~365,513~~ *357,669*
Musselshell	30,675	21,577	~~30,908~~ *48,959*	~~21,741~~ *41,250*
Park	154,192	81,696	~~155,364~~ *135,256*	~~82,317~~ *78,135*
Petroleum	0	16,897	0	~~17,026~~ *9,510*
Phillips	10,502	95,084	~~10,582~~ *103,747*	~~95,806~~ *54,728*
Pondera	79,805	60,307	~~80,411~~ *18,821*	~~60,765~~ *47,629*
Powder River	18,815	15,011	~~18,958~~ *0*	~~15,125~~ *0*
Powell	69,695	22,666	~~70,225~~ *71,420*	~~22,838~~ *30,458*
Prairie	0	26,791	0	~~26,995~~ *21,945*
Ravalli	85,333	169,769	~~85,981~~ *2,062*	~~171,059~~ *40,316*
Richland	83,671	30,302	~~84,307~~ *15,500*	~~30,533~~ *26,650*
Roosevelt	71,090	60,329	~~71,630~~ *96,278*	~~60,787~~ *61,038*

Rosebud	359,662	286,411	~~362,395~~ *475,055*	~~288,588~~ *126,246*
Sanders	203,863	127,694	~~205,413~~ *197,286*	~~128,665~~ *14,442*
Sheridan	0	46,231	0	~~46,583~~ *47,628*
Silver Bow	249,821	141,541	~~251,719~~ *193,304*	~~142,617~~ *119,358*
Stillwater	91,487	75,926	~~92,182~~ *91,185*	~~76,503~~ *51,769*
Sweet Grass	36,996	36,327	~~37,277~~ *24,214*	~~36,603~~ *12,316*
Teton	57,760	41,547	~~58,199~~ *45,217*	~~41,863~~ *40,769*
Toole	43,323	51,399	~~43,652~~ *36,109*	~~51,790~~ *73,362*
Treasure	0	18,947	0	~~19,091~~ *16,243*
Valley	15,824	90,532	~~15,944~~ *10,558*	~~91,220~~ *143,204*
Wheatland	20,946	12,103	~~21,105~~ *15,031*	~~12,195~~ *12,109*
Wibaux	0	14,585	0	~~14,696~~ *25,103*
Yellowstone	1,125,488	643,136	~~1,134,042~~ *1,070,887*	~~648,024~~ *612,203*
Total	6,269,374	4,650,865	~~6,317,022~~ *6,139,506*	~~4,686,212~~ *3,723,973*

~~(2) The average amount of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% *in fiscal year 2004 and* in each succeeding fiscal year.~~""

Section 13. Repealer. Sections 20-10-127 and 20-10-128, MCA, are repealed.

Section 14. Extension of school election deadlines. In order to allow for the orderly and efficient conduct of the regular school elections scheduled for May 6, 2003, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2003 only, a school district may limit the regular school election scheduled for May 6, 2003, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. In addition, all statutory deadlines for the May 6, 2003, regular school election that fall on or before April 18 are extended to April 28, 2003, except that the timeline for posting the election notice is changed to April 28, 2003, through May 2, 2003.

Section 15. Restrictions on retirement fund for fiscal year 2004. (1) For school fiscal year 2004, the amount that a school district or cooperative may charge to the retirement fund for the employer's contributions to the retirement, federal social security, and unemployment insurance systems for all employees whose salaries are paid from a federal funding source is limited to the amount that the district or cooperative charged to the retirement fund for those same purposes for the same group of employees in school fiscal year 2003.

(2) The restriction in subsection (1) does not apply to employees whose salaries are paid from the district's school food services fund.

Section 16. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, part 3, and the provisions of Title 20, chapter 9, part 3, apply to [section 1].

Section 17. Effective dates — applicability. (1) [Section 1] is effective July 1, 2004, and applies to school budgets for the fiscal years beginning on or after July 1, 2005.

(2) [Section 2] is effective July 1, 2003, and applies to school budgets for the school fiscal year beginning July 1, 2003.

(3) [Section 3] is effective July 1, 2004, and applies to school budgets for the school fiscal years beginning on or after July 1, 2004.

(4) [Sections 4 through 6 and 8 through 13] are effective July 1, 2003.

(5) [Section 7] is effective July 1, 2004.

(6) [Sections 14, 15, 16, 18, 19, and this section] are effective on passage and approval.

Section 18. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 27, 2003.

Section 19. Termination. [Section 2] terminates June 30, 2004.

Ap proved May 1, 2003

CHAPTER NO. 551

[SB 473]

AN ACT PROVIDING FOR A PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT THE PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; PROVIDING AN ANNUAL APPLICATION FEE FOR THE PROGRAM; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS FOR THE STARTUP COST OF THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Legislature finds that the cost of prescription drugs is a major threat to the public health of Montana citizens; and

WHEREAS, other states have implemented innovative prescription drug access and affordability legislation that can be adapted to meet Montana's needs; and

WHEREAS, the Legislature finds it necessary to provide some relief for the high cost of prescription drugs by using an expanded Medicaid program for which reimbursement will be sought through Medicaid rebates and federal reimbursement programs.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Average wholesale price" means the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Discounted price" means a price that is less than or equal to the average wholesale price, minus a percentage between 6% and 25% determined by the department pursuant to [section 2].

(4) "Gross household income" has the meaning provided in 15-30-171.

(5) "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

(6) "Participating retail pharmacy" means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

(7) "Program" means the medicaid prescription drug program provided for in [section 2].

Section 2. Prescription drug expansion program — rules. (1) By July 1, 2004, or upon securing any necessary waivers, the department shall provide for an expansion of prescription drug benefits under the medicaid program by offering prescription drugs at a discounted price to qualified individuals whose income is at a level set by the department at or below 200% of the federal poverty level. Subject to subsection (7), the department shall charge an annual application fee of $25 for the program. The application fee must be deposited in the medicaid prescription drug rebate account established in subsection (2).

(2) There is a medicaid prescription drug rebate account in the state special revenue fund to the credit of the department. All money received by the state as rebates from pharmaceutical manufacturers for the medicaid prescription drug expansion program must be deposited in the account. The money in the account, which is administered by the department, must be used to expand medicaid prescription drug benefits. Interest on account balances accrues to the account. The purpose of the account is to:

(a) reimburse participating retail pharmacies for the discount on the average wholesale price of prescription drugs provided to qualified residents pursuant to [sections 1 through 7]; and

(b) reimburse the department for contracted services, administrative costs, associated computer costs, professional fees paid to participating retail pharmacies, and other reasonable program costs.

(3) The department shall provide for sufficient personnel to ensure efficient administration of the program. The extent and the magnitude of the program must be determined by the department on the basis of the calculated need of the recipient population and available funds. The department may not spend more on this program than is available through appropriations, federal or other grants, and other established and committed funding sources. The department may accept, for the purposes of carrying out this program, federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly, and disabled individuals, may take action that is necessary for the purposes of carrying out that federal law, and may accept from any other agency of government, individual, group, or corporation funds that may be available to carry out [sections 1 through 7].

(4) The department may adopt rules relating to the conduct of this program. The rules may be based upon rules adopted in other states to administer similar programs.

(5) The department shall adopt rules to establish the discounted price to be charged to participants in the program. The department may establish a discounted price to encourage the use of generic drugs over higher-cost brand-name drugs.

(6) The department shall establish by rule eligibility based upon the applicant's family income as provided in [section 3]. The total income may not exceed 200% of the federal poverty level. The department may adopt rules defining income. In establishing eligibility based upon income, the department

shall take into account the amount of funding available for the program. The department shall issue enrollment cards to eligible individuals.

(7) Establishment of the prescription drug expansion program is contingent upon approval by the federal government that the program in [sections 1 through 7] will qualify for federal financial participation under federal laws implementing the medicaid program. The department may adopt rules necessary to implement conditions required by federal law or conditions required as part of the federal government's agreement to waive certain requirements of federal law.

(8) If program costs are expected to exceed the legislative authorization for the program, the department shall adjust discounted prices, the application fee, or eligibility standards to maintain the program within the available funding.

Section 3. Eligibility — income determination. (1) To be eligible for the program, an individual must be:

(a) at least 62 years of age;

(b) 18 years of age or older and determined to be disabled by the federal social security program; or

(c) eligible for mental health services pursuant to 53-21-702(2).

(2) Subject to [section 2(8)], individuals are eligible for the program if the gross household income is at or below the amount set by the department, which may not be more than 200% of the federal poverty level.

Section 4. Specifications for administration of program. (1) The department shall adopt specifications for the administration and management of the program. Specifications may include but are not limited to program objectives, accounting and handling practices, supervisory authority, and an evaluation methodology. The department shall apply for any waivers of federal law that are necessary to implement the program.

(2) Information disclosed by manufacturers during negotiations and all terms and conditions negotiated between the director and manufacturers and all information requested or required under the program must be kept confidential, except as the department determines is necessary to carry out the program. The department shall comply with the budget neutrality provisions required by the United States department of health and human services for the granting of any waivers.

(3) The department may not use access restrictions, supplemental rebates, or a preferred drug list to comply with the budget neutrality provisions when negotiating with the federal government for this waiver. These restrictions do not apply to other components of the medicaid or mental health services plan or drugs provided in those programs. These restrictions apply only to the prescription drug expansion program provided for in [section 2].

Section 5. Appeals. An eligibility determination made by the department based on information provided by the department of revenue is final, subject to appeal in accordance with the appeal process established in the medicaid program.

Section 6. Obligations of department. The department shall establish simplified procedures for determining eligibility and issuing Montana prescription enrollment cards to qualified individuals under [section 2] and shall undertake outreach efforts to build public awareness of the program and maximize enrollment of qualified individuals. The department may adjust the

requirements and terms of the program to accommodate any new federally funded prescription drug programs.

Section 7. Contracting. The department may contract for the administration of any components of the program, including but not limited to outreach, eligibility, claims, administration, and drug rebate recovery and redistribution.

Section 8. Loan for startup costs. The department of public health and human services may apply for a loan from the board of investments under the revolving loan program provided for in 17-5-1605 to pay the startup costs of the program provided for in [sections 1 through 7].

Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 7].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Contingent voidness. If the department of public health and human services is unable to obtain a waiver that includes persons who are eligible for mental health services pursuant to 53-21-702(2), the department shall notify the code commissioner and [section 3(1)(c)] is void.

Section 12. Effective date. [This act] is effective July 1, 2003.

Section 13. Termination. [Section 4(3)] terminates June 30, 2005.

Ap proved May 1, 2003

CHAPTER NO. 552

[HB 13]

AN ACT PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS', AND BLUE-COLLAR PAY PLANS; PROVIDING SALARY INCREASES; FREEZING THE STATEWIDE PAY SCHEDULE; INCREASING THE EMPLOYER CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAMS; APPROPRIATING FUNDS FOR THE INCREASES AND FOR A PERSONAL SERVICES CONTINGENCY POOL; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-312, 2-18-313, 2-18-315, AND 2-18-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313 and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey.

The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, ~~pay adjustments and~~ *pay adjustments and* pay schedules provided for in 2-18-303 and in 2-18-312, 2-18-313, and 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~57th~~ *58th* legislature.

(4) Pay levels provided for in 2-18-312, 2-18-313, and 2-18-315 may not be increased through collective bargaining after adjournment of the ~~57th~~ *58th* legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~57th~~ *58th* legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."

Section 2. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for using pay schedules. (1) The pay ~~schedules~~ *schedule* provided in 2-18-312 must be implemented as follows:

(a) The pay ~~schedules~~ *schedule* provided in 2-18-312 ~~indicate~~ *indicates* the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) through (9).

(c) On the first day of the first complete pay period in fiscal year ~~2002~~ *2004*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~2001~~ *2003*.

~~(d) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 2002, and June 30, 2003, the employee's base salary must be increased by 4% or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f). An employee's base salary increases resulting from subsection (1)(e) and this subsection may not exceed a maximum of 4% in each fiscal year. For employees hired on or before September 30, 1994, the anniversary date is October 1.~~

(d) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each employee must be increased by an amount equal to 25 cents an hour or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f).

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay ~~schedules~~ *schedule* provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay ~~schedules~~ *schedules* provided for in 2-18-313 ~~indicate~~ *indicate* the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years ~~2002~~ *2004* and ~~2003~~ *2005*.

(ii) The compensation of each teacher on July 1, ~~2001~~ *2003*, is the same as it was on June 30, ~~2001~~ *2003*.

~~(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services or the department of corrections before October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.~~

(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.

(b) The pay ~~schedules~~ *schedules* provided in 2-18-315 ~~indicate~~ *indicate* the maximum hourly compensation for fiscal years ending June 30, ~~2002~~ *2004*, and June 30, ~~2003~~ *2005*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) ~~A~~ *If the legislature authorizes a pay increase for state employees, a* member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement ~~covering the biennium ending June 30, 2003~~.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by ~~July 1, 2001~~ *the date on which a legislatively authorized pay increase is implemented*, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by ~~July 1, 2001~~ *the date on which a legislatively authorized pay increase is implemented*, members of the bargaining unit must continue to receive the compensation that they were receiving ~~as of June 30, 2001,~~ until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.

(7) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(8) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(9) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 3. Section 2-18-312, MCA, is amended to read:

"2-18-312. Statewide pay ~~schedules~~ *schedule.* ~~(1)~~ The statewide classification pay schedule for the period beginning on the first day of the first full pay period in fiscal year ~~2002~~ *2004*~~,~~ is as follows:

~~Annual Hours 2080 Note: Does Not Include Insurance~~

~~Pay Matrix State Matrix Type Annual~~

~~Pay Range: Entry Salary to Market Salary~~

~~GRADE~~	~~ENTRY SALARY~~	~~MARKET SALARY~~
~~1~~	~~9,075~~	~~10,677~~
~~2~~	~~9,776~~	~~11,527~~
~~3~~	~~10,529~~	~~12,447~~
~~4~~	~~11,346~~	~~13,445~~
~~5~~	~~12,262~~	~~14,562~~
~~6~~	~~13,316~~	~~15,854~~
~~7~~	~~14,456~~	~~17,249~~

8	15,748	18,834
9	17,135	20,546
10	18,676	22,447
11	20,365	24,534
12	22,241	26,859
13	24,286	29,403
14	26,560	32,230
15	29,074	35,370
16	31,884	38,888
17	35,036	42,833
18	38,339	46,983
19	42,039	51,644
20	46,170	56,885
21	50,754	62,660
22	55,877	69,154
23	61,655	76,498
24	68,147	84,760
25	75,329	93,924

(2) Effective on the first day of the pay period that includes October 1, 2001, the statewide classification pay schedule is as follows:

Annual Hours 2080 Note: Does Not Include Insurance

Pay Matrix State Matrix Type Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	9,384	11,040
2	10,108	11,919
3	10,887	12,870
4	11,732	13,902
5	12,679	15,057
6	13,769	16,393
7	14,948	17,835
8	16,283	19,474
9	17,718	21,245
10	19,311	23,210
11	21,057	25,368
12	22,997	27,772
13	25,112	30,403
14	27,463	33,326
15	30,063	36,573

~~16 32,968 40,210~~
~~17 36,227 44,289~~
~~18 39,643 48,580~~
~~19 43,468 53,400~~
~~20 47,740 58,819~~
~~21 52,480 64,790~~
~~22 57,777 71,505~~
~~23 63,751 79,099~~
~~24 70,464 87,642~~
~~25 77,890 97,117~~

~~(3) Effective on the first day of the pay period that includes October 1, 2002, the statewide classification pay schedule is as follows:~~

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — State Matrix Type — Annual
Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	9,703	11,415
2	10,452	12,324
3	11,257	13,308
4	12,131	14,375
5	13,110	15,569
6	14,237	16,950
7	15,456	18,442
8	16,837	20,136
9	18,320	21,967
10	19,968	23,999
11	21,773	26,231
12	23,779	28,716
13	25,966	31,436
14	28,397	34,459
15	31,085	37,816
16	34,089	41,577
17	37,459	45,795
18	40,990	50,232
19	44,946	55,215
20	49,363	60,819
21	54,264	66,993
22	59,741	73,936
23	65,919	81,788

24	72,860	90,622
25	80,538	100,419”

Section 4. Section 2-18-313, MCA, is amended to read:

“2-18-313. Teachers' pay ~~schedules~~ *schedules.* (1) The pay schedule for teachers for the period ~~that includes October 1, 2001, until~~ *beginning* the first day of the *first full* pay period ~~that includes October 1, 2002,~~ *in fiscal year 2004* is as follows:

~~Annual Hours — 2080 Note: Does Not Include Insurance~~

~~Term — Twelve Months Matrix Type — Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+15~~	~~BA+30~~	~~BA+45~~	~~BA+60~~	~~BA+75~~
~~1~~	~~26,085~~	~~26,867~~	~~27,673~~	~~28,503~~	~~29,359~~	~~30,239~~
~~2~~	~~26,867~~	~~27,673~~	~~28,503~~	~~29,358~~	~~30,239~~	~~31,147~~
~~3~~	~~27,673~~	~~28,503~~	~~29,358~~	~~30,239~~	~~31,147~~	~~32,082~~
~~4~~	~~28,503~~	~~29,358~~	~~30,239~~	~~31,147~~	~~32,082~~	~~33,044~~
~~5~~	~~29,358~~	~~30,239~~	~~31,147~~	~~32,082~~	~~33,044~~	~~34,035~~
~~6~~	~~30,239~~	~~31,147~~	~~32,082~~	~~33,044~~	~~34,035~~	~~35,056~~
~~7~~	~~31,147~~	~~32,082~~	~~33,044~~	~~34,035~~	~~35,056~~	~~36,108~~
~~8~~	~~32,082~~	~~33,044~~	~~34,035~~	~~35,056~~	~~36,108~~	~~37,191~~
~~9~~	~~33,044~~	~~34,035~~	~~35,056~~	~~36,108~~	~~37,191~~	~~38,307~~
~~10~~	~~34,035~~	~~35,056~~	~~36,108~~	~~37,191~~	~~38,307~~	~~39,457~~
~~11~~	~~35,056~~	~~36,108~~	~~37,191~~	~~38,307~~	~~39,457~~	~~40,640~~
~~12~~	~~36,108~~	~~37,191~~	~~38,307~~	~~39,457~~	~~40,640~~	~~41,858~~
~~13~~	~~37,191~~	~~38,307~~	~~39,457~~	~~40,640~~	~~41,858~~	~~43,114~~

~~(2) Effective on the first day of the pay period that includes October 1, 2002, the pay schedule for teachers is as follows:~~

Annual Hours — 2080 Note: Does Not Include Insurance

Term — Twelve Months Matrix Type — Annual

Education Level

STEP	BA	BA+15	BA+30	BA+45	BA+60	BA+75
1	27,129	27,942	28,780	29,643	30,532	31,449
2	27,942	28,780	29,643	30,532	31,449	32,393
3	28,780	29,643	30,532	31,449	32,393	33,365
4	29,643	30,532	31,449	32,393	33,365	34,366
5	30,532	31,449	32,393	33,365	34,366	35,396
6	31,449	32,393	33,365	34,366	35,396	36,459
7	32,393	33,365	34,366	35,396	36,459	37,552
8	33,365	34,366	35,396	36,459	37,552	38,679
9	34,366	35,396	36,459	37,552	38,679	39,840
10	35,396	36,459	37,552	38,679	39,840	41,035

11	36,459	37,552	38,679	39,840	41,035	42,266
12	37,552	38,679	39,840	41,035	42,266	43,532
13	38,679	39,840	41,035	42,266	43,532	44,839

(2) Effective on the first day of the pay period that includes January 1, 2005, the pay schedule for teachers is as follows:

Annual Hours — 2080 *Note: Does Not Include Insurance*

Term — Twelve Months *Matrix Type — Annual*

	Education Level					
STEP	*BA*	*BA+15*	*BA+30*	*BA+45*	*BA+60*	*BA+75*
1	*27,649*	*28,462*	*29,300*	*30,163*	*31,052*	*31,969*
2	*28,462*	*29,300*	*30,163*	*31,052*	*31,969*	*32,913*
3	*29,300*	*30,163*	*31,052*	*31,969*	*32,913*	*33,885*
4	*30,163*	*31,052*	*31,969*	*32,913*	*33,885*	*34,886*
5	*31,052*	*31,969*	*32,913*	*33,885*	*34,886*	*35,916*
6	*31,969*	*32,913*	*33,885*	*34,886*	*35,916*	*36,979*
7	*32,913*	*33,885*	*34,886*	*35,916*	*36,979*	*38,072*
8	*33,885*	*34,886*	*35,916*	*36,979*	*38,072*	*39,199*
9	*34,886*	*35,916*	*36,979*	*38,072*	*39,199*	*40,360*
10	*35,916*	*36,979*	*38,072*	*39,199*	*40,360*	*41,555*
11	*36,979*	*38,072*	*39,199*	*40,360*	*41,555*	*42,786*
12	*38,072*	*39,199*	*40,360*	*41,555*	*42,786*	*44,052*
13	*39,199*	*40,360*	*41,555*	*42,786*	*44,052*	*45,359*"

Section 5. Section 2-18-315, MCA, is amended to read:

"2-18-315. Blue-collar pay ~~schedules~~ *schedules.* (1) The pay schedule for blue-collar workers for the period ~~from July 1, 2001, until~~ *beginning* the first day of the *first full* pay period ~~that includes October 2001~~ *in fiscal year 2004* is as follows:

~~Annual Hours — 2080~~ ~~Note: Does Not Include Insurance~~

~~Pay Matrix — Blue Collar~~ ~~Matrix Type — Hourly~~

~~Grade~~	~~$/Hour~~
~~B1~~	~~11.275~~
~~B2~~	~~11.675~~
~~B3~~	~~12.075~~
~~B4~~	~~12.475~~
~~B5~~	~~12.875~~
~~B6~~	~~13.275~~
~~B7~~	~~13.675~~
~~B8~~	~~14.075~~
~~B9~~	~~14.475~~

~~B10 14.875~~
~~B11 15.275~~
~~B12 15.675~~
~~B13 16.075~~
~~B14 16.475~~

~~(2) Effective on the first day of the pay period that includes October 1, 2001, until the first day of the pay period that includes October 2002, the pay schedule for blue-collar workers is as follows:~~

~~Annual Hours — 2080 Note: Does Not Include Insurance~~
~~Pay Matrix — Blue-Collar Matrix Type — Hourly~~

~~Grade~~	~~$/Hour~~
~~B1~~	~~11.835~~
~~B2~~	~~12.235~~
~~B3~~	~~12.635~~
~~B4~~	~~13.035~~
~~B5~~	~~13.435~~
~~B6~~	~~13.835~~
~~B7~~	~~14.235~~
~~B8~~	~~14.635~~
~~B9~~	~~15.035~~
~~B10~~	~~15.435~~
~~B11~~	~~15.835~~
~~B12~~	~~16.235~~
~~B13~~	~~16.635~~
~~B14~~	~~17.035~~

~~(3) Effective on the first day of the pay period that includes October 1, 2002, the pay schedule for blue-collar workers is as follows:~~

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
B1	12.395
B2	12.795
B3	13.195
B4	13.595
B5	13.995
B6	14.395
B7	14.795
B8	15.195
B9	15.595
B10	15.995

B11	16.395
B12	16.795
B13	17.195
B14	17.595

(2) Effective on the first day of the first full pay period that includes January 1, 2005, the pay schedule for blue collar workers is as follows:

Annual Hours — 2080 *Note: Does Not Include Insurance*

Term — Blue Collar *Matrix Type — Hourly*

Grade	*$/Hour*
B1	*12.645*
B2	*13.045*
B3	*13.445*
B4	*13.845*
B5	*14.245*
B6	*14.645*
B7	*15.045*
B8	*15.445*
B9	*15.845*
B10	*16.245*
B11	*16.645*
B12	*17.045*
B13	*17.445*
B14	*17.845*"

Section 6. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 ~~and~~, for members of the legislature, ~~the employer contribution for group benefits is $295 a month for the period from July 2001 through December 2001, $325 a month for the period from January 2002 through December 2002, and $366 a month for January 2003 and for each succeeding month. For~~ *and for* employees of the Montana university system, the employer contribution for group benefits is ~~$325~~ *$410* a month for the period from July ~~2001~~ *2003* through June ~~2002~~ *2004* and ~~$366~~ *$460* a month for the period from July ~~2002~~ *2004* through June ~~2003~~ *2005* and for each succeeding month. ~~When~~ *If* a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security

Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on July 1, 1999, is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 7. Appropriation. (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in [this act]:

	Fiscal Year 2004		Fiscal Year 2005	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	24,969	6,399	110,035	28,200
Consumer Counsel		1,277		5,462
Judicial Branch	85,726	12,247	330,568	47,224
Executive Branch	1,042,381	1,926,519	4,474,666	8,248,297
University System	1,087,384	1,182,729	2,883,488	3,136,320

(2) The following money is appropriated for the biennium to the office of budget and program planning to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

	Fiscal Year 2004	
	General Fund	Other Funds
Personal Services Contingency	1,500,000	3,000,000

Section 8. Effective date. [This act] is effective July 1, 2003.

Ap proved May 5, 2003

CHAPTER NO. 553

[HB 42]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CALCULATE THE AMOUNT OF HABITAT AVAILABLE FOR ELK, DEER, AND ANTELOPE IN MONTANA; REQUIRING A DETERMINATION OF SUSTAINABLE POPULATIONS BASED ON THE HABITAT CALCULATION; REQUIRING THE DEPARTMENT TO MANAGE WITH THE OBJECTIVE THAT POPULATIONS OF ELK, DEER, AND ANTELOPE ARE AT OR BELOW THE POPULATION ESTIMATE; PROVIDING A FUNDING SOURCE; PROVIDING FOR ADJUSTMENTS BASED ON MANAGEMENT PROVISIONS IN THE MAXIMUM LICENSE NUMBERS THAT CAN BE ALLOCATED FOR RESIDENTS; AMENDING SECTIONS 87-1-201, 87-1-301, 87-2-104, 87-2-501, AND 87-2-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the universal mission of all wildlife management agencies includes an implied objective to manage wildlife within acceptable levels to ensure that wildlife does not become a nuisance or a hazard; and

WHEREAS, for over 70 years wildlife populations in Montana have continued to increase and the damage to private land as a result of this increased wildlife population has increased dramatically; and

WHEREAS, the Department of Fish, Wildlife, and Parks has historically included private land as part of the habitat equation in determining how much habitat is available for wildlife use in Montana; and

WHEREAS, the amount of habitat that is available for use by wildlife should be recalculated to accurately reflect the amount of habitat that is available without causing game damage to agricultural crops; and

WHEREAS, it is time for the Department of Fish, Wildlife, and Parks to use the tools that it has had available for many years, along with new tools to be implemented through this legislation, to manage Montana's wildlife populations in a sustainable manner.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 5] is to require the commission, with advice of the department, to manage elk, deer, and antelope populations in a sustainable manner that keeps animal populations at a number that does not adversely affect Montana land.

Section 2. Calculation of available habitat. When determining the total acreage that serves as habitat for elk, deer, and antelope, the commission shall consider public land and private land for wildlife management or habitat enhancement purposes. This calculation must be reconsidered and provided to the public by October 1 of each odd-numbered year.

Section 3. Viable elk, deer, and antelope populations based on habitat acreage — reduction of populations as necessary. (1) Based on the habitat acreage that is determined pursuant to [section 2], the commission shall determine the appropriate elk, deer, and antelope numbers that can be viably sustained. The department shall consider the specific concerns of private landowners when determining sustainable numbers pursuant to this section.

(2) Once the sustainable population numbers are determined as provided in subsection (1), the department shall implement, through existing wildlife

management programs, necessary actions with the objective that the population of elk, deer, and antelope remains at or below the sustainable population. The programs may include but are not limited to:

(a) liberalized harvests;

(b) game damage hunts;

(c) landowner permits; or

(d) animal relocation.

(3) The department shall:

(a) manage with the objective that populations of elk, deer, and antelope are at or below the sustainable population number by January 1, 2009; and

(b) evaluate the elk, deer, and antelope populations on an annual basis and provide that information to the public.

Section 4. Sustainable elk, deer, and antelope populations program — funding. The department shall use money from the fish and game fund, as described in 87-1-601(3), to implement [sections 1 through 5].

Section 5. Rulemaking. (1) The department and the commission shall adjust existing wildlife management rules and plans to implement [sections 1 through 5].

(2) The department and the commission may adopt rules for determining sustainability. The commission shall consider average carrying capacity and use generally accepted animal unit factors for each species in each commission region.

(3) Any rules adopted by the department pursuant to subsection (2) must be adopted in a timely manner.

Section 6. Section 87-1-201, MCA, is amended to read:

"87-1-201. (Temporary) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, *management,* and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, *management,* and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, *management,* and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; ~~and~~

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species*; and*

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.(Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999.)

87-1-201. (Effective March 1, 2006) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, *management,* and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, *management,* and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or

received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, *management*, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; ~~and~~

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species*; and*

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing."

Section 7. Section 87-1-301, MCA, is amended to read:

"87-1-301. (Temporary) Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, *management*, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office; ~~and~~

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000*; and*

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders*:*

(i) for the biologically sound management of big game populations of ~~deer and~~ elk*, deer, and antelope;* ~~and~~

(ii) to control the impacts of those ~~deer and~~ elk*, deer, and antelope* populations on uses of private property*; and*

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in [sections 1 through 5].

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts in the administrative region designated by the department as region 1; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts in the administrative region designated by the department as region 1, which may include limiting the number of nonresident hound handler permits.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.(Terminates April 30, 2004—sec. 3, Ch. 575, L. 2001.)

87-1-301. (Effective May 1, 2004) Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, *management,* and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water;

(f) shall review and approve the budget of the department prior to its transmittal to the budget office; ~~and~~

(g) shall review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000*; and*

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in [section 2] and maintain elk, deer, and antelope population numbers at or below population estimates as provided in [section 3].

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the

commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders*:*

(i) for the biologically sound management of big game populations of ~~deer and~~ elk*, deer, and antelope;* ~~and~~

(ii) to control the impacts of those ~~deer and~~ elk*, deer, and antelope* populations on uses of private property*; and*

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in [sections 1 through 5].

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission."

Section 8. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed — fees. (1) It is unlawful for any person to apply for, purchase, or possess more than one license of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.

(2) The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

(3) When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, *Class A-5, Class A-7,* Class B-7, Class B-8, *Class B-10, Class B-11,* or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

(4) The fee for any resident or nonresident license of any class issued under subsection (3) must be set annually by the department and may not exceed the regular fee provided by law for that class or species."

Section 9. Section 87-2-501, MCA, is amended to read:

"87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the following licenses at the prescribed cost that will entitle a holder who is 12 years of age or older to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $13;

(b) Class A-4, deer B tag, $8;

(c) Class A-5, elk tag, $16;

(d) Class A-6, black bear tag, $15;

(e) Class A-7, antlerless elk tag, $16.

(2) (a) The holder of a Class A-7 antlerless elk license who is 12 years of age or older is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.

(b) *Subject to the management provisions provided in [sections 1 through 5],* *a* ~~A~~ person may not take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) *Subject to the management provisions provided in [sections 1 through 5],* *a* ~~A~~ nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) *Subject to the management provisions provided in [sections 1 through 5],* *15%* ~~Fifteen percent~~ of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 10. Section 87-2-513, MCA, is amended to read:

"87-2-513. (Temporary) Either-sex or antlerless elk permit for landowner who offers free public elk hunting — terms, conditions, and issuance of permit. (1) In addition to any elk permits offered for sale, the department may, for wildlife management purposes, issue an either-sex or antlerless elk permit at no cost to a landowner who provides free public elk hunting on the landowner's property and who otherwise meets the conditions of this section. The department may issue elk permits to the public, at regular cost

and in the number authorized in subsection (3), for hunting on the property of a landowner who opens property for public elk hunting for wildlife management purposes pursuant to this section.

(2) To be eligible for a permit pursuant to this section, a landowner:

(a) must own occupied elk habitat that is large enough, in the department's determination, to accommodate successful public hunting;

(b) may not have been issued a Class A-7 landowner license pursuant to 87-2-501(3) during the license year;

(c) must have entered into a contractual public elk hunting access agreement with the department that allows public access for free public elk hunting on the landowner's property throughout the regular hunting season and that includes public hunting by permitholders using permits that are valid for the hunting district;

(d) may not receive cash payments under 87-1-267; and

(e) may not charge a fee or authorize a person to charge a fee for hunting access on the landowner's property.

(3) *Subject to the management provisions provided in [sections 1 through 5], not* ~~Not~~ more than 20% of permits issued pursuant to this section may be issued at no cost to a landowner, an immediate family member of a landowner, or an authorized full-time employee of a landowner. The remaining permits must be issued to the public on a first-come, first-serve basis.

(4) A permit issued pursuant to this section:

(a) is nontransferable and may not be sold; and

(b) may only be used for hunting conducted on property that is opened to public access pursuant to this section.

(5) The department may prioritize distribution of the permits according to the areas the department determines are most in need of management.

(6) If the department determines that a landowner or landowner's designee has not abided by the restrictions and conditions of a permit issued pursuant to this section, that landowner or landowner's designee is not eligible to receive another permit pursuant to this section during any subsequent license year.

(7) The department, through the commission, may authorize the issuance of permits under this section to a landowner who enters into a contractual public elk hunting access agreement with the department that defines the areas that will be open to public elk hunting, the number of public elk hunting days that will be allowed on the property, and other factors that the department and the landowner consider necessary for the proper management of elk on the landowner's property. (Terminates March 1, 2006—sec. 4, Ch. 519, L. 2001.)"

Section 11. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [sections 1 through 5].

Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 13. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 554

[HB 56]

AN ACT PROVIDING FOR INVOLUNTARY COMMITMENT TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER; PROVIDING FOR DIRECT ADMISSION TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 53-21-127, 53-21-128, AND 53-21-414, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) commit the respondent to the state hospital for a period of not more than 3 months; ~~or~~

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements, for a period of not more than 6 months*; or*

(c) commit the respondent to the Montana mental health nursing care center for a period of not more than 3 months, if the following conditions are met:

(i) the respondent meets the admission criteria of the center as described in 53-21-411 and established in administrative rules of the department; and

(ii) the superintendent of the center has issued a written authorization specifying a date and time for admission.

(4) Except as provided in subsection (3)(b), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working

days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment as provided in subsection (3)(b), and may not require commitment at the state hospital *or the Montana mental health nursing care center.*

(8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;

(g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission; and

~~(g)~~*(h)* if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

Section 2. Section 53-21-128, MCA, is amended to read:

"53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment to the state hospital *or the Montana mental health nursing care center* or the period of commitment to a community facility or program or a course of treatment provided for in 53-21-127, the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that

was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment as set forth in 53-21-127(3). However, an order may not affect the patient's custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Prior to the end of the period of commitment to a community facility or program or course of treatment, a respondent may request that the treating provider petition the district court for an extension of the commitment order. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition, an updated treatment plan, and a written statement by the respondent that an extension is desired. The extension procedure must follow the procedure required in subsections (1)(b) through (1)(d).

(3) Further extensions under subsection (1) or (2) may be obtained under the same procedure described in subsection (1). However, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

Section 3. Section 53-21-414, MCA, is amended to read:

"53-21-414. Admissions to mental health nursing care center. (1) The Montana mental health nursing care center may admit patients on a voluntary basis according to admission criteria and procedures established in administrative rules *and by involuntary commitment pursuant to 53-21-127(3)(c)*.

(2) A patient involuntarily committed to the Montana state hospital may be transferred by the department of public health and human services to the Montana mental health nursing care center if the patient meets the admission criteria of the center. The department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least 15 days before the transfer. If a person or entity notified by the department objects to the transfer, the person or entity may petition the district court for a hearing to review whether the transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection must include notification of the right to petition the district court pursuant to this subsection. Section 53-21-128 applies to extensions of involuntary commitment of patients to the center.

(3) Except as provided in 53-21-413(2) and subsection (2) of this section, patients involuntarily transferred to the center have the rights provided in this chapter."

Ap proved May 5, 2003

CHAPTER NO. 555

[HB 90]

AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE VOLUNTARY PROTECTIVE SERVICES TO PARENTS OF CHILDREN ALLEGED TO HAVE BEEN ABUSED OR NEGLECTED; DEFINING THE TERM "PROTECTIVE SERVICES"; PROVIDING FOR DISMISSAL OF ABUSE AND NEGLECT PETITIONS UPON SUCCESSFUL REUNIFICATION OF A CHILD WITH THE CHILD'S PARENTS; AND AMENDING SECTIONS 41-3-102, 41-3-202, 41-3-301, 41-3-302, AND 41-3-423, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual harm to a child's health or welfare;

(ii) substantial risk of harm to a child's health or welfare; or

(iii) abandonment.

(b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group conference" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) (a) "Protective services" mean services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

~~(18)~~*(19)* "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional,

intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

~~(19)~~*(20)* "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(20)~~*(21)* "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(21)~~*(22)* (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(22)~~*(23)* "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(23)~~*(24)* "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

~~(24)~~*(25)* "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

~~(25)~~*(26)* "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

~~(26)~~*(27)* (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(26)~~ *(27)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(27)~~*(28)* "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 2. Section 41-3-202, MCA, is amended to read:

"41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If a child interview is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide *emergency* protective services to the child, pursuant to 41-3-301, *or voluntary*

protective services, pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department through its local office."

Section 3. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) An abuse and neglect petition must be filed within 2 working days, excluding weekends and holidays, of emergency placement of a child unless ~~arrangements acceptable to the agency for the care of the child have been made by the parents.~~ *arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.*

(4) A show cause hearing must be held within 10 days, excluding weekends and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

~~(4)~~*(5)* The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 4. Section 41-3-302, MCA, is amended to read:

"41-3-302. Responsibility of providing protective services — *voluntary protective services agreement.* (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

(3) (a) The department may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent or other person responsible for a child's welfare for the purpose of keeping the child safely in the home.

(b) The department shall inform a parent or other person responsible for a child's welfare who is considering entering into a voluntary protective services agreement that the parent or other person may have another person of the parent's or responsible person's choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent or other person responsible for the child's welfare and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(4) A voluntary protective services agreement may include provisions for:

(a) a family group conference and implementation of safety plans developed during the conference;

(b) a professional evaluation and treatment of a parent or child, or both;

(c) a safety plan for the child;

(d) in-home services aimed at permitting the child to remain safely in the home;

(e) temporary relocation of a parent in order to permit the child to remain safely in the home;

(f) a 30-day temporary out-of-home protective placement; or

(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to other service providers.

(5) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude the department from filing a petition pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home placement pursuant to the agreement must be returned to the parents within 2 working days of termination of the agreement unless an abuse and neglect petition is filed by the department."

Section 5. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by

the state. Reasonable efforts include but are not limited to *voluntary protective services agreements,* development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. ~~The court shall review the services provided by the agency.~~

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, counsel must be appointed by the court at the time that a request is made for a determination under this subsection. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 6. Dismissal. Unless the petition has been previously dismissed, the court shall dismiss an abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all of the following criteria are met:

(1) a child who has been placed in foster care is reunited with the child's parents and returned home;

(2) the child remains in the home for a minimum of six months with no additional confirmed reports of child abuse or neglect; and

(3) the department determines and informs the court that the issues that led to department intervention have been resolved and that no reason exists for further department intervention or monitoring.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 6].

Ap proved May 5, 2003

CHAPTER NO. 556

[HB 197]

AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO

CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program — ~~department to contract with private entities —~~ participation by offending drivers. (1) ~~(a)~~ The department ~~shall~~ *may* establish by administrative rules a driver rehabilitation and improvement program or programs. ~~that~~ *The programs* may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques *and must include the requirements for obtaining a restricted probationary driver's license*.

~~(b) The rules must:~~

~~(i) provide for the local program courses to be operated by private entities;~~

~~(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;~~

~~(iii) establish the criteria that private entities must meet in order to be certified by the department; and~~

~~(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.~~

(2) ~~Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana~~ *Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department may participate in any driver rehabilitation and improvement program established under this section if the person's license* is:

(a) *(i)* ~~subject to suspension or revocation~~ *suspended* as a result of a violation of the traffic laws of this state, *unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8;* or~~,~~

(ii) unless otherwise provided by the sentencing court, ~~is~~ suspended under 45-5-624(2)(b); *or*

(b) revoked and ~~they have~~ *the person has*:

(i) completed at least 3 months of a 1-year revocation ~~or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208~~; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license~~; or~~

~~(c) subject to suspension as provided in 61-11-204(3)~~.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) ~~In the event that~~ *If* a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation ~~order~~ *action* must be terminated and the ~~order of~~ suspension or revocation ~~enforced~~ *action must be reinstated* if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

~~(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).~~

~~(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.~~

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

~~(9)~~*(8)* A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

~~(10)~~*(9)* (a) Except as provided in ~~(10)(b)~~ *subsection (9)(b)*, the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon

issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

~~(11)~~*(10)* It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 2. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must include a statement that allows the department to determine if:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial driver's license has ever been suspended or revoked;

(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;

(d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) *(a)* When *an* application is received from an applicant *who is not ineligible for licensure under 61-5-105 and who was* previously licensed by another jurisdiction, the department shall request a copy of the applicant's

driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.~~

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon ~~proper authority~~ *certain convictions — duration of action — exceptions.* (1) The department ~~upon proper authority~~ shall revoke ~~the~~ *an individual's* driver's license ~~or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final~~ *or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses*:

(a) negligent homicide resulting from the operation of a motor vehicle;

~~(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;~~

~~(c)~~*(b)* any felony in the commission of which a motor vehicle is used;

~~(d)~~*(c)* failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

~~(e)~~*(d)* perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles; *or*

~~(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or~~

~~(g)~~*(e)* negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) ~~The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for~~ *The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:*

(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.10 or more;

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 ~~when the conviction or forfeiture has become final~~ if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. ~~The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense.~~

(3) A revocation under subsection (1) must be for a period of 1 year.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 4. Section 61-5-206, MCA, is amended to read:

"61-5-206. Authority of department to suspend license or driving privilege or issue probationary license. (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

~~(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;~~

~~(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;~~

~~(c) is a habitually reckless or negligent driver of a motor vehicle;~~

~~(d) is incompetent to drive a motor vehicle;~~

~~(e)~~*(a)* has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

~~(f) has committed an offense in another state that if committed in this state would be grounds for suspension or revocation;~~

~~(g)~~*(b)* has falsified the licensee's date of birth on the application for a driver's license;

~~(h)~~*(c)* is under 21 years of age and has altered the licensee's or another's driver's license or identification card to obtain alcohol; *or*

~~(i)~~*(d)* has authorized another to use the licensee's driver's license or identification card to obtain alcohol~~; or~~

~~(j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement course or other appropriate course determined by the department as provided in 61-11-204~~.

(2) However, the department may, in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the

restrictions set forth in the probationary license. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or probation or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license."

Section 5. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — probationary license — ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year~~, except as ~~otherwise~~ permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall ~~revoke~~ *suspend* the license or driving privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license during the period of ~~revocation~~ *suspension*, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ *suspension* remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock

restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)~~*(4) (a)* ~~The~~ *Except as provided in subsection (4)(b), the* period of *suspension or* revocation for a person convicted of any offense that makes mandatory the *suspension or* revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)~~*(5)* If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 6. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable. (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional ~~like~~ *1-year* period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended ~~or revoked~~ for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person

does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 7. Section 61-7-103, MCA, is amended to read:

"61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop ~~such~~ *the* vehicle at the scene of ~~such~~ *the* accident or as close ~~thereto~~ *to the accident* as possible~~,~~ but shall then ~~forthwith~~ return to and in every event ~~shall~~ remain at the scene of the accident until ~~he~~ *the driver* has fulfilled the requirements of 61-7-105. ~~Every such stop shall~~ *Each stop at the scene of the accident must* be made without obstructing traffic more than is necessary.

(2) ~~Any person~~ *A driver* failing to stop or to comply with ~~said~~ *the* requirements ~~under such circumstances~~ *of subsection (1)* shall upon conviction be punished by imprisonment for not less than 30 days or more than 1 year, ~~or~~ by a fine of not less than $100 or more than $5,000, or by both ~~such~~ fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of ~~any~~ *a* person ~~so~~ convicted *of violating this section* for the period prescribed in ~~61-5-208~~ *61-5-205*."

Section 8. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests

may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension ~~or revocation~~ and the right to a hearing provided in 61-8-403.

(6) The following suspension ~~and revocation~~ periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a ~~revocation~~ *suspension* of 1 year with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Section 9. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension ~~or revocation~~ for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend ~~or revoke~~ the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402 (3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension ~~or revocation~~ under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 10. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205~~(1)(b)~~*(2)*, and 61-5-208(2), relating to suspension ~~and revocation~~ of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Section 11. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

~~(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).~~

~~(3)~~*(2)* "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

~~(4)~~*(3)* There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

~~(5)~~*(4)* "License" means any type of license or permit to operate a motor vehicle.

~~(6)~~*(5)* "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

~~(7)~~*(6)* A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 12. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

~~(3) If the records maintained by the department show that a person's driving record brings the person within the definition of a driver in need of rehabilitation and improvement, the department shall:~~

~~(a) declare the person a driver in need of rehabilitation and improvement;~~

~~(b) notify the person that unless the person enrolls in and successfully completes, within 90 days of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's driver's license will be suspended for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first;~~

~~(c) provide the person with a list of certified driver rehabilitation and improvement courses and information about how the person may comply with~~

~~the provisions of this subsection (3) if a driver rehabilitation and improvement program does not exist near the person's residence; and~~

~~(d) send the notice as provided in subsection (2).~~

~~(4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to successfully complete the program or an appropriate substitute within 90 days, the department may suspend the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first.~~"

Section 13. Section 61-13-104, MCA, is amended to read:

"61-13-104. Penalty — no record permitted. (1) A driver who violates 61-13-103 shall be fined $20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203~~(3)(m)~~ *(2)(m)*. Bond for this offense is $20, and a jail sentence may not be imposed.

(2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person violating 61-13-103.

(3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the insured's premiums due to a violation of 61-13-103."

Section 14. Discount on license reinstatement fee — completion of driver rehabilitation program. (1) A person who submits a certificate of completion from a department-approved driver rehabilitation program must receive a 50% reduction on the license reinstatement fee due under 61-2-107 or [section 1 of House Bill No. 215].

(2) For purposes of this section, a driver rehabilitation program may be approved by the department if the program provider annually certifies to the department that the provider's program:

(a) provides a participant with a minimum of 4 hours of instruction on Montana driving laws, the importance of positive driving attitudes and habits, defensive driving techniques, and the responsible use of drugs and alcohol;

(b) includes preinstruction and postinstruction testing of each participant;

(c) provides a certificate of completion to each person who successfully completes the program; and

(d) reports to the department, in a timely manner, the name, date of birth, and driver's license number of each person to whom the provider has issued a certificate of completion.

Section 15. Coordination instruction. (1) If a senate or house bill is passed and approved that amends 61-8-406(1)(a) by substituting "0.08" for "0.10", then "0.08" is substituted for "0.10" in 61-5-205(2)(a) as amended by [this act].

(2) If House Bill No. 215 is not passed and approved, then the bracketed language in [section 14(1) of this act] is void.

(3) If House Bill No. 185 and [this act] are both passed and approved, then subsection (4)(a) of 61-5-107 as amended by [this act] must read as follows:

"(4) *(a)* When *an* application is received from an applicant *who is not ineligible for licensure under 61-5-105 and who was* previously licensed by

another jurisdiction, the department shall request a copy of the applicant's driving record from ~~the previous licensing jurisdiction~~ *each jurisdiction in which the applicant was licensed in the preceding 10-year period*. The driving record may be transmitted manually or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.~~"

(4) If Senate Bill No. 13 and [this act] are both passed and approved, then [section 1 of Senate Bill No. 13], amending 61-5-205, is void.

(5) If Senate Bill No. 37 and [this act] are both passed and approved, then subsection (3) of 61-5-205 in [this act] must read as follows:

"*(3) Except as provided in 61-5-208(3)(c), a revocation under subsection (1) of this section must be for a period of 1 year.*"

(6) If Senate Bill No. 37 and [this act] are both passed and approved, then 61-5-208 must read as follows:

"61-5-208. Period of suspension or revocation — probationary license — ignition interlock device required ~~on second or subsequent offense~~. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year~~, except as ~~otherwise~~ permitted by law.

(2) ~~(a)~~ Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

~~(b)~~*(3)* ~~When~~ *If the department receives a report from a court or another licensing jurisdiction that* a person ~~is~~ *has been* convicted or ~~forfeits~~ *has forfeited* bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall~~, upon receiving a report of conviction or forfeiture of bail or collateral not vacated,~~*:*

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. ~~Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon~~ *Upon* issuance of any restricted probationary license during the period of ~~revocation~~ *suspension, the department shall* restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device*:*

(i) if the report shows that the person's alcohol concentration at the time of arrest was 0.16 or greater; or

(ii) if ordered by the court when the person's alcohol concentration at the time of arrest was less than 0.16.

(b) upon a second or third conviction for an offense within 5 years of the first offense, suspend the license or driving privilege of the person for a period of 1 year and, upon reinstatement of the person's driving privileges, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the

driver's license suspension. A restricted probationary license may not be issued during the 1-year period of suspension.

(c) upon a fourth or subsequent conviction constituting a felony under 61-8-731, revoke the license or driving privilege of the person for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the person's driving privileges may be reinstated for the last 3 years of the revocation period, and the person must be restricted to driving only a motor vehicle equipped with a functioning ignition interlock device during the remainder of the revocation period.

(4) If the ~~1-year~~ period *of revocation under subsection (3)(b) or (3)(c)* passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

~~(c)~~*(5)* For the purposes of subsection ~~(2)(b)~~ *(3)*, a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

~~(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.~~

~~(b)~~*(6)* ~~If~~ *When an ignition interlock restriction is imposed under subsection (3) and* the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the ~~court-imposed~~ ignition interlock restriction by~~, including but not limited to~~ *such acts as* operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall ~~lift the stay and reinstate the license suspension~~ *suspend the person's license or driving privilege* for the remainder of the ~~time~~ *restriction* period. The department may not issue a *restricted* probationary ~~driver's~~ license to a person whose license ~~suspension~~ has been ~~reinstated~~ *suspended* because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)~~*(7) (a)* ~~The~~ *Except as provided in subsection (7)(b), the* period of *suspension or* revocation for a person convicted of any offense that makes mandatory the *suspension or* revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)~~*(8)* If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

(7) If House Bill No. 195 and [this act] are both passed and approved, then [section 1 of House Bill No. 195], amending 61-2-302, is void.

(8) If House Bill No. 195 and [this act] are both passed and approved and Senate Bill No. 37 is not passed and approved, then 61-5-208 must read as follows:

"61-5-208. Period of suspension or revocation — probationary license — ignition interlock device ~~required~~ *allowed* on ~~second or subsequent~~ *first* offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year~~, except as ~~otherwise~~ permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for ~~the~~ *a first* offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for ~~the~~ *a first* offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall ~~revoke~~ *suspend* the license or driving privilege of the person for a period of 1 year and~~, upon issuance of any restricted~~ *may not issue a* probationary license during the period of ~~revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device~~ *suspension*. If the 1-year *suspension* period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ *suspension* remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If ~~a~~ *the* person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a *first* violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)~~*(4) (a)* ~~The~~ *Except as provided in subsection (4)(b), the* period of *suspension or* revocation for a person convicted of any offense that makes mandatory the *suspension or* revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)~~*(5)* If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 16. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 557

[HB 201]

AN ACT GENERALLY REVISING VOTER REGISTRATION AND ABSENTEE BALLOT PROVISIONS FOR ELECTORS ABSENT FROM THE POLLING PLACE ON ELECTION DAY; ESTABLISHING THE MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FEDERAL UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT AND THE FEDERAL HELP AMERICA VOTE ACT OF 2002; PROVIDING DEFINITIONS; DESIGNATING THE SECRETARY OF STATE AS THE SINGLE POINT OF CONTACT FOR INFORMATION ABOUT ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTORS AND REQUIRING A REPORT ON ABSENTEE BALLOTS FOR THOSE ELECTORS; AUTHORIZING ABSENT UNIFORMED SERVICES ELECTORS NOT OVERSEAS TO USE THE FEDERAL WRITE-IN ABSENTEE BALLOT FOR REGISTRATION AND APPLICATION FOR ABSENTEE BALLOTS; PROVIDING THAT THE ABSENTEE BALLOT APPLICATION OF CERTAIN ELECTORS MUST APPLY TO CERTAIN FUTURE ELECTIONS; REVISING THE TIME PERIOD DURING WHICH ANY ELECTOR MAY APPLY FOR AN ABSENTEE BALLOT; REQUIRING THAT ANY APPLICATION FOR AN ABSENTEE BALLOT INCLUDE THE ELECTOR'S BIRTH DATE; PROVIDING THAT IF AN APPLICATION BY CERTAIN ELECTORS IS REJECTED, THE ELECTORS MUST BE NOTIFIED OF THE REASON; CLARIFYING THE PROCEDURE FOR CASTING AND COUNTING THE FEDERAL WRITE-IN ABSENTEE BALLOT; AMENDING SECTIONS 13-2-212, 13-2-214, 13-2-215, 13-13-211, 13-13-212, 13-13-213, 13-13-214, 13-13-229, 13-13-271, 13-13-272, 13-13-273, 13-13-277, AND 13-13-278, MCA; AND REPEALING SECTIONS 13-2-211 AND 13-13-276, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Montana Absent Uniformed Services and Overseas Elector Voting Act".

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Absent uniformed services elector" means an absent uniformed services voter pursuant to 42 U.S.C. 1973ff-6 who is:

(a) a member of the uniformed services on active duty who, by reason of the active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) a spouse or dependent of a member referred to in subsection (1)(a) or (1)(b) who, by reason of the member's active duty, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(2) "Federal post card application" means the federal post card application prescribed pursuant to 42 U.S.C. 1973ff.

(3) "Federal write-in absentee ballot" means the federal write-in absentee ballot prescribed pursuant to 42 U.S.C. 1973ff-2.

(4) "Member of the merchant marine" means, pursuant to 42 U.S.C. 1973ff-6, a person, other than a member of the uniformed services or an individual employed, enrolled, or maintained on the Great Lakes of the inland waterways, who is:

(a) employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States, or a vessel of a foreign-flag registry under charter to or control of the United States; or

(b) enrolled as an officer or crew member with the United States for employment or for training for employment or who is maintained by the United States for emergency relief service on a vessel described in subsection (4)(a).

(5) "Overseas elector" means an overseas voter pursuant to 42 U.S.C. 1973ff-6 who is:

(a) an absent uniformed services elector who by reason of active duty or service is absent from the United States on the date of the election involved;

(b) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) a person who resides outside the United States and would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "Regular absentee ballot" means the absentee ballot prepared by the election administrator for any election.

(7) "Uniformed services" means, pursuant to 42 U.S.C. 1973ff-6, the U.S. army, navy, air force, marine corps, and coast guard, the commissioned corps of the U.S. public health service, and the commissioned corps of the U.S. national oceanic and atmospheric administration.

(8) "United States", as used in the context of describing a geographical area, means, pursuant to 42 U.S.C. 1973ff-6, the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(9) "United States elector" means an absent uniformed services elector or an overseas elector.

(10) "Voter registration form" means the form approved by the secretary of state that an elector may use to register to vote in Montana.

Section 3. Secretary of state designated as single point of contact. (1) The office of the secretary of state is the state's single point of contact responsible for providing information regarding voter registration and absentee ballot procedures to be used by a United States elector.

(2) The secretary of state shall, with the assistance of local election administrators, compile, make available to the general public, or forward to appropriate federal authorities any reports or information required to be compiled, made available, or forwarded pursuant to federal law.

Section 4. Application for absentee ballots. (1) A United States elector may apply for regular absentee ballots as follows:

(a) by making a written request, which must include the elector's birth date and signature;

(b) by properly completing, signing, and returning to the election administrator the federal post card application; or

(c) by properly completing, signing, and returning to the appropriate county election administrator the federal write-in absentee ballot transmission envelope.

(2) An application for a federal write-in absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections. The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in this subsection as soon as the ballots become available.

Section 5. Replacement absentee ballots. A United States elector who has made a request for an absentee ballot pursuant to [section 4] may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made to the election administrator by telephone, letter, facsimile transmission, or electronic mail.

Section 6. Mailing ballots to United States elector. Ballots mailed to a United States elector must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the elector and the return envelope for the ballot must have printed across its face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

Section 7. Report on absentee ballots. (1) Within 60 days after the date of each regularly scheduled federal general election, each county election administrator shall report to the secretary of state:

(a) the number of regular absentee ballots transmitted by the election administrator to United States electors for the election; and

(b) the number of regular absentee ballots cast and returned to the election administrator for the election from United States electors.

(2) The secretary of state may prescribe a standardized format for the report.

(3) Within 90 days after the date of each regularly scheduled federal general election, the secretary of state shall report to the federal election assistance commission, established pursuant to the Help America Vote Act of 2002, Public Law 107-252, or its successor a statewide report containing the information provided under subsection (1). The report must be made in the format prescribed by the federal election assistance commission.

Section 8. Registration provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with [sections 1 through 7].

Section 9. Absentee voting provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with [sections 1 through 7].

Section 10. Section 13-2-212, MCA, is amended to read:

"13-2-212. Registration of ~~electors in~~ United States ~~service~~ *electors — simultaneous application for absentee ballot.* (1) ~~An elector in the~~ *A* United States ~~service~~ *elector* ~~who is absent from the state and the county of which the elector is a resident~~ may register with the election administrator in the elector's county of residence ~~as follows~~ *by properly completing, signing, and returning*:

~~(a) by the close of registration provided for in 13-2-301, by using:~~

~~(i)~~*(a)* the voter registration form;

~~(ii)~~*(b)* the federal post card application; or

~~(iii)~~*(c)* ~~if eligible,~~ the federal write-in *absentee* ballot ~~as provided in 13-13-271(3)~~ *transmission envelope*;

~~(b)~~*(2)* ~~after the close of registration, only by federal post card application, which~~ *A registration application under this section* must be received by the election administrator ~~by noon on the day~~ *not less than 30 days* before the election *for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election*.

~~(2) The form of the federal post card application must be prescribed by the secretary of state.~~

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under [section 4]."

Section 11. Section 13-2-214, MCA, is amended to read:

"13-2-214. Classification of ~~federal post card application~~ *applications — notification of elector*. ~~(1) Unless the elector is already registered, a federal post card application received from an elector in the United States service shall be treated as a simultaneous application for registration and for ballot for each primary and general election in which he is entitled to vote during the year of its receipt.~~

~~(2)~~*(1)* Upon receipt by the election administrator of ~~a federal post card~~ *an* application *pursuant to 13-13-212 or [section 4],* ~~properly filled out and signed,~~ the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the *federal* post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered~~:~~. *This information is sufficient to meet any identification requirements provided by law for an elector.*

(c) send to the applicant by the fastest mail service available, *which may include facsimile transmission or electronic mail,* a notice that ~~he~~ *the elector* has been registered and informing ~~him~~ *the elector* that a ballot is enclosed or that ~~he~~ *the elector* will be mailed an absentee ballot for *that election or for* the next election in which ~~he~~ *the elector* is entitled to vote under subsection (1) *or, if the application is rejected, a notice that the application has been rejected and the reasons for the rejection*.

~~(3)~~*(2)* The election administrator may use photocopies of the *federal* post card application to complete all necessary records."

Section 12. Section 13-2-215, MCA, is amended to read:

"13-2-215. Registration of *United States* electors ~~whose United States service or employment has terminated~~ *after return*. ~~Electors in the~~ *A* United States ~~service~~ *elector* who ~~have been honorably discharged from the armed forces of the United States or who have terminated their service or employment outside the territorial limits of the United States~~ *has returned to the elector's residence* too late to register at the time when and place where registration is required ~~shall be~~ *is* entitled to register for the purpose of voting at the next ~~ensuing~~ election after ~~such discharge or termination of employment~~ *the date of the elector's return* up to noon on the day before the election. ~~Said~~ *The* elector shall execute a sworn affidavit qualifying ~~him~~ *the elector* under this section to be filed in the office of ~~his~~ *the elector's* registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which ~~he~~ *the elector* is entitled to vote. This certificate ~~shall~~ *must* be presented to the election judges of that precinct at the time of voting."

Section 13. Section 13-13-211, MCA, is amended to read:

"13-13-211. Time period for application. ~~An~~ *Except as provided in [section 4], an* application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending ~~at noon on the day before~~ *at noon on the day before* the election. However, a qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot."

Section 14. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) An elector may apply for an absentee ballot by making a written request, ~~signed by the applicant~~ *which must include the elector's birth date and signature*, to the election administrator of the ~~applicant's~~ *elector's* county of residence within the time period specified in 13-13-211.

~~(2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:~~

~~(a) as provided in subsection (1);~~

~~(b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or~~

~~(c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).~~

~~(3)~~*(2)* (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection ~~(3)~~ *(2)* must be received by the election administrator by noon on election day.

~~(4)~~*(3)* An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

Section 15. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) Except as provided in subsection (2), the elector shall forward the application by mail or deliver it in person to the election administrator. The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

(2) In lieu of the requirement provided in subsection (1), an elector who requests an absentee ballot pursuant to 13-13-212~~(3)~~*(2)* may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector."

Section 16. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing ballot to elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application whatever official ballots are necessary. Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots provided to an absentee elector as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

~~(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.~~

~~(5)~~*(4)* If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

~~(6)~~*(5)* Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return and verification envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector;

(b) the elector is out of the state or will be out of the state at the time of the election; and

(c) the elector requests a voter information pamphlet.

~~(7)~~*(6)* The return envelope must be self-addressed to the election administrator."

Section 17. Section 13-13-229, MCA, is amended to read:

"13-13-229. Voting performed before special absentee election board. (1) Pursuant to 13-13-212~~(3)~~*(2)*, the elector may request that a special absentee election board personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-221, except that the elector shall hand the marked ballot in the sealed return envelope to the special absentee election board, and the board shall deliver the sealed return envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

Section 18. Section 13-13-271, MCA, is amended to read:

"13-13-271. Federal write-in absentee ballot — qualifications. ~~(1) An elector in the~~ *A* United States ~~service~~ *elector*~~, as defined in 13-2-211,~~ who ~~is overseas,~~ has applied for a regular absentee ballot ~~as provided in 13-13-212 or subsection (3) of this section, and fears that the elector might not receive a regular ballot in time to vote and return it to the election administrator~~ *pursuant to [section 4] for a federal general election but who has not yet received the regular absentee ballot for the federal general election* may vote a federal write-in absentee ballot as provided in 13-13-272.

~~(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.~~

~~(3) An overseas elector in the United States service may use a federal write-in absentee ballot transmission envelope to register to vote and to apply for a regular absentee ballot if the envelope is received by the election administrator not less than 30 days before the election and the envelope has been properly completed and signed.~~

~~(4) As used in this section, "overseas" means outside the territorial limits of the United States and does not mean any location within the continental United States, Alaska, Hawaii, or Guam.~~"

Section 19. Section 13-13-272, MCA, is amended to read:

"13-13-272. Procedure for voting federal write-in absentee ballot. (1) ~~An~~ *A United States* elector voting a federal write-in *absentee* ballot *for a federal general election* may designate a candidate by writing in the name of the candidate or by writing in the name of the political party. *A written designation of the political party must be counted as a vote for the candidate of that party.* A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) If ~~an~~ *the* elector receives ~~his~~ *the* regular absentee ballot *for the federal general election* after ~~he~~ *the elector* has voted and mailed a federal write-in absentee ballot, ~~he~~ *the elector* may vote and return the regular absentee ballot."

Section 20. Section 13-13-273, MCA, is amended to read:

"13-13-273. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot *received by an election administrator* ~~must~~ *may* be counted *only* if:

(a) ~~the election administrator received the elector's application for a regular absentee ballot not less than 30 days before the election~~ *a valid application was received pursuant to [section 4]*;

(b) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. *on* election day;

~~(c) it has not been submitted from any location within the continental United States, Alaska, Hawaii, or Guam;~~ and

~~(d)~~*(c)* it is received by 8 p.m. *on* election day.

(2) Federal write-in absentee ballots received before the close of the polls *on* election day ~~will~~ *may* not be counted until the polls have closed.

(3) A regular absentee ballot received from a United States elector after the polls close may not be counted."

Section 21. Section 13-13-277, MCA, is amended to read:

"13-13-277. Registration and voting by facsimile and internet authorized. Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, or electronically through the internet for ~~overseas electors in the~~ *a* United States ~~service~~ *elector*, if internet facilities that provide for secrecy are available, in place of the public mails:

(1) register an individual to vote;

(2) give notice of registration;

(3) receive requests for an absentee ballot;

(4) transmit absentee ballots to electors; and

(5) receive absentee ballots from electors."

Section 22. Section 13-13-278, MCA, is amended to read:

"13-13-278. Adoption of rules — acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-13-277. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of ~~13-13-276 through 13-13-278~~ *[sections 1 through 7]*.

(2) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing ~~13-13-276 through 13-13-278~~ *[sections 1 through 7]*."

Section 23. Repealer. Sections 13-2-211 and 13-13-276, MCA, are repealed.

Section 24. Codification instruction. (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 13, and the provisions of Title 13 apply to [sections 1 through 7].

(2) The code commissioner is instructed to renumber 13-2-212, 13-2-214, 13-2-215, 13-13-271, 13-13-272, 13-13-273, 13-13-277, and 13-13-278 as an integral part of [sections 1 through 7], and the provisions of [sections 1 through 7] apply to 13-2-212, 13-2-214, 13-2-215, 13-13-271, 13-13-272, 13-13-273, 13-13-277, and 13-13-278.

(3) [Section 8] is intended to be codified as an integral part of Title 13, chapter 2, and the provisions of Title 13, chapter 2, apply to [section 8].

(4) [Section 9] is intended to be codified as an integral part of Title 13, chapter 13, and the provisions of Title 13, chapter 13, apply to [section 9].

Section 25. Coordination instruction. If House Bill No. 190 and [this act] are both passed and approved, then [section 28 of House Bill No. 190] amending 13-13-212, is void and [section 14 of this act], amending 13-13-212, must read:

"Section 14. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions.(1) An elector may apply for an absentee ballot*, using only a standardized form provided by rule by the secretary of state,* by making a written request*, which must include the applicant's birth date and must be* signed by the applicant~~.~~*. The request must be submitted* to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

~~(2) An elector in the United States service absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:~~

~~(a) as provided in subsection (1);~~

~~(b) by using the federal postcard application signed by the applicant and made within the time period specified in 13-13-211; or~~

~~(c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).~~

~~(3)~~*(2)* (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection ~~(3)~~ *(2)* must be received by the election administrator by noon on election day.

~~(4)~~*(3)* An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.""

Ap proved May 5, 2003

CHAPTER NO. 558

[HB 206]

AN ACT INCREASING AND CHANGING THE DISPOSITION OF FEES FOR DRIVER'S LICENSES AND DUPLICATE LICENSES; REQUIRING A BIENNIAL REPORT TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 61-5-111, 61-5-114, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of ~~a~~ driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and

endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts. ~~and~~ *The department* shall ~~make~~ *adopt* necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may~~, in its discretion,~~ appoint an agent to sell receipts.

(2) *(a)* The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain*:*

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department

may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — ~~$4~~ *$5* a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 a year or fraction of a year;

(ii) intrastate — $3.50 a year or fraction of a year.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 2. Section 61-5-114, MCA, is amended to read:

"61-5-114. Duplicate licenses. ~~In the event that~~ *If* an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom ~~the same~~ *it* was issued may, upon the payment of a fee of ~~$5~~ *$10*, obtain a duplicate or substitute ~~thereof~~ *permit or license*, upon furnishing proof satisfactory to the department that ~~such~~ *the* permit or license has been lost or destroyed."

Section 3. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of ~~16.7%~~ *22.3%* of each driver's license fee and ~~25%~~ *25%* of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. *The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.*

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of ~~26.25%~~ *20.7%* of each driver's license fee and ~~8.75%~~ *8.75%* of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of ~~54.55%~~ *54.5%* of each driver's license fee and ~~62.5%~~ *62.5%* of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state

special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved May 5, 2003

CHAPTER NO. 559

[HB 211]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ELIGIBILITY OF PRISONERS FOR PARDON AND PAROLE AND RELATING TO THE BOARD OF PARDONS AND PAROLE; ADDING TWO AUXILIARY BOARD MEMBERS; AUTHORIZING MULTIPLE BOARDS TO BE IMPANELED TO CONDUCT HEARINGS AROUND THE STATE AND TO MAKE PAROLE DECISIONS; AUTHORIZING THE BOARD TO ISSUE UP TO TWO 10-DAY FURLOUGHS; CLARIFYING FROM WHICH CORRECTIONAL FACILITIES AND PROGRAMS THE BOARD CAN GRANT PAROLE; REVISING THE CONDUCT OF HEARINGS; REQUIRING AN INTERIM REPORT ON DISPOSITION OF NATIVE AMERICAN PAROLE APPLICATIONS; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-215, 46-23-216, 46-23-218, 46-23-1025, AND 46-24-212, MCA; REPEALING SECTION 46-23-107, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2302, MCA, is amended to read:

"2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial. (1) There is a board of pardons and parole.

(2) The board consists of three members and ~~two~~ *four* auxiliary members, ~~at least one~~ *each* of whom must have ~~particular~~ knowledge of *American* Indian culture and problems *gained through training as required by rules adopted by the board*. Members of the board, including the auxiliary members, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.

(4) Board members and auxiliary members shall serve staggered 4-year terms. The governor shall appoint one member and ~~one~~ *two* auxiliary ~~member~~ *members* in January of the first year of the governor's term, one member *and one auxiliary member* in January of the second year of the governor's term, and one member and one auxiliary member in January of the third year of the governor's term.

(5) The terms of board members and auxiliary members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board, including the auxiliary members, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) The provisions of 2-15-124(2) do not apply to the board."

Section 2. Section 46-23-103, MCA, is amended to read:

"46-23-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

~~(4) "Initial appearance" means the prisoner's first appearance before the board during the prisoner's current term of incarceration.~~

(4) "Hearing panel" means a panel made up of at least two board members appointed by the board to conduct parole hearings.

(5) "Parole" means the release to the community of a prisoner by the decision of ~~the board~~ *a hearing panel* prior to the expiration of the prisoner's term, subject to conditions imposed by the ~~board~~ *hearing panel* and subject to supervision of the department.

(6) "Victim" means a victim as defined in 46-18-243."

Section 3. Section 46-23-104, MCA, is amended to read:

"46-23-104. Board of pardons and parole. (1) The board of pardons and parole is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly *at a place determined by the board*~~,~~ and at other times *and places* that the board considers necessary~~, at the state prison~~.

(3) The principal office of the board is in Deer Lodge.

~~(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:~~

~~(a) parole eligibility;~~

~~(b) plans for release on parole; or~~

~~(c) revocation hearings.~~

~~(5) If the offense was committed prior to March 20, 1989, the board may not designate one of its staff members or any other adult correctional releasing authority to preside over an initial appearance or hearing under 46-23-202, and the initial appearance and hearing must be before at least one member of the board.~~

(4) The board shall appoint hearing panels to conduct parole hearings and to issue a final decision concerning parole. If the two board members of the hearing panel are unable to reach a unanimous decision, the presiding officer of the

board shall convene a panel of three board members as soon as is practicable to rehear the case. The hearing panels have the full authority and power of the board to order the denial, grant, or revocation of parole."

Section 4. Section 46-23-109, MCA, is amended to read:

"46-23-109. Parole ~~and revocation~~ hearings ~~and administrative reviews~~ *and administrative reviews* — telephone — videoconference. The board *and the board's hearing panel* may~~, in its discretion,~~ hold any parole hearing ~~or revocation hearing~~ via interactive videoconference ~~and may hold an administrative review via~~ *and may hold an administrative review via* telephone conference."

Section 5. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through ~~(4)~~ *(5),* the board may release on nonmedical parole by appropriate order any person *who is* confined in a state prison~~, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) or 46-18-219,~~ *or the state hospital or any person who is sentenced to the state prison and confined in a prerelease center* when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be paroled.

~~(2)~~*(3)* A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

~~(3)~~*(4)* A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

~~(4)~~*(5)* A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."

Section 6. Section 46-23-202, MCA, is amended to read:

"46-23-202. ~~Investigation of prisoner by board or board's designee~~ *Initial parole hearing — conduct of hearing.* ~~(1)~~ Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the ~~prisoner~~ *department* shall make ~~an initial appearance before the board or the board's designee as provided for in 46-23-104(4), except that if the offense was committed prior to March 20, 1989, the initial appearance must be before at least one member of the board. The board~~ *the prisoner available for a hearing before a hearing panel. The hearing panel* shall consider all *available and* pertinent information regarding the prisoner, including:

~~(a)~~*(1)* the circumstances of the offense;

~~(b)~~*(2)* the prisoner's previous social history and criminal record;

~~(c)~~*(3)* the prisoner's conduct, employment, and attitude in prison; ~~and~~

~~(d)~~*(4)* the reports of any physical and mental examinations that have been made*; and*

(5) written or oral statements from any interested person or the interested person's legal representative, including written or oral statements from a victim

regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential.

~~(2) Before a prisoner may be paroled, the board or its designee shall:~~

~~(a) conduct a hearing and interview the prisoner, except that if the offense was committed prior to March 20, 1989, the hearing must be before at least one member of the board. At the time of the hearing, the board or its designee must receive relevant statements from interested persons and any person may be represented by counsel. The board has the power to regulate procedures at all hearings.~~

~~(b) permit a victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement may be kept confidential. The board shall consider the victim's statement, along with the information provided under subsection (1), in determining whether to grant parole.~~"

Section 7. Section 46-23-215, MCA, is amended to read:

"46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the department but is subject to the orders of the board.

(2) When *a hearing panel issues* an order for parole ~~is issued~~, ~~it~~ *the order* must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense as defined in 46-23-502. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever *a hearing panel grants a parole to* a prisoner ~~in a state prison has been approved for parole~~ on *the* condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the ~~department~~ *hearing panel* may grant the prisoner a furlough, not to exceed ~~10 days~~ *two 10-day periods*, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the department and is subject to all other conditions recited by the ~~board~~ *hearing panel*."

Section 8. Section 46-23-216, MCA, is amended to read:

"46-23-216. Duration of parole. (1) A prisoner on parole is considered released on parole until the expiration of the maximum term or terms for which the prisoner was sentenced.

(2) The period served on parole ~~or conditional release~~ must be considered service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole ~~or conditional release~~ has performed the obligations of the release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner."

Section 9. Section 46-23-218, MCA, is amended to read:

"46-23-218. Authority of board to adopt rules—*purpose for training*. *(1)* The board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole *and parole revocation* hearings, ~~video~~ *videoconference* hearings, *telephone conference administrative reviews*, progress reviews, ~~the conduct of revocation proceedings,~~ clemency proceedings, ~~and~~ *the* conditions to be imposed upon parolees*, the training of board members and auxiliary members regarding American Indian culture and problems, and other matters pertinent to service on the board*.

(2) The legislature finds that American Indians incarcerated in state prisons constitute a disproportionate percentage of the total inmate population when compared to the American Indian population percentage of the total state population. The training of board members regarding American Indian culture and problems is necessary in order for the board to deal appropriately with American Indian inmates appearing before the board."

Section 10. Section 46-23-1025, MCA, is amended to read:

"46-23-1025. Report to and action by board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report must be accompanied by the findings of the hearings officer.

(2) Upon receipt of a report, the board shall cause the prisoner to be promptly brought before ~~it~~ *a hearing panel* for a hearing on the violation charged under rules that the board may adopt. If the violation is established, the ~~board~~ *hearing panel* may continue or revoke the parole ~~or conditional release~~ or may enter an order as it sees fit.

(3) If the prisoner has violated a condition of release requiring the payment of restitution, the board shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an opportunity to be heard. If the ~~board~~ *hearing panel* finds that ~~due to~~ *because of* circumstances beyond the prisoner's control~~,~~ the prisoner is unable to make the required restitution payments, the ~~board~~ *hearing panel* may not revoke the prisoner's parole for failure to pay restitution. The ~~board~~ *hearing panel* may modify the time or method of making restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the prisoner.

(4) If ~~it appears~~ *the hearing panel determines* that the prisoner has violated the provisions of release, the ~~board~~ *hearing panel* shall determine whether the time from the issuing of the warrant to the date of the prisoner's ~~arrest~~ *return to the custody of Montana law enforcement, the department, or the department's agent* or any part of ~~it~~ *the time* will be counted as time served under the sentence."

Section 11. Section 46-24-212, MCA, is amended to read:

"46-24-212. Information concerning confinement. Upon request of a victim of a felony offense, the department of corrections or the board of pardons and parole, as applicable, shall:

(1) promptly inform the victim of the following information concerning a prisoner committing the offense:

(a) the custody level;

(b) the projected discharge or parole eligibility date;

(c) the actual date of the prisoner's discharge from confinement or parole, if reasonably ascertainable;

(d) the time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the board of pardons and parole *or the hearing panel conducting a parole hearing* under 46-23-202; and

(e) the community in which the prisoner will reside after parole;

(2) provide reasonable advance notice to the victim before release of the defendant on furlough or to a work-release program, halfway house, or other community-based program or correctional facility; and

(3) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

(a) an escape from a correctional or mental health facility or community program;

(b) a recapture;

(c) a decision of the board of pardons and parole;

(d) a decision of the governor to commute the sentence or to grant executive clemency;

(e) a release from confinement and any conditions attached to the release; and

(f) the prisoner's death."

Section 12. Repealer. Section 46-23-107, MCA, is repealed.

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Transition. The governor shall appoint the two auxiliary members, whose positions are created by [this act], on or before July 1, 2003. One new auxiliary member must be appointed to a term ending in January 2005, and one new auxiliary member must be appointed to a term ending in January 2006.

Section 16. Interim report. During the biennium beginning July 1, 2003, the board of pardons and parole shall report to the law and justice interim committee of the legislature on the disposition of parole applications made by Native Americans, including the reasons for approval or denial of parole, during the period of January 1, 1999, through March 31, 2004. The report must be made before July 1, 2004, and must be included in the board's biennial report.

Section 17. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2003.

(2) [Section 15 and this section] are effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 560

[HB 218]

AN ACT REQUIRING THAT THE OWNER OF HIGH-LEVEL RADIOACTIVE WASTE OR TRANSURANIC WASTE PAY FEES, SUBMIT A SAFETY PLAN, AND OBTAIN A PERMIT BEFORE SHIPPING THE WASTE THROUGH MONTANA; DEFINING TERMS; CREATING THE RADIOACTIVE WASTE TRANSPORTATION MONITORING, EMERGENCY RESPONSE, AND TRAINING ACCOUNT IN THE STATE SPECIAL REVENUE FUND; SPECIFYING HOW MONEY IN THE ACCOUNT MUST BE USED; REQUIRING THAT INITIAL NOTICE OF SHIPMENTS BE PROVIDED TO THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AND TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THAT THE DISASTER AND EMERGENCY SERVICES DIVISION NOTIFY CERTAIN OTHER AGENCIES AND PERSONS WHEN IT IS INFORMED THAT WASTE WILL BE ROUTED THROUGH MONTANA; PROVIDING RESPONSIBILITIES FOR OWNERS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO COLLECT THE FEES AND ISSUE PERMITS; REQUIRING INSPECTIONS; REQUIRING THAT THE PERMIT REMAIN WITH THE TRANSPORTER OF WASTE AS IT TRAVELS THROUGH THE STATE; REQUIRING THE HIGHWAY PATROL TO MONITOR OR ESCORT MOTOR CARRIERS THAT ARE CARRYING THE WASTE; PROVIDING FOR THE COORDINATION OF INSPECTIONS OF MOTOR CARRIERS; ALLOWING THE HIGHWAY PATROL TO BE REIMBURSED FOR COSTS INCURRED IN MONITORING OR ESCORTING THE MOTOR CARRIERS; SPECIFYING THAT THE PUBLIC SERVICE COMMISSION IS RESPONSIBLE FOR INSPECTING RAILS OR TRAINS THAT WILL BE INVOLVED IN CARRYING THE WASTE; PROVIDING CERTAIN RECOMMENDATIONS FOR TRANSPORT OF THE WASTE; ALLOWING THE PUBLIC SERVICE COMMISSION TO ENTER INTO RECIPROCAL AGREEMENTS WITH ADJACENT STATES AND CANADIAN PROVINCES FOR INSPECTION; REQUIRING THE PUBLIC SERVICE COMMISSION TO ESTABLISH RULES FOR CARRYING OUT THESE PROVISIONS; ASSIGNING LIABILITY; PROVIDING A PENALTY; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 10] may be cited as the "Montana High-Level Radioactive Waste and Transuranic Waste Transportation Act".

Section 2. Purpose. The purpose of [sections 1 through 10] is to enhance the safety of Montana's citizens by requiring a special permit, inspections, and monitoring of shipments of high-level radioactive waste and transuranic waste that travel through Montana by motor carrier or railroad.

Section 3. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "High-level radioactive waste" means:

(a) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any

solid material derived from the liquid waste that contains fission products in sufficient concentrations;

(b) irradiated reactor fuel; or

(c) other highly radioactive waste material that the U.S. nuclear regulatory commission has determined by rule requires permanent isolation.

(2) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(3) "Transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram or in other concentrations that the U.S. nuclear regulatory commission may prescribe.

Section 4. Radioactive waste transportation monitoring, emergency response, and training account — purpose — disbursement. (1) There is an account in the state special revenue fund to be known as the radioactive waste transportation monitoring, emergency response, and training account administered by the disaster and emergency services division of the department of military affairs.

(2) The money deposited into this account by the department of transportation pursuant to [section 7] may be used only for the following purposes:

(a) to reimburse the highway patrol for expenses incurred in monitoring or providing escorts for motor carriers transporting high-level radioactive waste or transuranic waste through the state;

(b) to provide funding for training local emergency response personnel in handling radioactive waste accidents, spills, and other related emergencies; and

(c) to reimburse local emergency response entities for costs incurred in the event that an accident, spill, or other related emergency occurs.

(3) Prior to rulemaking provided for under [section 9(3)], the disaster and emergency services division of the department of military affairs shall coordinate with the public service commission and the department of transportation to provide to an appropriate legislative interim committee prior to the 59th legislature a plan that prioritizes prospective disbursement of money in the account described in subsection (1).

Section 5. Responsibilities of owner. (1) Prior to shipping high-level radioactive waste or transuranic waste through the state, an owner and the originating shipper if not the owner shall provide to the transporter and to the disaster and emergency services division, within limits set by the regulating federal authority:

(a) a shipment description, including type of waste;

(b) a safety plan, which must be submitted to the disaster and emergency services division and which must include:

(i) the specifications of casks being used to transport the radioactive waste, including how the casks have been tested and certified;

(ii) proof of training of an owner's escorts for emergency situations, including accidents;

(iii) the intended route;

(iv) all safety precautions to be taken to prevent an accident; and

(v) emergency plans for threats to safety;

(c) proof of insurance or an indemnity bond. If the owner and the originating shipper if not the owner is covered by a federal insurance program for the transport of radioactive material, proof of coverage by that program is sufficient. If a federal insurance program does not cover the owner, the owner shall provide proof of a bond or indemnity insurance coverage as required by the regulating federal authority.

(d) proof of a radiotelephone or other working, two-way voice communications device approved by the nuclear regulatory commission for the main transporter and for each escort vehicle.

(2) An owner or the originating shipper if not the owner may not transport through the state any high-level radioactive waste or transuranic waste that is not properly sealed in a cask approved by the regulating federal authority.

Section 6. Transportation of radioactive waste through state — notification — responsibilities of division. (1) A person or entity may not ship high-level radioactive waste or transuranic waste through the state by rail or motor carrier unless the person or entity first notifies the disaster and emergency services division and the department of transportation, pays the appropriate fees, and obtains a permit.

(2) Upon receiving the notification required under subsection (1), the disaster and emergency services division shall notify the highway patrol, the public service commission, or other agencies as appropriate.

(3) The disaster and emergency services division shall reimburse the highway patrol for expenses incurred in monitoring or escorting motor carriers, as provided in [section 8], from money collected in the radioactive waste transportation monitoring, emergency response, and training account created in [section 4].

Section 7. Responsibilities of department of transportation — assessment and collection of fees — issuance of permits — inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of $2,500 must be assessed for each cask designed for transport by truck; and

(b) a fee of $4,500 must be assessed for the first cask designed for transport by rail and a fee of $3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in [section 4].

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and 61-3-321(5) and 61-10-127 do not apply.

Section 8. Responsibilities of highway patrol — monitoring of motor carriers — billing. (1) After receiving notification from the disaster and emergency services division that a motor carrier will be transporting high-level radioactive waste or transuranic waste through the state, the highway patrol shall establish a plan for monitoring the shipment.

(2) Monitoring a shipment by motor carrier may include escorting the vehicle through the state, establishing checkpoints, shadowing the vehicle, electronically following the vehicle's movements, or any other method determined by the highway patrol to be effective and safe.

(3) The highway patrol shall coordinate inspection of the motor carrier with the department of transportation's motor carrier services division.

(4) The highway patrol shall determine the cost that it has incurred in monitoring each motor carrier and shall submit a bill for reimbursement to the disaster and emergency services division for payment out of the account established in [section 4(1)] according to the priorities established in [section 4(3)].

(5) The routing of the transport by motor carrier of high-level radioactive waste and transuranic waste must be determined by the department of transportation and the appropriate regulating federal authority.

Section 9. Responsibilities of public service commission — inspection of rails and trains — agreements with neighboring states and provinces — rulemaking. (1) After receiving notification from the disaster and emergency services division that high-level radioactive waste or transuranic waste will be shipped by railroad through the state, the public service commission shall establish a plan for inspecting the rails and the trains, as authorized in Title 69, chapter 14, part 2, that will be involved in the transportation of the waste. The plan must include but is not limited to:

(a) coordination with the federal railroad administration on track and rolling stock inspections;

(b) inspection and approval by a federally certified inspector no later than 1 week prior to shipment; and

(c) a requirement that trains carrying radioactive waste or transuranic waste may not travel at greater than the speed required by federal regulations.

(2) The public service commission may enter into reciprocal agreements with adjacent states and bordering Canadian provinces that Montana's inspectors may inspect trains while they are stopped in those states or provinces before they cross the Montana border.

(3) The public service commission shall, in cooperation with the department of transportation, the disaster and emergency services division, and the

highway patrol, establish rules to carry out the provisions of [sections 1 through 10]. The rules must address:

(a) the process by which local authorities will be notified when a motor carrier or a train carrying high-level radioactive waste or transuranic waste is approaching their jurisdictions;

(b) which local authorities will receive notification;

(c) the process by which local governments and local emergency response entities may apply for and receive training and reimbursement money from the radioactive waste transportation monitoring, emergency response, and training account, as provided in [section 4];

(d) the criteria for qualifying to receive money from the account;

(e) acceptable means for monitoring a train that is carrying high-level radioactive waste or transuranic waste; and

(f) other processes or procedures that the public service commission, the department of transportation, the disaster and emergency services division, and the highway patrol determine are necessary to efficiently carry out the provisions of [sections 1 through 10] and to ensure the safe transportation of high-level radioactive waste or transuranic waste through Montana.

Section 10. Penalty. An owner found to be in violation of the provisions of [sections 5 through 9] shall be fined an amount of not more than $100,000 for each violation. In the case of an accidental spill of a cask containing transuranic waste or leakage of high-level radioactive waste, the penalty is in addition to any other liability. The department of justice is responsible for imposing and determining the amount of a fine.

Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 10].

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. Effective date. [This act] is effective January 1, 2004.

Ap proved May 5, 2003

CHAPTER NO. 561

[HB 247]

AN ACT PROHIBITING LOCAL GOVERNMENTS FROM ENACTING ORDINANCES CONCERNING VAGRANCY; CLARIFYING THAT VAGRANCY DOES NOT INCLUDE AGGRESSIVE SOLICITATION THAT IS INCLUDED IN THE OFFENSE OF DISORDERLY CONDUCT; REMOVING EXISTING STATUTORY PROVISIONS CONCERNING VAGRANCY; AMENDING SECTIONS 7-1-111, 7-21-3322, 7-32-4304, AND 53-21-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); ~~and~~

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy."

Section 2. Section 7-21-3322, MCA, is amended to read:

"7-21-3322. Role of market master. (1) ~~Such~~ *A county* market master shall, under the supervision and approval of the board of county commissioners, make all necessary rules for the establishment, maintenance, operation, and control of the markets established ~~hereunder~~ *under this part* in the respective counties of the state.

(2) ~~It shall be the duty of such~~ *The county* market master *shall*:

(a) ~~to~~ cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition;

(b) ~~to~~ arrange for stalls and spaces in ~~such~~ *a* manner ~~as to~~ *that* best ~~suit~~ *suits* the convenience of both buyers and sellers;

(c) ~~to~~ see that the laws of Montana ~~in reference~~ *relating* to weights and measures are enforced and observed;

(d) ~~to~~ cause order to be preserved during the time ~~such~~ *the* market ~~shall be~~ *is* open and in operation;

(e) ~~to~~ prevent and remove obstructions from the marketplace or grounds;

(f) ~~to remove all vagrants,~~ prevent disorderly conduct ~~, and prevent disorderly persons from loitering~~ *and prevent disorderly persons from remaining* in ~~said~~ market buildings, space, or grounds during the market hours;

(g) ~~to~~ cause all offenses against the laws of Montana ~~in relation to~~ *concerning* the inspection of foods or the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, vegetables, or provisions of any kind to be prosecuted;

(h) ~~to~~ designate proper means of supervising and accounting for the sales ~~therein~~ made and collecting the commissions ~~hereinafter~~ provided for *in this part*; and

(i) ~~to~~ generally supervise and control the operations of the public markets established under the provisions of this part."

Section 3. Section 7-32-4304, MCA, is amended to read:

"7-32-4304. Control of ~~vagrancy and~~ disorderly conduct. The city or town council has power to ~~define vagrancy and to~~ restrain and punish ~~vagrants, mendicants, and~~ persons guilty of disorderly conduct *and aggressive solicitation, as defined by ordinance, that is included in the offense of disorderly conduct*."

Section 4. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain persons suffering from mental disorders from detention center. (1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, ~~vagrancy,~~ disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [Sections 1 and 3] apply retroactively, within the meaning of 1-2-109, to ordinances enacted prior to [the effective date of this act].

Ap proved May 5, 2003

CHAPTER NO. 562

[HB 261]

AN ACT INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; INCREASING THE LOAN TO THE DEPARTMENT OF JUSTICE FOR THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM FROM $4.5 MILLION TO $22.5 MILLION; TEMPORARILY INCREASING THE FEE FOR ISSUANCE OF A CERTIFICATE OF OWNERSHIP FOR A MOTORBOAT OR SAILBOAT, A SNOWMOBILE, AN OFF-HIGHWAY VEHICLE, AND A MOTOR VEHICLE BY $5; TEMPORARILY IMPOSING A $10 FEE ON THE ISSUANCE OF A NEW CERTIFICATE OF TITLE; TEMPORARILY INCREASING THE FEE FOR OBTAINING A DUPLICATE CERTIFICATE OF OWNERSHIP; REQUIRING THE DEPOSIT OF THE NEW AND INCREASED FEES IN THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT FOR PURPOSES OF REPAYING THE LOAN; AMENDING SECTIONS 17-5-1608, 17-5-2001, 23-2-508, 23-2-611, 23-2-811, 61-3-103, 61-3-203, 61-3-204, AND 61-3-550, MCA, AND SECTIONS 5 AND 9, CHAPTER 394, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. (Temporary) Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~$80~~ *$100* million. (Terminates June 30, ~~2011~~ *2013 - sec. 9, Ch. 394, L. 2001.*)

17-5-1608. (Effective July 1, ~~2011~~ *2013*) Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part (except for bonds or notes issued to

fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101) to exceed $75 million."

Section 2. Section 17-5-2001, MCA, is amended to read:

"17-5-2001. (Temporary) Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed ~~$4.5~~ *$22.5* million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation.(Terminates June 30, ~~2011~~ *2013* ~~— sec. 9, Ch. 394, L. 2001.~~)

17-5-2001. (Effective July 1, ~~2011~~ *2013*) Loans to state agencies. An agency responsible for the procurement and provision of vehicles and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of

indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(1) the term of the indebtedness does not exceed the useful life of the items being financed; and

(2) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise."

Section 3. Section 23-2-508, MCA, is amended to read:

"23-2-508. Certificate of ownership — filing of security interests. (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) other information that the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, a bill of sale, a foreign title, an official certificate of boat number, a fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired, if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) A motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number on the motorboat or sailboat must

be assigned an identification number by the department. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of ~~$5~~ *$10* must be paid to the county treasurer~~, which must be forwarded by the county treasurer to the department of justice~~ and*, of the $10 fee, $5 must be forwarded to the department of revenue and must be* deposited in the general fund. *The remaining $5 must be forwarded to the department of justice for deposit in the motor vehicle information technology system account provided for in 61-3-550.*

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless the person transfers a part of the person's interest in the motorboat or sailboat or renews the certificate of number for the motorboat or sailboat.

(10) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the boat encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9A.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership:

"NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) Except as provided in subsection (15), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(15) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.

(16) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(17) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the person fails to file the satisfaction.

(18) Upon receipt of notice of any involuntary liens or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(19) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(20) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees

provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 4. Section 23-2-611, MCA, is amended to read:

"23-2-611. Certificate of ownership — filing of security interests. (1) A snowmobile may not be operated upon any private or public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state. A certificate of ownership is not required for a snowmobile purchased prior to April 16, 1993, if use of the snowmobile is restricted to private land.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom acquired.

(3) The application must be accompanied by documentation of ownership, such as an invoice, notarized bill of sale from the immediately previous owner, foreign title, official certificate of snowmobile number, or fee in lieu of tax receipt.

(4) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(5) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(6) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant with a certificate of ownership, which must contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of ~~$5~~ *$10* must be paid to the county treasurer~~, which must be forwarded by the county treasurer to the department of justice~~ and*, of the $10 fee, $5 must be forwarded to the department of revenue and must be* deposited in the general fund. *The remaining $5 must be forwarded to the department of justice for deposit in the motor vehicle information technology system account provided for in 61-3-550.*

(9) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the snowmobile encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(10) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9A.

(11) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(12) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(13) Except as provided in subsection (14), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(14) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.

(15) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that the satisfaction is not filed.

(17) Upon receipt of notice of any involuntary liens or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(18) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 5. Section 23-2-811, MCA, is amended to read:

"23-2-811. Certificate of ownership — procedure — fee — filing security interest. (1) An off-highway vehicle may not be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business address or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract, mortgage, or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before January 1, 1990.

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of ~~$5~~ *$10* must be paid to the county treasurer~~, which must be forwarded to the department of justice for deposit~~ *and, of the $10 fee, $5 must be forwarded to the department of revenue and must be deposited* in the general fund. *The remaining $5 must be forwarded to the department of justice for deposit in the motor vehicle information technology system account provided for in 61-3-550.*

(8) The department of justice may not file a voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the encumbered off-highway vehicle. If the approved lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, a complete description of the off-highway vehicle, the amount of the lien, and the signature of the debtor. The department of justice shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the off-highway vehicle encumbered. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate. However, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the vehicle is to be registered. The owner of an off-highway vehicle is the person entitled to operate and possess the vehicle.

(9) A security interest in an off-highway vehicle held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9A.

(10) Whenever a security interest or lien is filed against an off-highway vehicle that is subject to two or more security interests previously perfected

under this section, the department of justice shall endorse on the face of the certificate of ownership: "Notice. This off-highway vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(11) Satisfaction or statements of release filed with the department of justice under this section must be retained for a period of 8 years from the date of receipt, after which they may be destroyed.

(12) Except as provided in subsection (13), a voluntary security interest or lien is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(14) Upon default under a chattel mortgage or conditional sales contract covering an off-highway vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In the case of attachment of an off-highway vehicle, the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

(15) A conditional sales vendor, chattel mortgagee, or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sale contract within 15 days after receiving final payment shall pay to the department of justice the sum of $1 for each day after the expiration of the 15-day period that the person fails to file the satisfaction.

(16) Upon receipt of notice of any involuntary liens or attachments against the record of an off-highway vehicle in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice of the lien, showing the date of execution of the lien and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

(17) It is not necessary to refile with the department of justice instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(18) A fee of $4 must be paid to the department of justice to file a security interest or other lien against an off-highway vehicle. The $4 fee includes and covers the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department of justice or for filing

an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 6. Section 61-3-103, MCA, is amended to read:

"61-3-103. (Temporary) Filing of security interests — perfection — rights — procedure — fees. (1) Except as provided in 61-3-109, the department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or

encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.

(11) A fee of $8 must be paid to the department to file any security interest or other lien against a motor vehicle. The $8 fee includes the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department ~~and of deleting the endorsement of the security interest from the face of the certificate of ownership~~. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the $8 fee, $4 must be deposited in the state general fund in accordance with 15-1-504. The remaining $4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(12) A fee of $10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the vehicle owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. The $10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2008—sec. 2, Ch. 260, L. 1999.)

61-3-103. (Effective July 1, 2008) Filing of security interests — perfection — rights — procedure — fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The

department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file such satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall

within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $8 must be paid to the department to file any security interest or other lien against a motor vehicle. The $8 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department ~~and deleting the endorsement of the security interest from the face of the certificate of ownership~~. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer. Of the $8 fee, $4 must be deposited in the state general fund in accordance with 15-1-504. The remaining $4 must be forwarded to the state treasurer for deposit in the motor vehicle information technology system account provided for in 61-3-550.

(12) A fee of $10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the vehicle owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. The $10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550. (Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)

61-3-103. (Effective July 1, 2011) Filing of security interests — perfection — rights — procedure — fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under chapter 4 of this title must be perfected in accordance with Title 30, chapter 9A.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the

department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file such satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee must include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department ~~and deleting the endorsement of the security interest from the face of the certificate of ownership~~. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section

must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.

(12) A fee of $10 must be paid to the department by a vehicle owner if, following satisfaction or release of a security interest and its removal from the department's records, the vehicle owner requests issuance of a new certificate of title without the security interest or lien shown on the face of the title. The $10 fee must be deposited in the motor vehicle information technology system account provided for in 61-3-550."

Section 7. Section 61-3-203, MCA, is amended to read:

"61-3-203. Fee for original certificate of ownership and transfer of registration — disposition. A charge of ~~$5~~ *$10* must be made for issuance of an original certificate of ownership of title and for a transfer of registration, which must be collected by the county treasurer. An additional fee of $2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks. The fees must be *paid to the county treasurer and, of the $10 fee, $5 must be forwarded to the department of revenue and* deposited in the state general fund. *The remaining $5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550.*"

Section 8. Section 61-3-204, MCA, is amended to read:

"61-3-204. Lost certificates. ~~In the event any~~ *If a* certificate of ownership is lost, mutilated, or becomes illegible, the owner shall immediately ~~make application~~ *apply* for and obtain a duplicate ~~thereof~~ *of the certificate of ownership*, upon furnishing satisfactory evidence of ~~such~~ *the* facts and upon payment of a fee of ~~$3~~ *$10*. ~~Revenue from this~~ *Of the $10* fee, *$5* must be deposited in the *state* general fund *in accordance with 15-1-504, and the remaining $5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550.*"

Section 9. Section 61-3-550, MCA, is amended to read:

"61-3-550. (Temporary) Motor vehicle information technology system account. (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.

(2) Fees received by the department of revenue pursuant to 61-3-103*, $5 of each fee received under 23-2-508, 23-2-611, 23-2-811, and 61-3-203 for a certificate of ownership, and $5 from the fee received under 61-3-204* must be deposited in the account.

(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:

~~(a)~~*(a)* repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; or

~~(b)~~*(b)* payment of costs directly incurred in the creation and support of the new motor vehicle information technology system~~.~~. (Terminates June 30, ~~2011~~ *2013*~~— sec. 9, Ch. 394, L. 2001.~~)"

Section 10. Section 5, Chapter 394, Laws of 2001, is amended to read:

"**Section 5. Deposit of loan proceeds — capital projects appropriation.** (1) The proceeds of any loan from the board of investments to the department of justice for creation of a new motor vehicle information technology system must be deposited in the capital projects fund.

(2) ~~There~~ *Except as provided in subsection (5), there* is appropriated from the capital projects fund to the department of justice up to ~~$4.5~~ *$22.5* million for the motor vehicle information technology system described in 17-5-2001.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the motor vehicle information technology system authorized by 17-5-2001 for agency current level operating expenses.

(4) The appropriation continues until the project is completed in accordance with 17-7-212.

(5) The department of justice may not continue to expend funds on any loan from the board of investments authorized by the 58th legislature to finance the information technology system described in 17-5-2001(2)(a) after June 30, 2005, without obtaining spending authority from the 59th legislature."

Section 11. Section 9, Chapter 394, Laws of 2001, is amended to read:

"**Section 9. Termination.** *(1)* ~~[This act]~~ *Except as provided in subsection (2), [this act]* terminates June 30, ~~2011~~ *2013*.

(2) [Section 3] terminates June 30, 2011."

Section 12. Coordination instruction. If House Bill No. 538 and [this act] are both passed and approved, then:

(1) [Section 11] of [this act], amending section 9, Chapter 394, Laws of 2001, is void.

(2) [Section 9] of [this act] must read:

"Section 9. Section 61-3-550, MCA, is amended to read:

"61-3-550. (Temporary) Motor vehicle information technology system account. (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.

(2) Fees received by the department ~~of revenue~~ pursuant to 61-3-103 *and $5 of each fee received under 61-3-203 or 61-3-204 for a certificate of title* must be deposited in the account.

(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:

(a) repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; or

(b) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system. ~~(Terminates June 30, 2011 -- sec. 9, Ch. 394, L. 2001.)~~""

Section 13. Effective date. [This act] is effective July 1, 2003.

Section 14. Retroactive applicability. [Section 11] applies retroactively, within the meaning of 1-2-109, to January 1, 2002.

Section 15. Termination. [Sections 1 through 9] terminate June 30, 2013.

Ap proved May 5, 2003

CHAPTER NO. 563

[HB 298]

AN ACT ALLOWING A COUNTY OR MUNICIPALITY TO CHARGE FEES FOR AN EXAMINATION OF A DIVISION OF LAND TO DETERMINE WHETHER IT IS EXEMPT FROM SUBDIVISION REVIEW; AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land — *fees for examination of division*. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) is created to provide security for construction mortgages, liens, or trust indentures;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes; or

(g) is in a location over which the state does not have jurisdiction.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed $200, for the examination."

Section 2. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions — *fees for examination of division*. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and

the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) A division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed $200, for the examination."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 564

[HB 403]

AN ACT REQUIRING EACH CONTRACTOR TO ENSURE THAT AT LEAST 50 PERCENT OF THE CONTRACTOR'S WORKERS PERFORMING LABOR ON A STATE CONSTRUCTION PROJECT ARE BONA FIDE MONTANA RESIDENTS; AMENDING SECTION 18-2-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-409, MCA, is amended to read:

"18-2-409. Montana residents to be employed on state construction contracts. (1) On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States department of transportation or ~~where~~ *when* residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, *each contractor shall ensure that* at least 50% of the ~~work must be performed by~~ *contractor's workers performing labor on the project are* bona fide Montana residents, as defined in 18-2-401.

(2) For any contract awarded for a state construction project, except a project partially funded with federal aid money from the United States department of transportation or ~~where~~ *when* residency preference laws are

specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of subsection (1). The bid specification and the contract must provide that at least 50% of the workers on the project will be bona fide Montana residents. If ~~there are two or more contracts and~~ due to a lack of qualified personnel ~~a~~ *each* contractor cannot guarantee that at least 50% of ~~his~~ *the contractor's* workers *on the project* will be Montana residents, ~~his~~ *the* contract must provide that the percentage *that* the commissioner of labor and industry believes possible will be Montana residents ~~and one or more of the other contracts must provide for a higher percentage of Montana residents so that 50% of the workers on the project will be Montana residents~~.

(3) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

Ap proved May 5, 2003

CHAPTER NO. 565

[HB 509]

AN ACT REVISING LAWS RELATED TO ELECTRICAL ENERGY; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE ONLY AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; ESTABLISHING AN ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; REVISING CERTAIN LEGISLATIVE FINDINGS AND POLICY; DESIGNATING THE DEFAULT SUPPLIER AS THE DISTRIBUTION SERVICES PROVIDER OF A UTILITY; MODIFYING CERTAIN DEFINITIONS; DEFINING "DEFAULT SUPPLY SERVICE" AND "ELECTRICITY SUPPLY COSTS"; EXTENDING THE TRANSITION PERIOD TO JULY 1, 2027; MODIFYING PILOT PROGRAMS TO REQUIRE UTILITIES AND ELECTRICITY SUPPLIERS TO USE A SELECT SET OF SMALL CUSTOMERS TO MEASURE THE POTENTIAL FOR DEVELOPING AND OFFERING CUSTOMER CHOICE IN THE FUTURE; ESTABLISHING OPTIONS AND REQUIREMENTS FOR CUSTOMER CHOICE OF ENERGY SUPPLY; REQUIRING THE COMMISSION TO ESTABLISH RATES, FEES, RULES, AND PROCEDURES TO ENABLE CUSTOMERS TO REASONABLY CHOOSE AN ELECTRICITY SUPPLIER WHILE PROTECTING SMALL CUSTOMERS; ALLOWING THE COMMISSION TO ESTABLISH DIFFERENT CATEGORIES OF DEFAULT SUPPLY CUSTOMERS; PROHIBITING A CUSTOMER RECEIVING DEFAULT SUPPLY SERVICE FROM RESELLING ELECTRICITY; ALLOWING THE DEFAULT SUPPLIER TO IMPLEMENT DEMAND REDUCTION PROGRAMS; CLARIFYING CERTAIN PUBLIC UTILITY RESPONSIBILITIES AS A SUCCESSOR IN INTEREST; MODIFYING THE REQUIREMENT THAT PUBLIC UTILITIES EDUCATE CUSTOMERS ABOUT CUSTOMER CHOICE; MODIFYING PUBLIC UTILITY FUNCTIONAL SEPARATION REQUIREMENTS; MODIFYING DISTRIBUTION SERVICES REQUIREMENTS; MODIFYING

PUBLIC UTILITY ELECTRICITY SUPPLY REQUIREMENTS; REQUIRING THAT A PUBLIC UTILITY'S DISTRIBUTION SERVICES PROVIDER PROVIDE DEFAULT SUPPLY SERVICE; REQUIRING THE COMMISSION TO ESTABLISH DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT GUIDELINES; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM; PROVIDING FOR COMMISSION REVIEW OF ELECTRICITY SUPPLY COSTS; ALLOWING THE COMMISSION TO REQUIRE A DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING A DEFAULT SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS TO DECEMBER 31, 2005; PROVIDING FOR REIMBURSEMENT AND AUTHORIZING FINES IF AN ELECTRICITY SUPPLIER FAILS TO PROVIDE ELECTRICITY SUPPLY AND RELATED SERVICES TO RETAIL CUSTOMERS; MODIFYING COMMISSION AUTHORITY; REQUIRING THE COMMISSION TO MONITOR WHETHER OR NOT WORKABLE COMPETITION HAS DEVELOPED FOR SMALL CUSTOMERS; PROVIDING THAT THE COMMISSION REPORT TO THE LEGISLATURE IF IT DETERMINES THAT WORKABLE COMPETITION HAS DEVELOPED; MODIFYING BILL INFORMATION REQUIREMENTS; ELIMINATING DEFAULT SUPPLIER LICENSING REQUIREMENTS; ELIMINATING THE TRANSITION ADVISORY COMMITTEE AND TAX REVENUE ANALYSIS REQUIREMENTS; AMENDING SECTIONS 5-5-202, 5-5-223, 35-19-104, 69-8-102, 69-8-103, 69-8-104, 69-8-201, 69-8-203, 69-8-204, 69-8-208, 69-8-210, 69-8-211, 69-8-301, 69-8-402, 69-8-403, 69-8-408, 69-8-409, AND 69-8-503, MCA; REPEALING SECTIONS 35-19-103, 69-8-416, 69-8-417, 69-8-501, AND 69-8-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

(a) economic affairs committee;

(b) education and local government committee;

(c) children, families, health, and human services committee;

(d) law and justice committee;

(e) energy and telecommunications committee;

~~(e)~~*(f)* revenue and transportation committee; and

~~(f)~~*(g)* state administration and veterans' affairs committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the

referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee."

Section 2. Section 5-5-223, MCA, is amended to read:

"5-5-223. Economic affairs interim committee. The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(1) department of agriculture;

(2) department of commerce;

(3) department of labor and industry;

(4) department of livestock;

~~(5) department of public service regulation;~~

~~(6)~~*(5)* office of the state auditor and insurance commissioner; and

~~(7)~~*(6)* office of economic development."

Section 3. Energy and telecommunications interim committee. The energy and telecommunications interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of public service regulation and the entities attached to the department for administrative purposes.

Section 4. Section 35-19-104, MCA, is amended to read:

"35-19-104. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only ~~for the purpose of supplying electricity to small customers as a default supplier, pursuant to 69-8-403, and~~ for serving as a supplier or promoter of alternative energy and conservation programs."

Section 5. Section 69-8-102, MCA, is amended to read:

"69-8-102. Legislative findings and policy. The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their ~~supplier of~~ electricity *supply* and related services in ~~a competitive market as soon as administratively feasible~~ *accordance with this chapter*. Affording this opportunity serves the public interest.

(3) The interests of *small* Montana consumers ~~should~~ *must* be protected *through the provision of adequate and reliable default supply service at the lowest long-term total cost.* ~~and the~~

(4) The financial integrity of electrical utilities ~~should~~ *must* be fostered.

~~(4)~~*(5)* The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income customer weatherization;

(iii) renewable resource projects and applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy assistance;

(e) assurance of service reliability and quality; and

(f) prevention of anticompetitive and abusive activities.

~~(5)~~*(6)* A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana."

Section 6. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to ~~transition~~ *transition* property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to ~~transition~~ *transition* property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider ~~or a person that has received a default supplier license from the commission~~ *of a utility that has restructured in accordance with this chapter*.

(9) "Default supply service" means the provision of electricity supply by a default supplier.

~~(9)~~*(10)* "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

~~(10)~~*(11)* "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

~~(11)~~*(12)* "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(13) "Electricity supply costs" means the actual costs of providing default supply service, including but not limited to:

(a) capacity costs;

(b) energy costs;

(c) fuel costs;

(d) ancillary service costs;

(e) demand-side management and energy efficiency costs;

(f) transmission costs, including congestion and losses;

(g) billing costs;

(h) planning and administrative costs; and

(i) any other costs directly related to the purchase of electricity, management of default electricity supply costs, and provision of default supply and related services.

~~(12)~~*(14)* "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed ~~transition~~ *transition* amounts and the issuance of ~~transition~~ *transition* bonds.

~~(13)~~*(15)* (a) "Fixed ~~transition~~ *transition* amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of ~~transition~~ *transition* costs and the costs of recovering, reimbursing, financing, or refinancing the ~~transition~~ *transition* costs and of acquiring ~~transition~~ *transition* property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring ~~transition~~ *transition* bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed ~~transition~~ *transition* amounts must include nonbypassable rates or charges to recover federal and state taxes in which the ~~transition cost~~ *transition cost* recovery period is modified by the transactions approved in the financing order.

~~(14)~~*(16)* "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(15)~~*(17)* "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(16)~~*(18)* "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(17)~~*(19)* "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(18)~~*(20)* "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(19)~~*(21)* "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

~~(20)~~*(22)* "Net metering system" means a facility for the production of electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(21)~~*(23)* "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of ~~transition~~ *transition* costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(22)~~*(24)* "Pilot program" means ~~a program~~ *an experimental program* using a ~~representative sample~~ *select set* of ~~residential and small commercial~~ *small* customers to ~~assist in~~ *assess the potential for* developing and offering customer choice of electricity supply ~~for all residential and commercial~~ *to small* customers *in the future*.

~~(23)~~*(25)* "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

~~(24)~~*(26)* "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(25)~~*(27)* "Small customer" means a residential customer or a ~~small~~ commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than ~~100~~ *50* kilowatts or a new *residential or* commercial customer with an estimated average monthly demand of less than ~~100~~ *50* kilowatts of a public utility ~~distribution services provider~~

that has ~~opened access on its distribution system~~ *restructured* pursuant to Title 35, chapter 19, or this chapter.

~~(26)~~*(28)* ~~"Transition~~ "*Transition* bondholder" means a holder of ~~transition~~ *transition* bonds, including trustees, collateral agents, and other entities acting for the benefit of that ~~holder~~ *bondholder*.

~~(27)~~*(29)* ~~"Transition~~ "*Transition* bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other ~~transition~~ *transition* bonds issuer that is secured by or payable from fixed ~~transition~~ *transition* amounts or ~~transition~~ *transition* property. Proceeds from ~~transition~~ *transition* bonds must be used to recover, reimburse, finance, or refinance ~~transition~~ *transition* costs and to acquire ~~transition~~ *transition* property.

~~(28)~~*(30)* ~~"Transition~~ "*Transition* charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of ~~transition~~ *transition* costs.

~~(29)~~*(31)* ~~"Transition cost~~ "*Transition cost* recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of ~~transition~~ *transition* costs.

~~(30)~~*(32)* ~~"Transition~~ "*Transition* costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's ~~transition~~ *transition* plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts *executed before May 2, 1997*, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing ~~transition~~ *transition* bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of ~~transition~~ *transition* bonds would benefit customers.

~~(31) "Transition period" means the period ending July 1, 2007.~~

(33) "Transition period" means the period ending July 1, 2027.

~~(32)~~*(34)* ~~"Transition~~ "*Transition* property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of ~~transition~~ *transition* bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed ~~transition~~ *transition* amounts that are the subject of a

financing order, including those nonbypassable rates and other charges and fixed ~~transition~~ *transition* amounts that are authorized by the commission in the financing order to recover ~~transition~~ *transition* costs and the costs of recovering, reimbursing, financing, or refinancing the ~~transition~~ *transition* costs and acquiring ~~transition~~ *transition* property, including the costs of issuing, servicing, and retiring ~~transition~~ *transition* bonds. Any right that a utility has in the ~~transition~~ *transition* property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(33)~~*(35)* "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(34)~~*(36)* "Transmission services provider" means ~~a person~~ *an entity* controlling or operating transmission facilities.

~~(35)~~*(37)* "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(36)~~*(38)* "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

~~(37)~~*(39)* "Utility" means any public utility or cooperative utility."

Section 7. Section 69-8-104, MCA, is amended to read:

"69-8-104. Pilot programs. (1) Except as provided in ~~69-8-201(3)~~ *69-8-201(9)* and 69-8-311, utilities ~~shall~~ *shall* conduct pilot programs using a *select set of their small customers to assess the potential for developing and offering customer choice of electricity supply to small customers in the future. The commission shall review and approve the design and availability of pilot programs and shall monitor the results of pilot programs.* ~~representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2005.~~

(2) ~~Utilities shall use pilot~~ *Pilot* programs *must be designed* to gather necessary information to determine the most effective and timely options for providing customer choice *to small customers in the future*. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of ~~market prices~~ *market-based electricity supply options* for small customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of small customers;

(c) the electricity suppliers' interest in serving small customers and the opportunities in providing service to small customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to small customers."

Section 8. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility — ~~transition to~~ *transition to* customer choice — *options and requirements* — waiver. ~~(1) A public utility shall, except as provided in this section, adhere to the following deadlines:~~

~~(a) All customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.~~

~~(b) Before July 1, 2007, all other public utility customers must have the opportunity to choose an electricity supplier.~~

~~(2) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier.~~ *(1) Before July 1, 2027, all public utility customers of a public utility that has restructured in accordance with this chapter must have the opportunity to choose an electricity supplier other than the default supplier.*

(2) (a) A small customer of a public utility that has restructured in accordance with this chapter:

(i) must receive default supply services from the default supplier as provided in this chapter; and

(ii) may purchase electricity supply services through a commission-approved small customer electricity supply program as provided in this section.

(b) A small customer receiving electricity from a licensed supplier prior to [the effective date of this act] may continue to receive electricity supply from a supplier other than the default supplier.

(c) Customers that represent separately metered services with an estimated average monthly demand of less than 50 kilowatts related to the same individual customer referred to in subsection (3) or (4) may be combined with the respective eligible customer load or loads.

(3) (a) Subject to subsection (3)(b), a customer of a public utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 50 kilowatts may choose an electricity supplier.

(b) The total average monthly billing demand for all customers that choose an electricity supplier pursuant to subsection (3)(a) in each calendar year may not exceed 20,000 kilowatts.

(c) A customer referred to in subsection (3)(a) receiving electricity from a licensed supplier prior to [the effective date of this act] may continue to receive electricity supply from a supplier other than the default supplier.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a customer of a utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts shall purchase its entire electricity supply from the competitive marketplace.

(b) A customer referred to in subsection (4)(a) that is receiving its electricity supply from the competitive marketplace may make a one-time election to enter into a permanent power supply contract with the default supplier for service on or after July 1, 2004. These contracts must include the applicable provisions established by the commission pursuant to subsection (5). This election must be submitted to the commission in writing no later than December 31, 2003.

(c) A new customer with an estimated average monthly demand of greater than or equal to 5,000 kilowatts may enter into a power supply contract with the default supplier in order to receive default supply service. The new customer's election of an electricity supplier must be submitted in writing to the commission at least 90 days before delivery of electricity. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).

(d) A customer referred to in subsection (4)(a) that was receiving electricity from the default supplier on [the effective date of this act] may continue to receive electricity from the default supplier.

(e) A customer referred to in subsection (4)(a) that is a public agency, as defined in 18-1-101, may enter into a power supply contract with the default supplier for default supply service for all or part of the public agency's load. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).

(5) The commission shall adopt rules and establish rates and fees to enable customers to have reasonable opportunities to choose an electricity supplier or to receive default supply service in accordance with subsections (2) through (4), while providing protection for small customers from higher or more unstable default supply service rates than would otherwise result if these choices were not offered.

(6) An electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the opportunity to provide electricity to small customers. The total average monthly demand for all customers referred to in subsection (2)(a) in each calendar year that receive service from an electricity supplier that is not the default supplier may not exceed 10,000 kilowatts. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (5) and the provision of default supply service pursuant to this chapter.

(7) Based on an analysis of the sources of costs of providing default supply service, the commission may:

(a) establish different categories of default supply service customers to assist with the implementation of this section;

(b) allocate default supply costs; and

(c) develop default supply rates.

(8) (a) Except as provided in subsection (8)(b), a customer receiving default supply service may not resell the electricity.

(b) A default supplier may implement demand reduction programs that reward customers for reducing demand under terms established by the commission.

~~(3)~~*(9) (a)* Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory.

(b) To the extent that a public utility described in subsection (9)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter, it shall assume responsibility only for the applicable transition plan of the acquired public utility.

~~(4)~~*(10)* Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

Section 9. Section 69-8-203, MCA, is amended to read:

"69-8-203. Public utility — ~~customer choice — continued service —~~ *customer choice* — education of customers. ~~(1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.~~

~~(2) If a customer has not chosen an electricity supplier by the end of the transition period, a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of a licensed and approved city, county, or consolidated government electricity supplier area, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. The commission shall establish an application process and guidelines for the designation of one or more default suppliers for the distribution area of each public utility.~~

~~(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.~~

~~(4) Public~~ *During the transition period, public* utilities shall educate their customers about customer choice *options* so that customers may make an informed choice ~~of an electricity supplier~~ *from among the options, including pilot programs, electricity supplier service options, and other electricity supply options available under default supply service*. ~~This education process must give special emphasis to education efforts during the transition period.~~"

Section 10. Section 69-8-204, MCA, is amended to read:

"69-8-204. Public utility — functional separation, divestiture, and nondiscrimination. (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission, ~~and~~ *retail* distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

~~(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.~~

~~(3)~~*(2)* Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

~~(4)~~*(3)* The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with the federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37~~. The commission shall promulgate rules relating to the codes of conduct~~*, and commission rules and orders*."

Section 11. Section 69-8-208, MCA, is amended to read:

"69-8-208. Public utility — distribution services. ~~(1)~~ A public utility's distribution services provider shall:

~~(a)~~*(1)* file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

~~(b)~~*(2)* build and maintain distribution facilities; ~~and~~

~~(c)~~*(3)* ~~be an emergency supplier of electricity and related services~~ *provide default supply service; and*

(4) provide or contract for emergency electricity supply and related services.

~~(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.~~"

Section 12. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities — electricity supply. ~~(1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.~~

~~(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3) If the transition period is extended, then the customers' distribution services provider shall:~~

~~(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or~~

~~(b) purchase electricity from the market; and~~

~~(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.~~ *(1) A public utility's distribution services provider shall provide default supply service.*

(2) The commission shall adopt rules that establish guidelines that provide the basis for the default supplier's resource planning and procurement activities and the commission's review and consideration of the default supplier's requests for recovery of electricity supply costs.

(3) The commission shall establish an electricity cost recovery mechanism that allows a default supplier to fully recover prudently incurred electricity supply costs, subject to the provisions of subsection (2). The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(4) The commission's review of the electricity supply costs incurred by a default supplier must be based on facts that were known or should reasonably have been known by the default supplier at the time it made the decisions that resulted in incurring the costs.

(5) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201.

(6) Notwithstanding any service options that the commission may require pursuant to subsection (5), a default supplier shall offer its customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.

~~(4)~~*(7)* If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

Section 13. Section 69-8-211, MCA, is amended to read:

"69-8-211. Public utilities — ~~transition~~ *transition* costs and charges — ~~rate moratorium~~. (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of ~~transition~~ *transition* costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order

regarding a public utility's ~~transition~~ *transition* plan, including costs, expenses, and reasonable fees related to issuing of ~~transition~~ *transition* bonds;

(c) the unmitigable ~~transition~~ *transition* costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other ~~transition~~ *transition* costs ~~as~~ *that* may qualify for recovery under this section.

(2) ~~Transition~~ *Transition* costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) ~~Transition~~ *Transition* costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through ~~transition~~ *transition* bonds.

(b) The value of all generation-related assets and liabilities and *other* electricity supply ~~costs~~ *obligations* must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously *allowed* in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's ~~transition~~ *transition* plan.

(d) Unless otherwise provided for in this chapter, only costs related to ~~existing~~ investments and power purchase contracts identified in subsection (2)(c) *that were allowed in rates before May 2, 1997,* and costs arising from those investments and power purchase contracts may be included as ~~transition~~ *transition* costs.

(3) (a) On commission approval of the amount of a public utility's ~~transition~~ *transition* costs, those costs must be recovered through the imposition of a ~~transition~~ *transition* charge.

(b) A ~~transition~~ *transition* charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a public utility and a customer may agree to alter the customer's ~~transition~~ *transition* charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. ~~Transition~~ *Transition* charges are the only charges that may be imposed upon a customer class to recover ~~transition~~ *transition* costs under this section. A separate exit fee may not be charged *under this section*.

(4) ~~Transition charges~~ *Transition charges* must be imposed within a ~~transition cost~~ *transition cost* recovery period approved by the commission on a case-by-case basis. Except for ~~transition~~ *transition* costs recovered under subsection (1)(c), categories of ~~transition~~ *transition* costs may have varying ~~transition cost~~ *transition costs* recovery periods.

(5) Approval of ~~transition~~ *transition* costs and collection of those ~~transition~~ *transition* costs through ~~transition~~ *transition* charges is a settlement of all ~~transition~~ *transition* costs claims by a public utility. A public utility seeking to recover ~~transition~~ *transition* costs through any means not authorized by this chapter may not collect ~~transition~~ *transition* charges with respect to these ~~transition~~ *transition* costs.

~~(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period from July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.~~

~~(7) Excepted from the provisions of subsection (6) are:~~

~~(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;~~

~~(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.~~

~~(c) subject to commission approval, an extraordinary event resulting in an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;~~

~~(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.~~

~~(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.~~

~~(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).~~

~~(10) Before July 1, 2002, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow-through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.~~

~~(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings.~~"

Section 14. Section 69-8-301, MCA, is amended to read:

"69-8-301. Cooperative utility — transition plan for customer choice. (1) Except as provided in 69-8-311, on or before July 1, 2006, the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, ~~2007~~ *2027*. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) This chapter does not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with this chapter."

Section 15. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance ~~during the transition period and into the future~~.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. ~~To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection (7), these~~ *To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. These* universal system benefits charge rates must remain in effect ~~until July 1, 2003~~ *through December 31, 2005*.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) ~~Utilities~~ *A utility* must receive credit toward annual funding requirements for ~~a~~ *the* utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for ~~low-income related~~ *low-income-related* expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's ~~transition~~ *transition* plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission~~,~~, the department of revenue~~, and the transition advisory committee provided for in 69-8-501~~, *and the energy and telecommunications interim committee provided for in [section 3]*. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body~~,~~, the statewide cooperative utility office~~, and the transition advisory committee~~, *and the energy and telecommunications interim committee*. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue ~~and to the transition advisory committee~~ *and the energy and telecommunications interim committee*. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 16. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority — rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's

~~transition~~ *transition* plan, the commission shall regulate the public utility's retail transmission, ~~and~~ distribution, *and default supply* services within the state of Montana, as provided in this chapter.~~, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:~~

~~(a) by one or more default suppliers for those customers not being served by a competitive supplier; or~~

~~(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.~~

~~(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.~~

~~(3)~~*(2)* The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

~~(4)~~*(3)* The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

~~(5)~~*(4)* The commission shall establish just and reasonable rates through established ratemaking principles for public utility *default supply*, distribution, and transmission services and shall regulate these services. The commission may approve rates and charges for ~~electricity distribution and transmission~~ *those* services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's ~~transition~~ *transition* plan.

~~(6)~~*(5)* The commission shall certify that a cooperative utility has adopted a ~~transition~~ *transition* plan that complies with this chapter. A cooperative utility's ~~transition~~ *transition* plan is considered certified 60 days after the cooperative utility files for certification.

~~(7)~~*(6)* The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.~~

~~(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

~~(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.~~

(7) (a) After July 1, 2010, the commission shall continuously monitor whether or not workable competition has developed for small customers.

(b) If the commission determines that workable competition has developed for small customers after July 1, 2010, the commission shall provide a report to the legislature that includes recommendations for legislative implementation of customer choice for small customers.

~~(11)~~*(8)* In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~*(9)* This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

Section 17. Section 69-8-408, MCA, is amended to read:

"69-8-408. Penalties — license revocation. (1) The commission may begin a proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched~~,~~ *the electricity supply for a customer* or caused ~~to be switched,~~ the electricity supply for a customer *to be switched* without first obtaining the ~~customers~~ *customer's* written permission;

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; or

(d) committed fraud or engaged in deceptive practices.

(2) Any person selling or offering to sell electricity in this state in violation of 69-8-404, 69-8-410, and this section is subject to a fine of not less than $100 or more than $1,000 for the violation or a license revocation or suspension. Each day of each violation constitutes a separate violation.

~~(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.~~

~~(4)~~*(3)* A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(4) (a) If a distribution services provider provides or contracts for the provision of emergency electricity supply and related services to retail customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider for the higher of the customers' contracted electricity supply rates or the existing market rates multiplied by the quantity of electricity supply service provided.

(b) (i) An electricity supplier's failure to deliver electricity supplies and the necessity of an emergency supply response by the distribution services provider pursuant to 69-8-208 is justification for a commission proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both.

(ii) For purposes of this subsection (4), the actual costs and rates for the electricity provided by the distribution services provider as emergency supply must be used as the basis of any fine levied on an electricity supplier pursuant to subsection (4)(b)(i). The fine must be determined by an amount to be applied to actual costs and rates of electricity provided for the emergency service. The commission shall determine the amount to be used and how the amount is applied.

(5) Fines imposed under this section must be recovered in a civil action upon a complaint filed by the commission in any court of competent jurisdiction."

Section 18. Section 69-8-409, MCA, is amended to read:

"69-8-409. Bill information — customer nonpayment — commission rulemaking. (1) ~~Electrical~~ *Electricity* bills to consumers must disclose each component of the ~~electrical~~ bill in accordance with rules promulgated by the commission. ~~Electrical~~ *Electricity* bills must disclose but are not limited to the following:

(a) distribution ~~and transmission~~ *and transmission* charges;

~~(b)~~*(b)* electricity supply charges;

~~(c)~~*(c)* ~~competitive transition~~ *transition* charges; and

~~(d)~~*(d)* universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the ~~customers~~ *customer's* nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

(a) customer nonpayment and reconnection; and

(b) information contained in ~~electrical~~ *electricity* bills to consumers."

Section 19. Section 69-8-503, MCA, is amended to read:

"69-8-503. ~~Transition~~ *Transition* costs financing. (1) A utility may~~, after July 1, 1997,~~ apply to the commission for a determination that certain ~~transition~~ *transition* costs may be recovered through the issuance of ~~transition~~ *transition* bonds. If ~~transition~~ *transition* bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge ~~transition~~ *transition* property or to cause the ~~transition~~ *transition* bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If ~~transition~~ *transition* bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of ~~transition~~ *transition* costs and the acquisition of ~~transition~~ *transition* property. A financing order may be adopted only upon the application of a utility and may ~~only~~ become effective in accordance with its terms*only* after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed ~~transition~~ *transition* amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed ~~transition~~ *transition* amounts included in the order to ensure recovery of all ~~transition~~ *transition* costs and the costs of capital associated with the proposed recovery,

reimbursement, financing, or refinancing of ~~transition~~ *transition* costs and the acquisition of ~~transition~~ *transition* property, including the costs of issuing, servicing, and retiring the ~~transition~~ *transition* bonds contemplated by the financing order. The order must set forth the term over which the ~~transition~~ *transition* bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed ~~transition~~ *transition* amounts upon customer classes that were not subject to the fixed ~~transition~~ *transition* amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to ~~transition~~ *transition* property that has been made the basis for the issuance of ~~transition~~ *transition* bonds and upon the issuance of ~~transition~~ *transition* bonds, the financing orders and the fixed ~~transition~~ *transition* amounts must be irrevocable.

(b) If ~~transition~~ *transition* bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the ~~transition~~ *transition* costs or the costs of recovering, reimbursing, financing, or refinancing the ~~transition~~ *transition* costs and acquiring ~~transition~~ *transition* property;

(ii) determine that the fixed ~~transition~~ *transition* amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of ~~transition~~ *transition* property either directly or indirectly by taking fixed ~~transition~~ *transition* amounts into account when setting other rates for the utility.

(c) The total amount of the ~~transition~~ *transition* property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of ~~transition~~ *transition* property and ~~transition~~ *transition* bondholders that the state may not limit or alter the fixed ~~transition~~ *transition* amounts, ~~transition~~ *transition* property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed ~~transition~~ *transition* amounts ~~as~~ *that* may be necessary to ensure timely recovery of all ~~transition~~ *transition* costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of ~~transition~~ *transition* costs and acquiring ~~transition~~ *transition* property including the costs of issuing, servicing, and retiring the ~~transition~~ *transition* bonds contemplated by the financing order. The adjustments may not impose fixed ~~transition~~ *transition* amounts upon customer classes that were not subject to the fixed ~~transition~~ *transition* amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the ~~transition~~ *transition* property or the proceeds of that property specifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed ~~transition~~ *transition* amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed ~~transition~~ *transition* amounts become ~~transition~~ *transition* property when and to the extent that a financing order authorizing the fixed ~~transition~~ *transition* amounts has become effective in accordance with subsection (2), and the ~~transition~~ *transition* property must thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the financing order or until the ~~transition~~ *transition* bonds are paid in full, including all principal, interest, premium, costs, and arrearages on the ~~transition~~ *transition* bonds.

(7) ~~Transition~~ *Transition* bonds may be issued upon commission approval in the pertinent financing order. ~~Transition~~ *Transition* bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the ~~transition~~ *transition* property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in ~~transition~~ *transition* property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that ~~transition~~ *transition* property to one or more assignees in connection with the issuance of ~~transition~~ *transition* bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge ~~transition~~ *transition* property as collateral for ~~transition~~ *transition* bonds to the extent approved in the pertinent financing order and may provide for a security interest in the ~~transition~~ *transition* property as provided in this section.

(c) ~~Transition~~ *Transition* property may be sold, assigned, or transferred for the benefit of:

(i) ~~transition~~ *transition* bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the ~~transition~~ *transition* property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in ~~transition~~ *transition* property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed ~~transition~~ *transition* amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in ~~transition~~ *transition* property is valid, is enforceable against the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the ~~transition~~ *transition* property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed ~~transition~~ *transition* amounts included in the ~~transition~~ *transition* property;

(b) value has been given by the pledgees of the ~~transition~~ *transition* property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the ~~transition~~ *transition* property.

(12) (a) A valid and enforceable security interest in ~~transition~~ *transition* property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the ~~transition~~ *transition* property as debtor and identify the ~~transition~~ *transition* property.

(b) Any description of the ~~transition~~ *transition* property is sufficient if the description refers to the financing order creating the ~~transition~~ *transition* property.

(c) The commission may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in ~~transition~~ *transition* property is a continuously perfected security interest in all revenue and proceeds arising

with respect to the ~~transition~~ *transition* property, whether or not the revenue or proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection. ~~Transition~~ *Transition* property constitutes property for all purposes, including for contracts securing ~~transition~~ *transition* bonds, whether or not the revenue and proceeds arising with respect to the ~~transition~~ *transition* property have accrued.

(14) (a) Subject to the terms of the security agreement covering the ~~transition~~ *transition* property and the rights of any third parties holding security interests in the ~~transition~~ *transition* property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the ~~transition~~ *transition* property with other funds of the utility that is the pledgor or transferor of the ~~transition~~ *transition* property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9A, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the ~~transition~~ *transition* property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the ~~transition~~ *transition* property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the ~~transition~~ *transition* property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the ~~transition~~ *transition* property, a pledgee of the ~~transition~~ *transition* property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under Title 30, chapter 9A, part 6, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the ~~transition~~ *transition* property, subject to the rights of any third parties holding prior security interests in the ~~transition~~ *transition* property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the ~~transition~~ *transition* property that in the event of default by the utility in payment of revenue arising with respect to the ~~transition~~ *transition* property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the ~~transition~~ *transition* property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the ~~transition~~ *transition* property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the ~~transition~~ *transition* property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the ~~transition~~ *transition* bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of ~~transition~~ *transition* property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferors right, title, and interest, as in a true sale, and not as a pledge or other financing of the ~~transition~~ *transition* property, other than for federal and state income and franchise tax purposes.

(b) Granting to ~~transition~~ *transition* bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to ~~transition~~ *transition* bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of ~~transition~~ *transition* property may ~~only~~ be considered perfected as against any third person, including any judicial lien creditor, *only* when both of the following have taken place:

(a) the financing order authorizing the fixed ~~transition~~ *transition* amounts included in the ~~transition~~ *transition* property has become effective in accordance with subsection (2); and

(b) an assignment of the ~~transition~~ *transition* property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the ~~transition~~ *transition* property as debtor and must identify the ~~transition~~ *transition* property. Any description of the ~~transition~~ *transition* property is sufficient if the description refers to the financing order creating the ~~transition~~ *transition* property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the ~~transition~~ *transition* property sold, assigned, transferred, or pledged to secure ~~transition~~ *transition* bonds.

(19) ~~Transition~~ *Transition* property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of ~~transition~~ *transition* property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles as those terms are defined in 30-9A-102. Any

right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated ~~transition~~ *transition* property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed ~~transition~~ *transition* amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the ~~transition~~ *transition* property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the ~~transition~~ *transition* property previously perfected in the manner described in this section if value has been given by the purchasers of ~~transition~~ *transition* bonds. A perfected lien in ~~transition~~ *transition* property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated ~~transition~~ *transition* property, whether or not revenue has been accrued. ~~Transition~~ *Transition* property constitutes property for the purposes of contracts securing ~~transition~~ *transition* bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the ~~transition~~ *transition* property, to the fixed ~~transition~~ *transition* costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed ~~transition~~ *transition* amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of ~~transition~~ *transition* property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of ~~transition~~ *transition* property or any pledge of ~~transition~~ *transition* property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The ~~transition~~ *transition* bonds issued under this chapter are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to ~~transition~~ *transition* property and the proceeds ~~thereof~~ *of transition property* are governed by this section rather than by Title 30, chapter 9A.

(25) Upon the payment in full of ~~transition~~ *transition* bond principal and interest, the utility shall discontinue charging and collecting the competitive ~~transition~~ *transition* charge associated with that portion of the utility's approved ~~transition~~ *transition* costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest."

Section 20. Repealer. Sections 35-19-103, 69-8-416, 69-8-417, 69-8-501, and 69-8-502, MCA, are repealed.

Section 21. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [section 3].

Section 22. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 23. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. Effective date. [This act] is effective July 1, 2003.

Ap proved May 5, 2003

CHAPTER NO. 566

[HB 539]

AN ACT REVISING THE PROVISIONS OF THE FAMILY EDUCATION SAVINGS ACT; CHANGING TERMINOLOGY TO CONFORM TO CHANGES IN FEDERAL LAW; CLARIFYING THE DUTIES OF THE BOARD OF REGENTS AND THE PROGRAM MANAGER'S RESPONSIBILITIES RELATING TO NONQUALIFIED WITHDRAWALS; CLARIFYING THE PROCEDURES INVOLVING INVESTMENT PRODUCTS WHEN A PROGRAM MANAGER IS TERMINATED; DEFINING "INVESTMENT PRODUCTS"; AND AMENDING SECTIONS 15-30-604, 15-62-103, 15-62-201, 15-62-203, 15-62-206, 15-62-207, 20-25-901, AND 20-25-902, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-604, MCA, is amended to read:

"15-30-604. (Temporary) Montana farm and ranch risk management account — creation — administration. (1) A Montana farm and ranch risk management account is a trust created or organized in the state for the exclusive benefit of the taxpayer. The account trustee must be a financial institution, *other than an investment adviser*, as defined in 15-62-103, supervised by the United States or by the state of Montana. The trust must be created by written instrument.

(2) The trustee may not accept any deposit for any tax year in excess of the amount allowed as a deduction under 15-30-603.

(3) The trustee shall report to the department if a portion of a deposit is distributed within 6 months of the date of deposit.

(4) The assets of the trust must consist entirely of cash or of obligations that have adequate stated interest and that pay the interest at least annually.

(5) All income of the trust must be distributed currently to the grantor.

(6) The assets of the trust may not be commingled with other property except in a common trust fund or common investment fund. (Terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)"

Section 2. Section 15-62-103, MCA, is amended to read:

"15-62-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Account" means an individual trust account or savings account established under this chapter.

(2) "Account owner" means the person designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the board of regents of higher education established by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) "Committee" means the family education savings program oversight committee established in 20-25-901.

(5) "Designated beneficiary" means, with respect to an account, the person designated at the time that the account is opened as the person whose higher education expenses are expected to be paid from the account or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated beneficiary.

(6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, ~~mutual fund~~ *investment adviser*, or other similar entity that is authorized to do business in this state.

(7) "Higher education institution" means an eligible educational institution as defined in section 529(e)(5) of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

(8) "Investment products" means, without limitation, certificates of deposit, savings accounts paying fixed or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

~~(8)~~*(9)* "Member of the family" means, with respect to a designated beneficiary, a member of the family of the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

~~(9)~~*(10)* "Nonqualified withdrawal" means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary described in 15-62-202.

~~(10)~~*(11)* "Program" means the family education savings program established pursuant to 15-62-201. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

~~(11)~~*(12)* "Qualified higher education expenses" means qualified higher education expenses as defined in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

~~(12)~~*(13)* "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account."

Section 3. Section 15-62-201, MCA, is amended to read:

"15-62-201. Program requirements — application — establishment of account — qualified and nonqualified withdrawal — penalties. (1) A person who wishes to deposit money into an account to pay the qualified higher education expenses of a designated beneficiary shall:

(a) complete an application on the form prescribed by the board that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902; and

(v) any other information required by the board;

(b) pay the one-time application fee established by the board;

(c) make the minimum contribution required by the board or by opening an account; and

(d) designate the type of account to be opened if more than one type of account is offered.

(2) A person shall make contributions to an opened account in cash.

(3) An account owner may withdraw all or part of the balance from an account under rules prescribed by the board. ~~to enable~~ *The rules must be used to help* the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal *to the extent that the board concludes that it is necessary for the board or program manager to make that determination*. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(b) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If ~~a~~ *the board determines that it is required to impose a penalty on* nonqualified ~~withdrawal is made from an account,~~ *withdrawals for the program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in* an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with

section 529 of the Internal Revenue Code, 26 U.S.C. 529~~.~~. *The penalty* must be withheld ~~as a penalty~~ and paid to the board for use in operating and marketing the program and for state student financial aid.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program *or a qualified tuition program* under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program *or qualified tuition program* under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty ~~amount~~ *imposed under subsection (4)* is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

(a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal and state income tax return for the taxable year of the withdrawal; or

(b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for federal and state income tax returns, including any authorized extensions.

(8) Each account must be maintained separately from each other account under the program.

(9) Separate records and accounting must be maintained for each account for each designated beneficiary.

(10) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account and may not pledge the interest of an account or use an interest in an account as security for a loan.

(11) If, *pursuant to 15-62-203(10),* the board terminates the authority of a financial institution to ~~hold accounts~~ *serve as program manager* and accounts *held by or through the program manager* must be moved from that financial institution to another financial institution, the board shall select the financial institution ~~and type of investment~~ to which ~~the balance of the account is~~ *the accounts are to be* moved. *If as a result of the change, the investment products in which the accounts are invested must be changed, the board shall select new investment products for the accounts* unless the *account owner is permitted under the applicable rules of the* internal revenue service ~~provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a~~

~~qualified state tuition plan~~ *to select new investments for the account without violating rules prohibiting investment direction*.

(12) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(13) The financial institution shall provide statements to each account owner at least once each year within 31 days after the 12-month period to which they relate. The statement must identify the contributions made during a preceding 12-month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period, and any other matters that the board requires be reported to the account owner.

(14) Statements and information returns relating to accounts must be prepared and filed to the extent required by federal or state tax law or by administrative rule.

(15) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened."

Section 4. Section 15-62-203, MCA, is amended to read:

"15-62-203. Selection of financial institution as ~~account depository and~~ *program* manager — contract — termination. (1) The board shall implement the program through the use of one or more financial institutions to act as the ~~depository and~~ *program* manager. Under the program, a person may establish accounts at *the location of* ~~the depository~~ *or through the program manager. Accounts may be invested in one or more investment products approved by the board.*

(2) The committee shall solicit proposals from financial institutions to act as ~~the depositories and~~ managers of the program. Financial institutions that submit proposals shall describe the ~~financial instruments~~ *investment products* that ~~will be held in accounts~~ *they propose to offer through the program*.

(3) On the recommendation of the committee, the board shall select as program ~~depositories and~~ managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and to this state, of:

(a) financial stability and integrity;

(b) the safety of the investment ~~instruments~~ *products* being offered, taking into account any insurance provided with respect to these ~~instruments~~ *products*;

(c) the ability of the investment ~~instruments~~ *products* to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;

(f) the fees, if any, proposed to be charged to persons for maintaining accounts;

(g) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and

(h) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the board by the account owner to cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as ~~depositories and~~ program managers.

(5) The ~~committee~~ *board* may select more than one financial institution to serve as ~~depository and~~ program manager. The ~~committee~~ *board* may select more than one kind of investment ~~instrument~~ *product* to be offered through the program. Any decision on the use of multiple financial institutions or multiple investment ~~instruments~~ *products* must take into account:

(a) the requirements for qualifying as a qualified state tuition program *or qualified tuition program* under section 529 of the Internal Revenue Code, ~~(~~26 U.S.C. 529~~)~~;

(b) differing needs of contributors regarding risk and potential return of investment instruments; and

(c) administrative costs and burdens that may be imposed as the result of the decision.

(6) A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of this chapter to manage the program so that it is treated as a qualified state tuition ~~plan~~ *program or qualified tuition program* under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by 15-62-201(12) through (14) or file these statements on behalf of the board;

(c) compile and total information contained in statements required to be prepared under 15-62-201(12) through (14) and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with rules adopted by the board pursuant to 20-25-902 *and to comply with any state or federal tax reporting requirements*;

(e) provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the board, its contractor, or the state agency

responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

(f) hold all accounts in trust for the benefit of this state and the account owner.

(7) A person may not circulate any description of the program, whether in writing or through the use of any media, unless the board or its designee first approves the description.

(8) A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(9) If a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) accounts previously established ~~and held in investment instruments at the financial institution~~ may not be terminated;

(b) additional contributions may be made to the accounts in existence at the time of nonrenewal of a contract; ~~and~~

(c) new accounts may not be placed with that financial institution unless a new contract is executed*; and*

(d) except as provided in subsection (10), accounts under the supervision of the program manager must continue to be invested in the financial products in which they were invested prior to the nonrenewal.

(10) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment ~~instruments~~ *products* as similar as possible to the original investments."

Section 5. Section 15-62-206, MCA, is amended to read:

"15-62-206. Limitations. (1) This chapter may not be construed to:

(a) give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) guarantee that a designated beneficiary will be admitted to a higher education institution or be allowed to continue enrollment at or graduate from a higher education institution located in this state after admission;

(c) establish state residency for a person merely because the person is a designated beneficiary; or

(d) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) This chapter does not establish any obligation of this state or any agency or instrumentality of the state to guarantee for the benefit of any account owner, contributor to an account, or designated beneficiary:

(a) the return of any amounts contributed to an account;

(b) the rate of interest or other return on any account; or

(c) the payment of interest or other return on any account.

(3) Under rules adopted by the board, each contract, application, ~~deposit slip, or~~ *offering or disclosure document, and any* other *type of* document *identified by the board* that may be used in connection with a contribution to an account must clearly indicate that the account is not insured by the state and that the principal deposited or the investment return is not guaranteed by the state."

Section 6. Section 15-62-207, MCA, is amended to read:

"15-62-207. Deductions for contributions. An individual who contributes to ~~an account~~ *one or more accounts* in a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111(8), by the *total* amount of the ~~contribution~~ *contributions*, but not more than $3,000. The contribution must be made to an account owned by the contributor, the contributor's spouse, *or* the contributor's child~~,~~ or ~~the contributor's~~ stepchild if the *contributor's child or* stepchild is a Montana resident."

Section 7. Section 20-25-901, MCA, is amended to read:

"20-25-901. Family education savings program oversight committee — membership — powers and duties. (1) There is ~~created~~ a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms. The members must include:

(a) the commissioner of insurance or the commissioner's designee;

(b) the state treasurer or the state treasurer's designee;

(c) the presiding officer of the board or the presiding officer's designee; and

(d) four members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

(3) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(4) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the ~~depositories and~~ managers of family education savings accounts pursuant to 15-62-201; and

(b) may submit proposed policies to the board to assist in the implementation and administration of Title 15, chapter 62.

(6) The committee is allocated to the board for administrative purposes only, as prescribed in 2-15-121.

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in 15-62-103 apply to this section."

Section 8. Section 20-25-902, MCA, is amended to read:

"20-25-902. Board — powers and duties. (1) The board shall:

(a) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;

(b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;

(c) make changes to the program as required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

(d) charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;

(e) select the financial institution or institutions to act as the ~~depository and~~ manager of the program pursuant to 15-62-203;

(f) on the recommendation of the committee, adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules must address the following:

(i) procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(ii) the establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(iii) requirements that persons who contribute to an account certify that to the best of their knowledge, the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529, for the designated beneficiary does not exceed the lesser of:

(A) a maximum college savings amount established by the board; or

(B) the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(iv) requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section; and

(g) adopt procedures as necessary to implement Title 15, chapter 62.

(2) The definitions in 15-62-103 apply to this section."

Ap proved May 5, 2003

CHAPTER NO. 567

[HB 564]

AN ACT CREATING THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT TO ASSIST COMMUNITY ECONOMIC DEVELOPMENT BY PROVIDING TRAINING FOR EXISTING WORKERS AND INCENTIVES FOR BUSINESSES TO LOCATE AND EXPAND WITHIN THE STATE THROUGH GOVERNMENT-ASSISTED NEW JOBS TRAINING; PROVIDING CRITERIA FOR GRANT ELIGIBILITY; PROVIDING TEMPORARY FUNDING FOR WORKFORCE TRAINING GRANTS THROUGH BOARD OF INVESTMENT LOANS, WHICH WILL BE REPAID THROUGH A NEW JOBS CREDIT THAT IS GENERATED FROM THE CREATION OF PERMANENT, FULL-TIME JOBS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 7] may be cited as the "Primary Sector Business Workforce Training Act".

Section 2. Purpose. (1) The Primary Sector Business Workforce Training Act is created to meet the training needs of existing industries in the state and to provide incentives to businesses to locate and expand within the state through government-assisted new jobs training.

(2) It is the intent of the legislature to provide training funds for businesses to train and educate employees, which will result in the production of high-wage and high-skilled jobs that will increase the earning potential and employment opportunities for Montana employees and enhance the state's economy.

Section 3. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) "Average weekly wage" has the meaning provided in 39-71-116.

(2) "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

(3) "Eligible training provider list" means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in [section 5].

(4) "Employee" means the individual employed in a new job.

(5) "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

(6) "Full-time job" means a predominantly year-round position requiring an average of 35 hours of work each week.

(7) (a) "New job" means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

(8) "New jobs credit" means the credit provided in [section 6].

(9) "Office of economic development" means the office of economic development established in 2-15-218.

(10) "Primary sector business" means an employer engaged in expanding operations within Montana, which through the employment of knowledge or

labor, adds value to a product, process, or export service that results in the creation of new wealth, and for which at least 50% of the sales of the employer occur outside of Montana or the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

(11) "Primary sector business training program" or "program" means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

(12) (a) "Program costs" means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of purchase of equipment to be owned or utilized by the eligible training provider.

(13) "Program services" means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers.

Section 4. Grant review committee — appointment — powers and duties — rulemaking authority. (1) There is a seven-member loan review committee, as follows:

(a) two representatives from the private sector representing economic development, appointed by the governor;

(b) two representatives from the business community, one appointed by the president of the senate and one appointed by the speaker of the house, one of whom serves on a local workforce investment board;

(c) one representative from the governor's office, appointed by the governor;

(d) one representative from the department of revenue, appointed by the governor; and

(e) one representative from the department of labor and industry, appointed by the governor.

(2) The committee shall award training grants to a primary sector business qualified under [section 5] after a determination that the primary sector business:

(a) has prospects for achieving commercial success and for creating new jobs in the state;

(b) has prospects for collaboration between the public and private sectors of the state's economy;

(c) has potential for commercial success related to the specific product, process, or business development methodology proposed;

(d) can provide matching funds; and

(e) can be reasonably expected to provide an economic return within a reasonable period of time.

(3) A committee member may not personally apply for or receive a primary sector business workforce training grant. If an organization with which a member is affiliated applies for a grant, the member shall disclose the nature of the affiliation and, if the committee member is a board member or officer of the organization, may not participate in the decision of the committee regarding the grant application.

(4) The committee shall adopt rules to:

(a) provide for grant application procedures;

(b) develop procedures for awarding grants pursuant to the criteria provided in [section 5]; and

(c) develop independent review and audit procedures to ensure that grants made are used for the purposes identified in the grant contracts.

(5) All decisions of the committee are final and are not subject to the contested case provisions of Title 2, chapter 4.

(6) The committee is allocated to the office of economic development for administrative purposes only as provided in 2-15-121.

Section 5. Primary sector business workforce training grants — eligibility. (1) The grant review committee provided for in [section 4] may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least $1 for every $3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed $5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of Montana's current average weekly wage, the current average weekly wage of the county in which the employees are to be principally employed, or for jobs that will be principally located on a reservation, the current average weekly wage of the reservation.

(b) The office of economic development may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section may not exceed an amount greater than the present value of expected incremental tax receipts, as described in [section 6], that are expected over the 10-year period immediately following the grant award. The committee shall consider the loan rate established by the board of investments pursuant to the Municipal Finance Consolidation Act of 1983 that is in effect at the time of the grant and the state personal income tax rates in effect or those rates scheduled to take effect in calculating the maximum grant amount.

(5) A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy. Funding ceilings will be determined by the availability of funding, the cost for each job, and the quality of the primary sector business proposal.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the committee to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the committee determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the committee, the committee may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds to the primary sector business.

(8) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the full amount of the grant will be reimbursed in the event that the primary sector business ceases operation within 12 months from the time that the grant is awarded;

(ii) requiring the employer receiving the grant to repay any shortfall in the personal income tax revenues to the state, as calculated in [section 6], that are the result of the company failing to meet the number of jobs or pay level of those jobs described in the final grant application. A shortfall in any fiscal year must be accessed against and paid by the company in the next fiscal year.

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive.

Section 6. New jobs credit — loan repayment. A grant made under [section 5] for program costs must be repaid by a new jobs credit, which must be calculated and paid as follows:

(1) New jobs credit must be based on the gross wages paid for new jobs created.

(2) Each employer receiving a grant under the program shall report the gross wages paid for each new job for which training grants under the program were received. Gross wages must be reported for the 12-month period following a grant award and for each subsequent 12-month period until the principal on the loan, issued under [section 7] and used to fund the grant award, is repaid.

(3) The employer shall provide any additional information required by the department of revenue to calculate the new jobs credit.

(4) The department of revenue shall calculate the income tax receipts to the state based on the gross wages paid by the employer. The department of revenue may use a state average effective income tax rate, by income bracket, to calculate income tax receipts to the state from the program.

(5) The department of revenue shall transfer the amount of the new jobs credits from the general fund to the office of economic development, to be used for repayment of principal, interest, and administrative costs on loans issued under [section 7]. The office of economic development shall account separately for each grant award and any new jobs credit associated with that grant. Funds

transferred for a new jobs credit may be used only for repayment of principal, interest, and administrative costs for the loan that funded the grant with which the new jobs credit is associated and for the labor supply studies authorized in subsection (6). If funds transferred for a new jobs credit exceed the amount required for repayment of principal, interest, and administrative costs on the loan that funded the grant with which the new jobs credit is associated and the labor supply studies authorized in subsection (6), all remaining funds must be used for early repayment of principal on the loan associated with the new jobs credit. Transfers from the department of revenue for a new jobs credit must cease once the principal and interest on the loan used to fund the grant associated with that new jobs credit has been repaid.

(6) The office of economic development shall, in each fiscal year, retain 5% of the total of all transfer payments from the department of revenue to the office of economic development, as provided for in subsection (5), that occur in that fiscal year. These funds must be used to assist the department of labor and industry in analyzing data and reporting on the available labor supply in Montana's rural, reservation, and urban labor markets.

(7) The department of revenue may adopt rules necessary to implement this section, including but not limited to:

(a) the development of application procedures and forms; and

(b) requirements for submission of information necessary to process the tax credit.

Section 7. Board of investment loans. The office of economic development may obtain a maximum of $10 million in outstanding loans from the board of investments issued pursuant to the Municipal Finance Consolidation Act of 1983 authorized in Title 17, chapter 5, part 16, to provide financial assistance for primary sector business workforce training grants authorized by the loan committee pursuant to criteria outlined in [section 5].

Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 7].

Section 9. Effective date — applicability. [This act] is effective on passage and approval and applies to grants issued on or after [the effective date of this act].

Section 10. Termination. [This act] terminates June 30, 2007.

Ap proved May 5, 2003

CHAPTER NO. 568

[HB 608]

AN ACT RELATING TO THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE MONTANA INDIAN TRIBES AND THE STATE OF MONTANA; PROVIDING FOR TRIBAL CONSULTATION IN THE DEVELOPMENT OF STATE AGENCY POLICIES THAT DIRECTLY AFFECT INDIAN TRIBES; AUTHORIZING CERTAIN STATE EMPLOYEES TO RECEIVE ANNUAL TRAINING; PROVIDING FOR ANNUAL MEETINGS BETWEEN STATE AND TRIBAL OFFICIALS; AND REQUIRING AN ANNUAL REPORT BY A STATE AGENCY.

WHEREAS, the Legislature recognizes the right of tribes to self-government; and

WHEREAS, the Legislature supports tribal sovereignty and self-determination; and

WHEREAS, the Legislature recognizes the fundamental principle and integrity of the government-to-government relationship between the State of Montana and the Indian Nations of Montana; and

WHEREAS, the Legislature supports strengthening communications and building collaborative relationships that will benefit both the Indian Nations and the State of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "State agency" means a department, board, or commission of the executive branch of state government.

(2) "Tribal government" means the officially recognized government of any tribe or nation.

(3) "Tribal officials" means the elected or appointed officials of a tribal government.

(4) "Tribe" means an Indian tribe that is recognized by federal law or formally acknowledged by the state.

Section 2. Guiding principles. In formulating or implementing policies or administrative rules that have direct tribal implications, a state agency should consider the following principles:

(1) a commitment to cooperation and collaboration;

(2) mutual understanding and respect;

(3) regular and early communication;

(4) a process of accountability for addressing issues; and

(5) preservation of the tribal-state relationship.

Section 3. Training and consultation. (1) At least once a year, the department of justice and a trainer selected by the tribal governments shall provide training in Helena or a site mutually agreed upon to state agency managers and key employees who have regular communication with tribes on the legal status of tribes, the legal rights of tribal members, and social, economic, and cultural issues of concern to tribes.

(2) At least annually, the governor may convene in Helena a full-day, working meeting at which the governor, representatives of state agencies, and tribal officials, including chiefs and tribal presiding officers, shall:

(a) review the policies that directly impact tribal government and tribal populations that are proposed for adoption by the state agencies and recommend changes to the policies; and

(b) discuss issues of concern to the state and the tribes and formulate solutions.

(3) By December 15 of each year, a state agency shall submit a report to the governor and to each tribal government on the activities of the state agency relating to tribal government and tribal populations. The report must include:

(a) any policy that the state agency adopted under subsection (2)(a);

(b) the name of the individual within the state agency who is responsible for implementing the policy;

(c) the process that the state agency has established to identify the programs of the state agency that affect tribes;

(d) the efforts of the state agency to promote communication and the government-to-government relationship between the state agency and the tribes;

(e) the efforts of the state agency to ensure tribal consultation and the use of American Indian data in the development and implementation of agency programs that directly affect tribes; and

(f) a joint description by tribal program staff and state staff of the training required under subsection (1).

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [sections 1 through 3].

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Ap proved May 5, 2003

CHAPTER NO. 569

[HB 609]

AN ACT HONORING THE SACRIFICE, PATRIOTISM, AND LONG TRADITION OF MILITARY PARTICIPATION BY MONTANA'S AMERICAN INDIAN CITIZENS BY REQUIRING SPECIFIC RECOGNITION OF MONTANA'S PAST, PRESENT, AND FUTURE AMERICAN INDIAN WAR VETERANS IN THE CONSTRUCTION OF THE AMERICAN INDIAN MONUMENT AND TRIBAL FLAG CIRCLE; AMENDING SECTION 22-2-601, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

WHEREAS, American Indians have participated with distinction in United States military actions for more than 200 years and, according to the United States Department of Defense, as an ethnic group, have the highest record of service per capita; and

WHEREAS, prior to being granted official United States citizenship in 1924, American Indians voluntarily participated in the War of 1812, fought as auxiliary troops for both the North and South in the Civil War, served as Indian scouts for the United States Army in the late 1880s, rode with Teddy Roosevelt after being recruited to become members of the Rough Riders during the Spanish-American War in 1898, accompanied General John J. Pershing's expedition in pursuit of Pancho Villa in 1916, and volunteered in numbers exceeding 12,000 to fight in World War I; and

WHEREAS, it is estimated by the United States Department of Defense that more than 44,000 American Indians, out of a total population of 350,000, served with distinction in World War II between 1941 and 1945; and

WHEREAS, more than 42,000 American Indians, 90% of whom were volunteers, fought in Vietnam and saw combat duty in Grenada, Panama, Somalia, and the Persian Gulf; and

WHEREAS, according to the 2002 United States census, 12% of Montana's total population of American Indians are military veterans who have served with distinction in every military campaign, with many receiving the Purple Heart, the Silver Star, and other campaign and commendation medals for their valor; and

WHEREAS, a tribute to American Indians from throughout Montana would highlight the contributions of individual soldiers, including a great-grandson of Salish Chief Charlo, Private First Class Louis Charles Charlo, who died on Iwo Jima after being one of the original Marines to plant a flag on Mount Suribachi, which action later was memorialized and serves as the basis for the Iwo Jima U.S. Marine Corps Memorial in Arlington, Virginia; and

WHEREAS, it is fitting that the Legislature honor the sacrifice, patriotism, and long tradition of military participation by its American Indian citizens by specifically recognizing past, present, and future American Indian veterans in the construction of the American Indian monument and Montana tribal flag circle.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-2-601, MCA, is amended to read:

"22-2-601. American Indian monument and tribal flag circle — competition for design. (1) The state of Montana shall erect on the grounds of the capitol complex a monument to American Indians and a Montana tribal flag circle in recognition of American Indians' contributions to this state and nation, *including specific recognition of the contributions and sacrifices made by Montana's past, present, and future American Indian war veterans.*

(2) The Montana arts council shall advertise and conduct a competition among all Montanans for a design for the monument and flag circle."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective on the date that the state treasurer certifies to the governor that sufficient private funds have been received to finance the construction of the monument and tribal flag circle. The state treasurer shall provide a copy of the certification to the code commissioner.

Ap proved May 5, 2003

CHAPTER NO. 570

[HB 642]

AN ACT PROVIDING THAT STATE AND LOCAL TAXES AND FEES PAID BY A PUBLIC UTILITY MAY BE SEPARATELY DISCLOSED IN A PUBLIC UTILITY CUSTOMER'S BILL; REQUIRING AN AUTOMATIC RATE ADJUSTMENT TO REFLECT STATE AND LOCAL TAXES AND FEES PAID BY A PUBLIC UTILITY; AMENDING SECTIONS 69-3-302 AND 69-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disclosure of taxes and fees paid by customers of a public utility — automatic rate adjustment and tracking for taxes and fees. (1) A public utility may separately disclose in a customer's bill the amount of state and local taxes and fees assessed against the public utility that the customer is paying.

(2) (a) (i) The commission shall allow a public utility to file rate schedules containing provisions for the automatic adjustment and tracking of Montana state and local taxes and fees, except state income tax, paid by the public utility. The resulting rate schedule changes must include:

(A) adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees;

(B) retroactive tax adjustments; and

(C) adjustments related to the resolution of property taxes paid under protest.

(ii) The rate schedules must include provisions for annual rate adjustments, including both tax increases and decreases.

(b) The amended rates must automatically go into effect on January 1 following the date of change in taxes paid on an interim basis, subject to any adjustments determined in subsection (2)(c).

(c) The amended rate schedule must be filed with the commission on or before the effective date of the change in taxes paid, and if the commission determines that the revised rate schedule is in error, the commission may, within 45 days of receipt of the revised rate schedule, ask for comment and order the public utility to address any errors or omissions including, if necessary, any refunds due customers.

(d) Failure of the commission to issue an order pursuant to subsection (2)(c) is considered approval on the part of the commission.

(e) A public utility may challenge an order issued by the commission under subsection (2)(c) in accordance with the provisions of 69-3-401 through 69-3-405.

Section 2. Section 69-3-302, MCA, is amended to read:

"69-3-302. Changes in schedules. (1) ~~No change shall~~ *Except as provided in [section 1], a change may not* be made in any schedule, including schedules of joint rates, except as approved by the commission, upon the passage of 9 months, or by operation of 69-3-907(1). If the 9-month time period expires prior to commission approval of a schedule, a utility may waive the time period.

(2) Notwithstanding any provision of this title to the contrary, *other than rate adjustments made pursuant to [section 1],* ~~and notwithstanding the existence of and authorization for the office of consumer counsel,~~ the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to 69-3-301 ~~shall~~ *must* become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever ~~shall occur~~ *occurs* first, unless the utility waives the 9-month time period. However, if the rates, tolls, or charges become effective because of the passage of 9 ~~months' time~~ *months,* the ~~revenues~~ *revenue* collected ~~thereunder shall be~~ *is* subject to rebate, plus interest

at ~~a per annum~~ *an annual* rate determined by the commission, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce ~~revenues which are~~ *revenue that is* less than ~~those~~ *that* collected under the filed schedules. In the case of an investor-owned utility, the interest rate set by the commission may not exceed the cost of equity capital as last determined by the commission.

(3) The commission may prescribe rules necessary to effectively administer this section."

Section 3. Section 69-3-303, MCA, is amended to read:

"69-3-303. Notice and hearing on proposed change. (1) ~~Before it~~ *Except as provided in [section 1], before the commission* may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area or before any change may become effective due to the passage of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice ~~shall~~ *must* announce a hearing on the proposed change and ~~shall~~ *must* inform interested persons *as to* how they may petition the commission to become parties to the hearing.

(2) The commission shall proceed to conduct the hearing under the Montana Administrative Procedure Act. The final decision of the commission in any matter decided after a hearing conducted pursuant to this section ~~shall~~ *must* conform to the requirements of a decision in a contested case under the Montana Administrative Procedure Act.

(3) The consumer counsel may ~~in his discretion~~ petition to become a party to the hearing."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 3, and the provisions of Title 69, chapter 3, part 3, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 571

[HB 680]

AN ACT PROVIDING STANDARDS FOR DOCUMENTS THAT ARE RECORDED AND FILED WITH THE OFFICE OF THE CLERK AND RECORDER; ESTABLISHING FEES FOR RECORDING CERTAIN DOCUMENTS; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Standards for recorded documents. (1) Unless accompanied by the appropriate fee required in [section 2], a document submitted for recording that conveys an interest in real property must:

(a) be legibly printed or typed in black ink in at least 10-point typeface, not including the signature, on white paper of not less than 20-pound weight, each

page of which must be separated and have dimensions of either 8 1/2 x 11 inches or 8 1/2 x 14 inches;

(b) provide the names of the parties to the conveyance on the first or second page of any document with more than one page;

(c) provide a description of the property;

(d) except as provided in subsection (1)(e) and except for page numbers or other designations, have margins that are clear of all markings in the following dimensions:

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages; and

(ii) at least 1 inch on the sides and bottom of each page; and

(e) include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page of each document submitted and may include legibly printed or typed transactional information.

(2) Unless accompanied by the fee required in [section 2], all other documents submitted for recording must meet the requirements of subsections (1)(a), (1)(d), and (1)(e).

(3) (a) Except as provided in subsection (3)(b), only documents submitted for recording and filing that conform to the provisions of subsection (1) or (2) are considered standard documents for the purposes of [section 2].

(b) Documents that are acknowledged as having been executed prior to [the effective date of this act] must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of subsection (1) or (2).

Section 2. Fees for recording standard documents. (1) Except as provided in 7-4-2631 and subsection (2) of this section, the fee for recording a standard document that meets the requirements of [section 1] is $6 for each page or fraction of a page.

(2) The fee for recording a document that does not meet the requirements of [section 1] is $10 for each page or fraction of a page for the first five pages or fractions of the pages and $6 for each subsequent page.

(3) (a) Of the fees collected under subsection (1), $1 must be deposited in the records preservation fund, provided for in 7-4-2635, and the remainder must be deposited as provided for in 7-4-2511.

(b) Of the fees collected under subsection (2) for nonstandard documents, each $6 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining $4 of each $10 charge for a page or fraction of a page must be deposited in the records preservation fund, provided for in 7-4-2635, and, notwithstanding 7-4-2635(3), each $4 amount from a $10 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents.

Section 3. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) Except as provided in 7-4-2632 *and [section 2]*, the county clerks shall charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $5;

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

(m) for each certified copy of a birth certificate, $5, and for each certified copy of a death certificate, $3;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service~~.~~.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 7, chapter 4, part 26, and the provisions of Title 7, chapter 4, part 26, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective July 1, 2005.

Ap proved May 5, 2003

CHAPTER NO. 572

[HB 689]

AN ACT REVISING THE LAWS RELATING TO LOBBYING REGISTRATION AND REPORTING BY PRINCIPALS; REVISING DEFINITIONS; REVISING REPORTING REQUIREMENTS; PROVIDING FOR ADJUSTMENT OF REPORTING THRESHOLD AMOUNTS FOR INFLATION; AMENDING SECTIONS 5-7-102, 5-7-103, 5-7-105, AND 5-7-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-102, MCA, is amended to read:

"5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Business" means:

(a) a holding or interest whose fair market value is greater than $1,000, in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(2) "Commissioner" means the commissioner of political practices.

(3) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(4) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" also applies to the offices.

(5) "Individual" means a human being.

(6) "Lobbying" means:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature by a person other than a member of the legislature or a public official; and

(b) the practice of promoting or opposing official action by any public official.

~~(7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an individual is reimbursed only for his personal living and travel expenses, which together are less than $1,000 per calendar year, that individual is not considered to be lobbying for hire.~~

~~(8)~~*(7)* (a) "Lobbyist" means a person who engages in the practice of lobbying ~~for hire~~.

(b) Lobbyist does not include:

(i) an individual acting solely on ~~his~~ *the individual's* own behalf; ~~or~~

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of ~~his~~ *the lobbyist's* principal*; or*

(iii) an individual who receives payments from one or more persons that total less than the amount specified under [section 5] in a calendar year.

(c) Nothing in this ~~section~~ *chapter* deprives an individual *who is* not ~~lobbying for hire~~ *a lobbyist* of the constitutional right to communicate with public officials.

~~(9)~~*(8) (a)* "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value*:*

(i) to a lobbyist to influence legislation or official action by an elected local official or a public official;

(ii) directly or indirectly~~.~~

~~(10) "Payment to influence official action" means any of the following types of payment:~~

~~(a) direct or indirect payment~~ to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for *lobbying* expense~~s, excluding personal living expenses~~; or

~~(b)~~*(iii)* ~~payment~~ in support of or assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(b) The term does not include payments or reimbursements for:

(i) personal and necessary living expenses; or

(ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

~~(11)~~*(9)* "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

~~(12)~~*(10)* "Principal" means a person who employs a lobbyist *or a person required to report pursuant to 5-7-208.*

~~(13)~~*(11)* "Public official" means an individual, elected or appointed, acting in ~~his~~ *an* official capacity for ~~the~~ state government. The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

~~(14)~~*(12)* "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official for the purpose of obtaining employment;

(c) attempting to influence the action of a public official on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

Section 2. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses — fees — eligibility — waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is $150 for each lobbyist *except as provided in subsection (5) or unless the fee is waived for hardship reasons under this subsection*. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within ~~10~~ *10 business* days of the date of the filing of the application, *excluding the date on which the application is filed.*

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) $50 in the general fund; and

(b) $100 in the state special revenue account provided for in 5-11-1112.

(5) A lobbyist who receives payments from one or more principals that total less than the amount specified under [section 5] in a calendar year is not required to pay the license fee or file an application form as provided for in subsection (1).

~~(5)~~*(6)* The commissioner may adopt rules to implement the waiver provisions of ~~subsection (1)~~ *subsections (1) and (5)*."

Section 3. Section 5-7-105, MCA, is amended to read:

"5-7-105. Suspension of lobbying privileges. ~~No~~ *A* lobbyist whose license has been suspended and ~~no~~ *a* person who has been adjudged guilty of a violation of any provision of this chapter may *not* engage in lobbying ~~for hire~~ until that person has been reinstated to the practice and duly licensed."

Section 4. Section 5-7-208, MCA, is amended to read:

"5-7-208. Principals to file report. (1) A principal subject to this chapter shall file with the commissioner a report of payments made for the purpose of lobbying. *A principal is subject to the reporting requirements of this section only if the principal makes payments exceeding the amount specified under [section 5] to one or more lobbyists during a calendar year.*

(2) If payments are made solely to influence legislative action, a report must be made:

(a) by February 15th of any year the legislature is in session and must include all payments made in that calendar year prior to February 1;

(b) by the 15th day of the calendar month following a calendar month in which the principal spent $5,000 or more and must include all payments made during the prior calendar month; and

(c) no later than 30 days following adjournment of a legislative session and must include all payments made during the session, except as previously reported.

(3) If payments are made to influence any other official action by a public official or made to influence other action and legislative action, a report must be made:

(a) by February 15th of the calendar year following the payments and must include all payments made during the prior calendar year; and

(b) by the 15th day of the calendar month following a calendar month in which the principal spent $5,000 or more and must include all payments made during the prior calendar month.

(4) If ~~no~~ payments are *not* made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) ~~above~~, the principal shall file a report stating that fact.

(5) Each report filed under this section must:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

~~(iv) travel expenses;~~

(iv) travel expenses;

~~(v)~~*(v)* salaries and fees, including allowances, rewards, ~~and~~ *and* contingency fees;

~~(vi)~~*(vi)* entertainment, including all foods and refreshments;

~~(vii)~~*(vii)* telephone and telegraph; and

~~(viii)~~*(viii)* other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring $25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring $100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to $250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked;

(d) list each official action on which the principal or ~~his~~ *the principal's* agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action; and

(e) be kept by the commissioner for a period of 10 years."

Section 5. Payment threshold — inflation adjustment. For calendar years 2002 through 2004, the payment threshold in 5-7-102 and 5-7-208 is $2,150. The commissioner shall adjust the threshold amount following a general election by multiplying the threshold amount valid for the year in which the general election was held by an inflation factor, adopted by the commissioner by rule. The rule must be written to reflect the annual average change in the consumer price index from the prior year to the year in which the general election is held. The resulting figure must be rounded up or down to the nearest $50 increment. The commissioner shall adopt the adjusted amount by rule.

Section 6. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 7. Coordination. If [this act] and Senate Bill No. 7 are both passed and approved:

(1) and amend 5-7-102, then 5-7-102(13)(c) of Senate Bill No. 7 must read:

"Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials."

(2) and amend 5-7-103, then the amendments to 5-7-103 contained in Senate Bill No. 7 are void.

Section 8. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 5, chapter 7, part 1, and the provisions of Title 5, chapter 7, part 1, apply to [section 5].

Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. Effective date. [This act] is effective on passage and approval.

Section 11. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all occurrences concerning filing or reporting on or after September 1, 2002. This section may not be construed to require a refund of any fee paid on or after September 1, 2002.

Ap proved May 5, 2003

CHAPTER NO. 573

[HB 693]

AN ACT PROVIDING THAT CHILD SUPPORT OBLIGATIONS DETERMINED PURSUANT TO ADMINISTRATIVE PROCEDURE ARE EFFECTIVE IMMEDIATELY UPON SERVICE OF A NOTICE OF FINANCIAL RESPONSIBILITY ON THE PARENT OR PARENTS AND THAT FINAL ORDERS ARE RETROACTIVE TO THAT DATE; PROVIDING THAT A NOTICE OF FINANCIAL RESPONSIBILITY MUST INCLUDE A STATEMENT REGARDING ITS IMMEDIATE EFFECTIVENESS; AMENDING SECTION 40-5-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. The support order must include a medical support order as required by 40-5-208.

(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child;

(c) that the monthly support obligation is effective on the date of service of the notice, unless an objection is made and a hearing is requested, and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;

~~(c)~~*(d)* that in addition to child support, the parent or parents may be ordered to provide for the child's medical support needs;

~~(d)~~*(e)* that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

~~(e)~~*(f)* that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

~~(f)~~*(g)* that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;

~~(g)~~*(h)* that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

~~(h)~~*(i)* that the parties are entitled to a fair hearing under 40-5-226.

(3) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.

(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or

(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:

(i) within 20 days from the date of service of a notice of financial responsibility; and

(ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support and to provide for the child's medical needs as stated in the notice. The child support obligation must be the

amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.

(10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a support obligation for another child of the same parents.

(11) A child support and medical support order under subsection (1) is effective as of the date of service of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to the department for the enforcement of child support obligations. A final order is retroactive to the date of service of the notice of financial responsibility as provided in this subsection, except that the final order may also determine child support for a prior period as provided in 40-5-226(3).

~~(11)~~*(12)* A child support and medical support order under subsection (1) continues until the child reaches 18 years of age or until the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 574

[HB 720]

AN ACT REVISING THE LAWS GOVERNING WATER USE PERMITS AND CHANGES IN APPROPRIATION RIGHTS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES REGARDING DETERMINATION OF WHETHER OR NOT AN APPLICATION FOR A WATER USE PERMIT AND AN OBJECTION TO AN APPLICATION FOR A WATER USE PERMIT ARE CORRECT AND COMPLETE; PROVIDING THAT AN APPLICATION MUST BE TREATED AS IF IT IS CORRECT AND COMPLETE IF DEFICIENCIES ARE NOT IDENTIFIED WITHIN 180 DAYS; AND AMENDING SECTIONS 85-2-302 AND 85-2-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. *(1)* Except as provided in 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable

to issuance of a permit under this part. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) The applicant shall submit a correct and complete application. *The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.*

(5) The department shall notify the applicant of any defects in an application *within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application*.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. *In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored.* The department shall notify the objector of any defects in an objection. An objection not corrected or

completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under ~~subsection (1), (2), or (4)~~ *this section and rules of the department*."

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Ap proved May 5, 2003

CHAPTER NO. 575

[HB 727]

AN ACT PROVIDING FOR THE DISCONTINUANCE OF THE EASTMONT HUMAN SERVICES CENTER; PROVIDING FOR THE TRANSFER OF THE FACILITY TO THE DEPARTMENT OF CORRECTIONS; PROVIDING A TIMEFRAME FOR THE CLOSURE AND TRANSFER; AMENDING SECTIONS 53-1-402, 53-1-602, AND 53-20-102, MCA; REPEALING SECTIONS 53-20-501 AND 53-20-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Eastmont Human Services Center has provided consistent high-quality care to the residents of the Center; and

WHEREAS, the community of Glendive has continuously supported the staff and residents of the Eastmont Human Services Center; and

WHEREAS, the lack of a need to continue the use of the Eastmont Human Services Center as a residential facility for persons with developmental disabilities does not diminish the state's admiration of the dedication of the staff and the support of the community of Glendive for the Center; and

WHEREAS, section 53-1-602(2), MCA, provides that a state institution may not be moved, discontinued, or abandoned without the consent of the Legislature, this act constitutes consent for the discontinuance of the Eastmont Human Services Center.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents and financially responsible persons liable for cost of care. (1) A resident and a financially responsible person are liable to the department for the resident's cost of care as provided in this part. The cost of care includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) Montana mental health nursing care center;

~~(f) Eastmont human services center;~~ and

~~(g)~~*(f)* Montana chemical dependency treatment center.

(2) The eastern Montana veterans' home may assess charges on either a per diem and ancillary charge basis or an all-inclusive rate basis if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

(3) The Montana state hospital and the Montana mental health nursing center may determine the cost of care using an all-inclusive rate or per diem and ancillary charges if the department contracts with a private entity to operate a mental health managed care program."

Section 2. Section 53-1-602, MCA, is amended to read:

"53-1-602. Department of public health and human services. (1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital;

(ii) the Montana mental health nursing care center; and

(iii) a community services component, consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(b) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(c) *an* institutional and residential ~~components~~ *component* of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which ~~components consist~~ *component consists* of~~:~~

~~(i)~~ the Montana developmental center; and

~~(ii) the Eastmont human services center; and~~

(d) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) the Montana veterans' home; and

(ii) the eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 3. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(3) "Court" means a district court of the state of Montana.

(4) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(5) "Developmental disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that results in the person having a substantial disability.

(6) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person committed to a residential facility.

(11) "Residential facility" or "facility" means the Montana developmental center ~~and the Eastmont human services center~~.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who,

because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services."

Section 4. Transfer of property — allowed purpose. Pursuant to 53-20-505 and 77-2-302, the former Eastmont human services center at Glendive is the property of the department of corrections, and the building may be used for any purpose determined appropriate by the department. Whenever possible, the department shall employ the former employees of the Eastmont human services center in the new program established at the facility.

Section 5. Transition. The Eastmont human services center must be closed by December 31, 2003, and be transferred to the department of corrections by that date. When the department contracts for additional group homes for the developmentally disabled, the department shall give priority to providing those homes in a community in eastern Montana in which a residential facility has been closed. It is the intent of the legislature that the department of public health and human services have access to the personal services contingency funds in House Bill No. 13 in order to address any severance pay and costs for reduction in force associated with the closure of Eastmont human services center.

Section 6. Repealer. Sections 53-20-501 and 53-20-502, MCA, are repealed.

Section 7. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 4].

Section 8. Effective date. [This act] is effective July 1, 2003.

Ap proved May 5, 2003

CHAPTER NO. 576

[HB 744]

AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SEEK FEDERAL FUNDS TO OFFSET GENERAL FUND EXPENDITURES TO THE MAXIMUM EXTENT POSSIBLE; DIRECTING THE DEPARTMENT TO EVALUATE THE PROPOSED MEDICAID BLOCK GRANT AS PART OF REFINANCING ACTIVITIES AND REPORT FINDINGS AT EACH REGULAR MEETING OF THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING FOR THE USE OF FUNDING OBTAINED PURSUANT TO THE DIRECTIVE; AUTHORIZING THE DEPARTMENT TO REINSTATE SERVICES IF AUTHORIZED BY THE OFFICE OF BUDGET AND PROGRAM PLANNING; AMENDING SECTIONS 17-2-108 AND 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Refinancing by department. The department of public health and human services shall seek federal funds to offset general fund expenditures to the maximum extent possible. The cost administration and any supporting contract efforts to claim federal funds above historic levels must be funded from anticipated and realized savings from refinancing work in the department of public health and human services. To the extent that the department of public health and human services is involved in refinancing work in other

departments, the department of public health and human services shall receive a share of savings generated in those departments through work conducted by the department of public health and human services, in an amount at least equal to the cost of conducting the work.

Section 2. Evaluation of proposed medicaid block grant and acceptance of grant. (1) As part of its refinancing duties, the department of public health and human services shall evaluate the proposed medicaid block grant and report its findings with respect to the criteria in subsection (2) to the legislative finance committee at each regular meeting of the committee.

(2) The department shall use the following criteria in its evaluation of the proposed medicaid block grant compared to other medicaid funding alternatives from which the state may choose:

(a) total cost to the state over the life of the block grant and during each year of the block grant compared to the state cost of maintaining medicaid eligibility and service levels funded by the legislature during the current biennium;

(b) types of flexibility;

(c) advantages and disadvantages; and

(d) policy choices that may occur.

(3) (a) The legislative finance committee shall review and analyze the department's findings and make a recommendation to the governor and to the department with regard to acceptance or rejection of the block grant if the state is required to make a decision as to whether to accept or reject the block grant prior to the next regular convening of the legislature.

(b) The governor shall consider the recommendation of the legislative finance committee and provide a written rationale to the committee if the recommendation of the committee is not followed.

Section 3. Use of funding obtained by refinancing. (1) It is the intent of the legislature that general fund savings generated through the refinancing work described in [section 1] be applied in the following priority:

(a) the savings must be applied to fund the refinancing activities;

(b) the department of public health and human services may retain funds to maintain existing services; and

(c) the department of public health and human services may use funds to reinstate services that have been cut during the 2003 biennium.

(2) Additional funds generated through refinancing savings, beyond those used pursuant to subsection (1), revert to the general fund. Prior to reinstating services pursuant to subsection (1)(c), the department shall receive approval from the office of budget and program planning of its service reinstatement plan.

(3) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the department because of the refinancing efforts required by [section 1].

Section 4. Section 17-2-108, MCA, is amended to read:

"17-2-108. Expenditure of nongeneral fund money first. (1) Except for the exemptions applicable to the Montana historical society in 22-3-114(5), ~~and~~ the Montana state library in 22-1-226(5), *and the department of public health*

and human services in [section 3], an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) ~~The~~ *Except as provided in [section 3], the* approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease."

Section 5. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in

subsections (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature, *whether approval has been received as provided in [section 3],* and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 1, part 6, and the provisions of Title 53, chapter 1, part 6, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective July 1, 2003.

Ap proved May 5, 2003

CHAPTER NO. 577

[SB 126]

AN ACT REVISING THE GENERAL LAW RELATING TO CATEGORIES OF PROPERTY THAT ARE EXEMPT FROM PROPERTY TAXATION BY INCORPORATING CONTINGENT AMENDMENTS INTO A SINGLE VERSION OF THE SECTION; CLARIFYING THE CATEGORIES OF PROPERTY THAT ARE EXEMPT FROM PROPERTY TAXATION; PROVIDING THAT BIOLOGICAL CONTROL INSECTS ARE AN

AGRICULTURAL PRODUCT AND RECEIVE AN AGRICULTURAL PRODUCT EXEMPTION; CLARIFYING PROPERTY TAX PROVISIONS RELATING TO INSURANCE COMPANIES BY REPEALING SPECIFIC LAWS THAT ARE REDUNDANT WITH GENERAL PROPERTY TAX LAWS; AMENDING SECTIONS 15-1-101, 15-6-201, AND 15-6-207, MCA, AND SECTION 31, CHAPTER 285, LAWS OF 1999; AND REPEALING SECTIONS 15-24-601 AND 15-24-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, *biological control insects*, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(l) The term "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home, as defined in 61-1-501 and in subsection (1)(m) of this section, a housetrailer, as defined in 61-1-501, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(m) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218.

(o) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

Section 2. Section 15-6-201, MCA, is amended to read:

"15-6-201. ~~(Temporary)~~ Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) ~~the following percentage~~ *31%* of the market value of residential property as described in 15-6-134(1)(e) and (1)(f)~~:~~

~~(i) 23% for tax year 2000;~~

~~(ii) 27.5% for tax year 2001; and~~

~~(iii) 31%~~ for tax year 2002 and succeeding tax years;

(aa) ~~the following percentage~~ *13%* of the market value of commercial property as described in 15-6-134(1)(g)~~:~~

~~(i) 9% for tax year 2000;~~

~~(ii) 11% for tax year 2001; and~~

~~(iii) 13%~~ for tax year 2002 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; ~~and~~

(ee) light vehicles as defined in 61-1-139*; and*

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(i) all agricultural implements and equipment;

(ii) all mining machinery, fixtures, equipment, tools, and supplies;

(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;

(v) all goods and equipment that are intended for rent or lease;

(vi) special mobile equipment as defined in 61-1-104;

(vii) furniture, fixtures, and equipment;

(viii) x-ray and medical and dental equipment;

(ix) citizens' band radios and mobile telephones;

(x) radio and television broadcasting and transmitting equipment;

(xi) cable television systems;

(xii) coal and ore haulers; and

(xiii) theater projectors and sound equipment.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

~~**15-6-201. (Effective on occurrence of contingency) Exempt categories.** (1) The following categories of property are exempt from taxation:~~

~~(a) except as provided in 15-24-1203, the property of:~~

~~(i) the United States, except:~~

~~(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or~~

~~(B) as provided in 15-24-1103;~~

~~(ii) the state, counties, cities, towns, and school districts;~~

~~(iii) irrigation districts organized under the laws of Montana and not operating for profit;~~

~~(iv) municipal corporations;~~

~~(v) public libraries; and~~

~~(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;~~

~~(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;~~

~~(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.~~

~~(d) property that is:~~

~~(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;~~

~~(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and~~

~~(iii) not maintained and operated for private or corporate profit;~~

~~(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;~~

~~(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;~~

~~(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;~~

~~(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;~~

~~(i) truck canopy covers or toppers and campers;~~

~~(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;~~

~~(k) motor homes;~~

~~(l) all watercraft;~~

~~(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;~~

~~(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to~~

~~enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;~~

~~(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and~~

~~(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;~~

~~(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;~~

~~(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.~~

~~(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:~~

~~(A) construct, repair, and maintain improvements to real property; or~~

~~(B) repair and maintain machinery, equipment, appliances, or other personal property;~~

~~(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;~~

~~(s) harness, saddlery, and other tack equipment;~~

~~(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;~~

~~(u) timber as defined in 15-44-102;~~

~~(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;~~

~~(w) all vehicles registered under 61-3-456;~~

~~(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and~~

~~(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);~~

~~(y) motorcycles and quadricycles;~~

~~(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):~~

~~(i) 23% for tax year 2000;~~

~~(ii) 27.5% for tax year 2001; and~~

~~(iii) 31% for tax year 2002 and succeeding tax years;~~

~~(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):~~

~~(i) 9% for tax year 2000;~~

~~(ii) 11% for tax year 2001; and~~

~~(iii) 13% for tax year 2002 and succeeding tax years;~~

~~(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;~~

~~(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:~~

~~(i) the acquired cost of the personal property is less than $15,000;~~

~~(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and~~

~~(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;~~

~~(dd) all agricultural implements and equipment;~~

~~(ee) all mining machinery, fixtures, equipment, tools, and supplies except those included in class five;~~

~~(ff) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;~~

~~(gg) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;~~

~~(hh) special mobile equipment as defined in 61-1-104;~~

~~(ii) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;~~

~~(jj) x-ray and medical and dental equipment;~~

~~(kk) citizens' band radios and mobile telephones;~~

~~(ll) radio and television broadcasting and transmitting equipment;~~

~~(mm) cable television systems;~~

~~(nn) coal and ore haulers;~~

~~(oo) theater projectors and sound equipment; and~~

~~(pp) light vehicles as defined in 61-1-139.~~

~~(2) (a) For the purposes of subsection (1)(e):~~

~~(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:~~

~~(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.~~

~~(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.~~

~~(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.~~

~~(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:~~

~~(i) actually used by the governmental entity or nonprofit organization as a part of its public display;~~

~~(ii) held for future display; or~~

~~(iii) used to house or store a public display.~~

~~(3) For the purposes of subsection (1)(bb):~~

~~(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.~~

~~(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.~~

~~(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low-emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:~~

~~(a) $20,000 in the case of a single-family residential dwelling;~~

~~(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.~~"

Section 3. Section 15-6-207, MCA, is amended to read:

"15-6-207. Agricultural exemptions. (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products;

(d) all livestock and the unprocessed products of livestock;

(e) poultry and the unprocessed products of poultry; ~~and~~

(f) bees and the unprocessed product of bees*; and*

(g) biological control insects.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if the implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 4. Repealer. Sections 15-24-601 and 15-24-602, MCA, are repealed.

Section 5. Section 31, Chapter 285, Laws of 1999, is amended to read:

"**Section 31**. **Effective dates.** (1) [Sections 1, 11, 12, 15, 22, 26, 28 through 30, and 32 and this section] are effective on passage and approval.

(2) [Sections 3 through 9 and 23] are effective July 1, 2000.

(3) [Sections 2, 10, 13, 14, 16 through 21, 24, 25, and 27(1)] are effective January 1, 2003.

(4) ~~[Sections 13(1)(aa) through (1)(ll) and 27(2)] are~~ *[Section 27(2)] is* effective if the tax rate in [section 12], amending 15-6-138, reaches zero."

Ap proved May 5, 2003

CHAPTER NO. 578

[SB 270]

AN ACT REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO APPOINT AN INTERIM ADVISORY COMMITTEE TO STUDY ISSUES RELATED TO INDEPENDENT CONTRACTORS AND TO MAKE RECOMMENDATIONS TO THE 59TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Study of independent contractor exemption. (1) The commissioner of labor and industry shall appoint an advisory committee that will serve on a volunteer basis to define the term "independent contractor" and study the issues related to exemptions of independent contractors from coverage under the Workers' Compensation Act.

(2) The advisory committee must consist of:

(a) members representing business and community interests;

(b) members representing workers' compensation insurers;

(c) members representing building contractors of whom at least one-half must be independent contractors;

(d) members representing labor organizations; and

(e) a representative from the department of labor and industry.

(3) The committee is exempt from the requirements of 2-15-122 or 2-15-124.

(4) The department of labor and industry shall periodically report its findings and progress to the economic affairs interim committee, including any recommendations for proposed legislation to the 59th legislature regarding independent contractors.

Section 2. Effective date. [This act] is effective on passage and approval .

Ap proved May 5, 2003

CHAPTER NO. 579

[SB 370]

AN ACT REVISING WHICH ENTITIES PAY FOR THE MEDICAL EXPENSES OF INMATES HELD IN COUNTY DETENTION FACILITIES; PROVIDING CIRCUMSTANCES UNDER WHICH THE INMATE IS RESPONSIBLE FOR PAYMENT; REQUIRING THE HEALTH CARE PROVIDER TO COLLECT PAYMENTS FOR TREATMENT FROM INMATES WHO ARE ABLE TO PAY; PROVIDING CIRCUMSTANCES UNDER WHICH THE COUNTY IS RESPONSIBLE FOR PAYMENT; AMENDING SECTIONS 7-32-2222 AND 7-32-2245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2222, MCA, is amended to read:

"7-32-2222. Health and safety of prisoners. (1) Each detention center shall comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator shall remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

~~(4) (a) If in the opinion of the detention center administrator an inmate under the administrator's jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the arresting agency when the arresting agency is not the county in which the inmate is confined, except as provided in 7-32-2245 or subsection (4)(b) of this section.~~

~~(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county, except as provided in 7-32-2245. If the department of corrections is the arresting agency and the inmate is a probation violator, the expense must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.~~

~~(c) The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved in accordance with 7-32-2245.~~"

Section 2. Section 7-32-2245, MCA, is amended to read:

"7-32-2245. Payment of*confinement and medical* costs by inmate. (1) An inmate found by the sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of the inmate's confinement in a detention center. The rate for confinement costs must be determined in accordance with 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.

(2) ~~An~~ *If an inmate requires medical treatment, the* inmate is responsible for ~~the actual costs of medication, medical services, or hospitalization while the inmate is detained in a detention center. Inability to pay may not be a factor in providing necessary medical care for an inmate. This section does not restrict an inmate's right to use a third-party payor~~ *medical costs associated with:*

(a) preexisting conditions;

(b) self-inflicted injuries while in custody;

(c) injuries incurred while in custody if the injuries are not the result of negligent or intentionally torturous acts committed by the detention center administrator or a member of the administrator's staff;

(d) injuries incurred during the commission of a crime or while unlawfully resisting arrest or attempting to avoid an arrest; and

(e) any other injuries or illnesses that are not the responsibility of other entities as provided in 7-32-2242(3) and [section 3].

(3) (a) If an inmate is found to be able to pay for the inmate's medical costs, as provided in subsections (1) and (2), the health care provider who treats the inmate shall collect the cost of the treatment from the inmate or the detention center administrator may arrange with the health care provider to pursue reimbursement from a third-party payor for the services provided.

(b) If the health care provider is unable to collect from the inmate or third-party payor within 120 days from the date of the service, the county is responsible for reimbursing the health care provider for the services at:

(i) the medicaid reimbursement rate or at a rate that is 70% of the provider's customary charges, whichever is greater; or

(ii) a negotiated rate.

(c) If the health care provider is reimbursed by the inmate or the third-party payor after the provider has been reimbursed by the county, the provider shall refund to the county the amount that the provider had been paid by the county for the services provided to the inmate.

(4) Inability to pay may not be a factor in providing necessary medical care for an inmate.

(5) This section does not restrict an inmate's right to use a third-party payor.

(6) If a city or town is the arresting agency and commits a person to the detention center of the county in which the city or town is located, the inmate is responsible for the inmate's medical expenses and the provisions of this section apply."

Section 3. Payment of medical costs by entities other than inmate. (1) The detention center administrator shall forward to the appropriate

arresting agency all charges for medical treatment for which the agency is responsible.

(2) When the inmate is in the custody of a county detention center and the detention center administrator determines that the inmate requires medical treatment, the county or the arresting agency is responsible for medical costs associated with:

(a) conditions that are not preexisting;

(b) injuries incurred by the inmate:

(i) while in the custody of the detention center if the injuries are the result of an accident, an assault by another inmate, or negligent or intentionally torturous acts committed by the detention center administrator or the administrator's staff;

(ii) during the arrest of the inmate by the sheriff or the sheriff's staff if the injuries were not incurred while unlawfully resisting arrest; or

(iii) while on a work program or while the inmate is performing duties assigned by the detention center administrator or the administrator's staff;

(c) infections or contagious or communicable diseases that the inmate contracts while in the custody of the detention center; or

(d) medical examinations that are required by law or court order unless the order provides otherwise.

(3) In order to determine which entity is responsible for medical charges that are not the responsibility of the inmate, the following applies:

(a) If the arresting agency is a law enforcement agency whose jurisdiction is limited to the county boundaries of the county or a municipality in the county where the detention center is located, then the county is responsible.

(b) If the arresting agency is a law enforcement agency with statewide jurisdiction or whose jurisdiction is a county or municipality in a county other than the county where the detention center is located, then the arresting agency is responsible.

(c) If a municipality commits a person to the detention center of the county in which the municipality is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that municipality, then the county in which the municipality is located is responsible.

(4) For the purposes of 7-32-2245 and this section, "preexisting condition" means an illness or condition that began or injuries that were sustained before a person was in the custody of county officers.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 7, chapter 32, part 22, and the provisions of Title 7, chapter 32, part 22, apply to [section 3].

Section 5. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 580

[SB 375]

AN ACT RESTRICTING THE USE OF BALED WASTE TIRES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Baled waste tires prohibited — exception — department rules. (1) Waste tires that are mechanically compressed or baled and bound together with cable, straps, wires, or other nonpermanent mechanical devices may not be used for any aboveground purpose within 500 feet of any road, commercial business, or private residence without the consent of the owner of the business or residence unless they are encased in a material that will maintain the integrity of the bale upon failure of the bale restraining devices. Notwithstanding any other provision of law, the department shall adopt rules authorizing other aboveground uses for baled waste tires, whether or not they are defined as solid waste.

(2) Baled waste tires, as described in subsection (1), may not be placed under water under any circumstances or in a location where they are likely to enter any state waters.

(3) A bale of waste tires that loses its integrity is solid waste and is subject to disposal requirements and penalties as provided in this part.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 581

[SB 381]

AN ACT PROVIDING THAT THE USE OF ARBITRATION FOR DISPUTE RESOLUTION UNDER THE NATURAL STREAMBED AND LAND PRESERVATION ACT OF 1975 IS NOT MANDATORY; AND AMENDING SECTIONS 75-7-111, 75-7-112, 75-7-113, 75-7-116, 75-7-117, AND 75-7-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7-111, MCA, is amended to read:

"75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place.

(2) The notice must include the location, general description, and preliminary plan of the project.

(3) At the time of filing a notice of the proposed project under subsection (1), the applicant ~~shall~~ *may* sign an arbitration agreement as provided in 75-7-117.

(4) The district may authorize a representative to accept notices of proposed projects."

Section 2. Section 75-7-112, MCA, is amended to read:

"75-7-112. Procedure for considering projects — team. (1) Upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team.

(2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.

(3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(5) *(a)* When a member of the team, *other than an applicant that has not agreed to arbitration*, disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision regarding the dispute.

(b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work may not be commenced on a project before the end of the 15-day waiting period unless written permission is given by all team members and the district.

(7) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions.

(8) Work on a project under this part may not take place without the written consent of the supervisors.

(9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:

(a) the purpose of the project; and

(b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:

(i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;

(ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

(10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.

(11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means."

Section 3. Section 75-7-113, MCA, is amended to read:

"75-7-113. Emergencies — procedure. (1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The emergency notice given under subsection (1) must contain the following information:

(a) the location of the action taken;

(b) a general description of the action taken;

(c) the date on which the action was taken; and

(d) an explanation of the emergency causing the need for the action taken.

(3) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

(4) A team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days of receipt of the emergency notice.

(5) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project.

(6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and

team members of their decision within 60 days of receipt of the emergency notice.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

(8) *(a)* When a member of the team, *other than an applicant that has not agreed to arbitration,* disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

(b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:

(a) failure to provide emergency notice under subsection (1);

(b) failure to submit a notice of the project under subsection (7); or

(c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation."

Section 4. Section 75-7-116, MCA, is amended to read:

"75-7-116. Modification of plan — assignment of costs. (1) If the final decision of the arbitration panel *or district court* requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel *or district court* shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision."

Section 5. Section 75-7-117, MCA, is amended to read:

"75-7-117. Rules — minimum standards — arbitration agreement. (1) The department of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts that meet, exceed, or are not covered by the minimum standards set by the department under subsection (1).

(3) The department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts *when an applicant chooses to use arbitration*. The arbitration agreement must contain provisions for:

(a) the appointment of arbitrators;

(b) the exercise of power by the arbitrators;

(c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and

(d) the fees and expenses of arbitration."

Section 6. Section 75-7-121, MCA, is amended to read:

"75-7-121. Review. *(1)* Any review of final action by the supervisors under 75-7-112 or 75-7-113 ~~must~~ *may* be by arbitration *or by the district court of the county where the project is located*. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3.

(2) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration regardless of whether arbitration was requested prior to the filing of a petition for judicial review by the applicant."

Ap proved May 5, 2003

CHAPTER NO. 582

[SB 484]

AN ACT AUTHORIZING MUNICIPALITIES, CONSOLIDATED LOCAL GOVERNMENTS, AND COUNTIES TO CREATE EMPOWERMENT ZONES TO ENCOURAGE THE CREATION OF JOBS WITHIN THE ZONES; ALLOWING A TAX CREDIT AGAINST INDIVIDUAL INCOME TAXES, CORPORATION INCOME OR LICENSE TAXES, OR INSURANCE PREMIUM TAXES FOR QUALIFYING 3-YEAR JOBS CREATED IN AN EMPOWERMENT ZONE; AND AUTHORIZING THE DEPARTMENT TO ADOPT RULES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose of empowerment zone. An empowerment zone is intended to be a tool of economic development that encourages the establishment of businesses in designated areas, which can cause the emergence of industry clusters. Businesses are encouraged to locate in empowerment zones through income tax credits and insurance premium tax credits based upon the number of jobs that the employer has created in the empowerment zone.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Department" means the department of labor and industry.

(2) "Governing body" means the board of county commissioners of a county and the governing body of a consolidated local government or municipality.

Section 3. Empowerment zones — creation. (1) The governing body of a county, a consolidated local government, or a municipality or jointly the governing bodies of counties, consolidated local governments, and municipalities may create empowerment zones. The empowerment zone may consist of all or a part of a county, consolidated local government, or municipality. If a proposed empowerment zone consists of an area partly within and partly outside of the limits of a municipality, the zone must be established by both the county and municipal governing bodies acting jointly, meeting together but voting separately.

(2) A governing body may adopt a resolution of intention to create an empowerment zone. The resolution must identify the limits of the zone and make findings that the proposed zone meets the qualifying criteria set forth in [section 4]. The governing body shall hold a public hearing on the question of whether to establish an empowerment zone. The hearing may be set no sooner than 3 weeks or later than 90 days from the date of the adoption of the resolution. Notice of the hearing must be published twice, 1 week apart not later than one week prior to the date set for the hearing. The notice must provide the subject, date, time, and place of the hearing and must identify the proposed empowerment zone boundaries.

(3) The hearing may be adjourned from time to time to seek additional information or to hear additional proponents or opponents. After the hearing, the governing body may, by resolution, create an empowerment zone.

(4) Each governing body may create a maximum of one empowerment zone, either wholly or partially within its limits, in any 7-year period.

Section 4. Criteria for empowerment zone. An empowerment zone may be established if it meets the following requirements:

(1) the average unemployment or the poverty rate in the area or an area within a reasonable proximity of the area in the preceding 2 years, as determined by the department, was at least 150% of the average annual statewide unemployment or poverty rate for the same period;

(2) the geographical area must be contiguous, must be within one county, and unless it consists totally of undeveloped land, may not consist of less than one-fourth square mile; and

(3) the boundaries must be based on historic community or neighborhood identity and the empowerment zone must include an area in which there is an annual average population of at least 1,000 residents. Boundaries may also be based on boundaries of United States census geographical units, political subdivisions, Indian reservations, and school districts.

(4) The governing body has the burden of establishing that the proposed empowerment zone meets the requirements of this section.

Section 5. Tax credits for employers in empowerment zone. (1) There is allowed to an employer a credit against taxes imposed under 15-30-103, 15-31-121, 15-31-122, or 33-2-705 for an increase in net employees as provided in this section.

(2) To be eligible for a credit under this section, the owner of a business located in an empowerment zone:

(a) shall conduct a business in a facility within the empowerment zone in which retail sales of tangible personal property, other than that manufactured in the business facility, is not in excess of 10% of the business conducted in the

facility, whether measured by number of employees doing retail sales, by square footage, or by dollar volume; and

(b) shall increase employment in the empowerment zone with employees:

(i) who are employed for at least 1,750 hours a year in permanent employment intended to last at least 3 years;

(ii) who were not employed by the business in the preceding 12 months;

(iii) at least 35% of whom were residents of the county in which the empowerment zone is located at the time they were hired by the business;

(iv) who are provided a health benefit plan for employees in accordance with 33-22-1811(3)(d) of which at least 50% of the premium is paid by the business; and

(v) who are paid for job duties performed at the empowerment zone location of the business.

(3) (a) For the purposes of subsection (2)(b)(i), an employee hired in the last 90 days of a year is considered to be an employee beginning employment in the following year. If an employee terminates employment, a replacement employee may be hired and the credit for the combined length of time may be claimed.

(b) For the purposes of subsection (2)(b)(iii), if an employee for whom a credit was claimed and who counted as an empowerment zone county resident for credit eligibility in either of the immediate 2 preceding years terminates employment, the replacement employee must have been a resident of the county in which the empowerment zone is located at the time the replacement employee is hired.

(4) An employer shall apply for certification to claim a credit under the provisions of this section. The department shall require a report that contains detailed information to determine whether an employer qualifies under subsections (2) and (3). The information must be detailed enough for auditing purposes. The department is authorized to inspect employers applying for certification or who have obtained certification.

(5) The department shall certify to the department of revenue or the state auditor's office, as applicable, whether a business may claim a credit under the provisions of this section as well as how many additional employees qualify and the year of initial employment of qualifying employees.

Section 6. Empowerment zone new employees — tax credit. (1) There is a credit for taxes due under 15-30-103 for an employer for each new employee at a business in an empowerment zone created pursuant to [sections 1 through 5]. The taxpayer must be certified by the department of labor and industry to be eligible to receive the credit as provided in [section 5].

(2) The amount of the credit for each qualifying employee is:

1st year of employment	$500
2nd year of employment	$1,000
3rd year of employment	$1,500

(3) If the amount of the credit exceeds the taxpayer's liability, the credit may be carried forward 7 years and carried back 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

Section 7. Empowerment zone new employees — tax credit. (1) There is a credit for taxes due under 15-31-121 or 15-31-122 for an employer for each new employee at a business in an empowerment zone created pursuant to [sections 1 through 5]. The taxpayer must be certified by the department of labor and industry to be eligible to receive the credit as provided in [section 5].

(2) The amount of the credit for each qualifying employee is:

1st year of employment	$500
2nd year of employment	$1,000
3rd year of employment	$1,500

(3) If the amount of the credit exceeds the taxpayer's liability, the credit may be carried forward 7 years and carried back 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

Section 8. Empowerment zone new employees — tax credit. (1) There is a credit for taxes due under 33-2-705 for an employer for each new employee at a business in an empowerment zone created pursuant to [sections 1 through 5]. The taxpayer must be certified by the department of labor and industry to be eligible to receive the credit as provided in [section 5].

(2) The amount of the credit for each qualifying employee is:

1st year of employment	$500
2nd year of employment	$1,000
3rd year of employment	$1,500

(3) If the amount of the credit exceeds the taxpayer's liability, the credit may be carried forward 7 years and carried back 3 years. The entire amount of the tax credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

Section 9. Rulemaking authority. The department may adopt rules to implement [sections 1 through 5].

Section 10. Codification instruction. (1) [Sections 1 through 5 and 9] are intended to be codified as an integral part of Title 7, chapter 21, and the provisions of Title 7, chapter 21, apply to [sections 1 through 5 and 9].

(2) [Section 6] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 6].

(3) [Section 7] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 7].

(4) [Section 8] is intended to be codified as an integral part of Title 33, chapter 2, and the provisions of Title 33, chapter 2, apply to [section 8].

Ap proved May 5, 2003

CHAPTER NO. 583

[SB 490]

AN ACT REVISING THE LAWS GOVERNING STATE ASSUMPTION OF DISTRICT COURT COSTS; REVISING CERTAIN DISTRICT COURT EXPENSES; CLARIFYING WHEN DISTRICT COURT EXPENSES MUST BE PAID DIRECTLY BY THE STATE OR PAID BY THE COUNTIES AND REIMBURSED BY THE STATE; PROVIDING FOR RETROACTIVE COUNTY RESPONSIBILITY FOR ACCUMULATED SICK AND VACATION LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES UPON STATE ASSUMPTION OF DISTRICT COURT EXPENSES; CREATING A SPECIAL REVENUE ACCOUNT TO BE USED BY THE SUPREME COURT FOR PAYMENT OF ACCUMULATED VACATION AND SICK LEAVE FOR COUNTY EMPLOYEES WHO BECAME STATE EMPLOYEES ON JULY 1, 2002; AMENDING SECTIONS 3-1-130, 3-5-604, 3-5-901, 3-5-902, 41-5-111, 46-8-202, 53-21-116, AND 53-21-132, MCA, AND SECTION 57, CHAPTER 585, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-130, MCA, is amended to read:

"3-1-130. Supreme court — adoption of judicial branch personnel plan. (1) The supreme court shall adopt a plan of personnel administration for employees of the judicial branch, other than justices, judges, the supreme court administrator, the librarian of the state law library, *and* the clerk of the supreme court~~, county attorneys, deputy county attorneys, salaried public defenders, assistant public defenders, employees of the offices of public defenders, clerks of district court, and employees of the offices of the clerks of district court~~. The plan must include but not be limited to classification and pay, recruitment and selection, performance appraisal, training, and promotion.

(2) The court administrator appointed under 3-1-701 shall, under the direction of the supreme court, administer the judicial branch personnel plan adopted under this section."

Section 2. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters — transcript of proceedings — costs. (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of $2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy.

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) *(a)* If the ~~county attorney, attorney general, or~~ judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the state as provided in 3-5-901.

(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter's

actual cost of preparation may be paid by the county or the office of the attorney general.

(4) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge. In civil cases, all transcripts required by the county must be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(5) If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript, it must be furnished to the party and paid for by the state as provided in 3-5-901."

Section 3. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program. Under this program, the state shall fund all district court costs, except as provided in subsection ~~(2)~~ *(4)*. These costs include but are not limited to:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases, fees for transcripts of proceedings, as provided in 3-5-604, ~~witness fees and necessary expenses, juror fees~~ *expenses for indigent defense that are paid under contract or at an hourly rate*, and expenses for psychiatric examinations;

(c) the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

~~(f) costs of juror and witness fees and witness expenses before a grand jury;~~

(f) in involuntary commitment cases pursuant to 53-21-121, reasonable compensation for services and related expenses for counsel appointed by the court;

~~(g)~~*(g)* costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

~~(h)~~*(h)* all district court expenses associated with civil jury trials if those expenses were paid out of the district court budget in fiscal year 1998 or fiscal year 1999; ~~and~~

~~(i)~~*(i)* all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, ~~costs of the youth court and youth division offices, and costs of training for persons listed in subsections (1)(a)(i) through (1)(a)(v),~~ but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125~~.~~*; and*

(j) costs of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5, and the costs of providing youth court office, courtroom, and other space as provided in 3-1-125.

~~(2) For the purposes of subsection (1), district court costs do not include:~~

~~(a) one-half of the salaries of county attorneys;~~

~~(b) salaries of deputy county attorneys;~~

~~(c) salaries of employees and expenses of the office of county attorney;~~

~~(d) costs for clerks of district court and employees and expenses of the office of the clerks of district court; or~~

~~(e) costs of providing district court office space.~~

~~(3)~~*(2)* In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund *and directly pay*~~:~~

~~(a)~~ the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.

~~(b) district court expenses related to involuntary commitment proceedings and youth court proceedings in an annual amount not to exceed the district court expense for those proceedings in fiscal year 2001 plus a 3% growth factor each year. Any amount that exceeds the district court expense for those proceedings is the responsibility of the county.~~

~~(4) (a)~~*(3)* In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties, *within 30 days of receipt of a claim, for the following*:

~~(i)~~*(a)* in district court criminal cases ~~only,~~*:*

(i) expenses for indigent defense *that are not paid under subsection (1)(b)*; ~~and~~

(ii) juror fees and necessary expenses; and

(iii) witness fees and necessary expenses as provided in 46-15-116;

~~(ii)~~*(b)* in proceedings under subsection (1)(e):

~~(A)~~*(i)* expenses for appointed counsel for the youth; and

~~(B)~~*(ii)* expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth*; and*

(c) costs of juror and witness fees and witness expenses before a grand jury.

~~(b) If money appropriated for the expenses listed in subsection (4)(a) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.~~

(4) For the purposes of subsection (1), district court costs do not include:

(a) one-half of the salaries of county attorneys;

(b) salaries of deputy county attorneys;

(c) salaries of employees and expenses of the offices of county attorneys;

(d) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(e) costs of providing and maintaining district court office space; or

(f) charges incurred against a county by virtue of any provision of Title 7 or 46. ~~(Subsections (3)(b) and (4)(b) terminate June 30, 2003 -- sec. 65, Ch. 585, L. 2001.)~~"

Section 4. Section 3-5-902, MCA, is amended to read:

"3-5-902. Fiscal administration for payment of court expenses. The supreme court administrator shall establish procedures for ~~disbursement of funds for~~ *the direct* payment of district court expenses listed in 3-5-901 *and for the reimbursement of district court expenses to counties as provided in 3-5-901* and *shall* record payments at a detailed level for budgeting and auditing purposes. *The supreme court administrator shall reimburse counties for district court expenses in a timely manner.*"

Section 5. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. The following expenses ~~shall~~ *must* be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

~~(1) the costs of medical and other examinations and treatment of a youth ordered by the court;~~

~~(2)~~*(1)* reasonable compensation for services and related expenses for counsel appointed by the court for a party;

~~(3)~~*(2)* the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

~~(4)~~*(3)* reasonable compensation of a guardian ad litem appointed by the court; and

~~(5)~~*(4)* cost of transcripts and printing briefs on appeal."

Section 6. Section 46-8-202, MCA, is amended to read:

"46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and any assistant public defenders that may be necessary to satisfy the legal requirements in providing

counsel for defendants unable to employ counsel. The costs of the office must be paid ~~by the state according to procedures established under 3-5-901(4) and, to the extent that those costs are not paid by the state, must be paid by the county~~ in accordance with 3-5-901~~(4)~~."

Section 7. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial — appointment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present at any hearing or trial. If the person ~~has no attorney~~ *is indigent*, the judge shall appoint ~~one~~ *counsel* to represent the person at either the hearing or the trial, or both, ~~who~~ *and the counsel* must be compensated ~~from the public funds of the county where the respondent resides~~ *pursuant to 3-5-901(1)(f)*."

Section 8. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) The cost of precommitment examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid by the county in which the person resides at the time that the person is committed. The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent*and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123*. However, the county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.

(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."

Section 9. Judiciary branch account created. (1) There is an account in the state special revenue fund to be used by the supreme court for payment of accumulated vacation and sick leave for county employees who became state employees on July 1, 2002.

(2) The money paid to the state by the counties for the counties' share of accumulated sick leave and accumulated vacation leave accruals under subsection (4) of section 57, Chapter 585, Laws of 2001, must be deposited in the account established in subsection (1).

(3) Interest and earnings on the account must be deposited in the account.

Section 10. Section 57, Chapter 585, Laws of 2001, is amended to read:

"**Section 57. Transition — transfer of county employees to state employment — preservation of rights.** (1) District court employees who are employed by the county on June 30, 2002, and who are transferred to state employment by [this act] become state employees on July 1, 2002, except for purposes of application of the judiciary branch personnel plan, as provided in [section 63].

(2) The compensation of former county employees who become state employees under [this act] may not be impaired. This subsection does not preserve the right of any former county employee to any salary or compensation, including longevity benefits, that was payable while the employee was employed by the county and that was not accrued and payable as of June 30, 2002.

(3) An employee who is transferred from county employment to state employment under [this act] may elect to become a member of the state employee benefit plan on July 1, 2002, or remain on the employee's county benefit plan through the remainder of the plan year in effect on June 30, 2002. For an employee who elects to remain on a county benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

(4) Accumulated sick and vacation leave and years of service with a county must be transferred ~~fully~~ to the state as of July 1, 2002~~, and become an obligation of the state at that time~~. *On January 1, 2004, and on January 1, 2005, the counties shall pay the state 12.5% of the sick leave accrual and 25% of vacation leave accrual for each employee who transferred to state employment on July 1, 2002, at the rate of pay as of June 30, 2002.* Any liability for accumulated compensatory time of employees who are transferred from county employment to state employment under [this act] is not transferred to the state and remains an obligation of the county that employed the employee prior to the transfer, subject to federal law and the county's personnel policies. *Upon termination from employment, sick leave must be paid out at one-fourth of its value as provided in 2-18-618(6).*

(5) The state becomes a successor employer with regard to any collective bargaining agreement existing on July 1, 2002, that prior to July 1, 2002, covered any employee transferred from county employment to state employment by [this act]. The responsibilities and obligations of the parties to an agreement to which the state becomes a successor employer must, as applied to a transferred employee, continue until the expiration date of the agreement.

(6) In the development of a plan of personnel administration for employees of the judicial branch, the supreme court may recognize an appropriate bargaining unit."

Section 11. Coordination instruction. (1) If Senate Bill No. 218 and [this act] are both passed and approved, then:

(a) [section 6 of this act], amending 46-8-202, is void;

(b) [section 3] of Senate Bill No. 218, amending 3-5-901, is void and [section 3 of this act], amending 3-5-901, must read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program. Under this program, the state shall fund all

district court costs, except as provided in subsection ~~(2)~~ *(3)*. These costs include but are not limited to:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases, fees for transcripts of proceedings, as provided in 3-5-604, ~~witness fees and necessary expenses, juror fees,~~ and expenses for psychiatric examinations;

(c) the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

~~(f) costs of juror and witness fees and witness expenses before a grand jury;~~

~~(g)~~*(f)* costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

~~(h)~~*(g)* all district court expenses associated with civil jury trials if those expenses were paid out of the district court budget in fiscal year 1998 or fiscal year 1999; ~~and~~

~~(i)~~*(h)* all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, costs of the youth court and youth division offices, and costs of training for persons listed in subsections (1)(a)(i) through (1)(a)(v), but

excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125*; and*

(i) district court expenses related to involuntary commitment proceedings and youth court proceedings, excluding expenses of providing legal services.

~~(2) For the purposes of subsection (1), district court costs do not include:~~

~~(a) one-half of the salaries of county attorneys;~~

~~(b) salaries of deputy county attorneys;~~

~~(c) salaries of employees and expenses of the office of county attorney;~~

~~(d) costs for clerks of district court and employees and expenses of the office of the clerks of district court; or~~

~~(e) costs of providing district court office space.~~

~~(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund:~~

~~(a) the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.~~

~~(b) district court expenses related to involuntary commitment proceedings and youth court proceedings in an annual amount not to exceed the district court expense for those proceedings in fiscal year 2001 plus a 3% growth factor each year. Any amount that exceeds the district court expense for those proceedings is the responsibility of the county.~~

~~(4) (a)~~*(2)* In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties, *within 30 days of receipt of a claim, for the following*:

~~(i)~~*(a)* in district court criminal cases ~~only,~~*:*

(i) expenses for indigent defense *that are not paid under [section 4 of Senate Bill No. 218] or subsection (1)(b) of this section*; ~~and~~

(ii) juror fees and necessary expenses; and

(iii) witness fees and necessary expenses as provided in 46-15-116;

~~(ii)~~*(b)* in proceedings under subsection (1)(e):

~~(A)~~*(i)* expenses for ~~appointed~~ *assigned* counsel for the youth; and

~~(B)~~*(ii)* expenses for ~~appointed~~ *assigned* counsel for the parent, guardian, or other person having physical or legal custody of the youth*; and*

(c) costs of juror and witness fees and witness expenses before a grand jury.

~~(b) If money appropriated for the expenses listed in subsection (4)(a) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.~~

(3) For the purposes of subsection (1), district court costs do not include:

(a) one-half of the salaries of county attorneys;

(b) salaries of deputy county attorneys;

(c) salaries of employees and expenses of the offices of county attorneys;

(d) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(e) costs of providing and maintaining district court office space; or

(f) charges incurred against a county by virtue of any provision of Title 7 or 46. ~~(Subsections (3)(b) and (4)(b) terminate June 30, 2003 -- sec. 65, Ch. 585, L. 2001.)~~"

(c) [section 4] of Senate Bill No. 218 must read:

"**Section 4. Indigent defense — state expense.** (1) In addition to the district court costs assumed by the state under the state-funded district court program, as provided in 3-5-901, the state shall fund the expenses of the statewide criminal trial and appellate public defender system. These expenses must include the costs of providing legal services in proceedings in district court on behalf of:

(a) indigent defendants, when counsel is assigned under 46-8-101, including trial defense and appellate defense;

(b) a youth, when counsel is assigned to represent a youth in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6;

(c) a youth, when counsel is assigned to represent a youth in a proceeding held pursuant to Title 41, chapter 5; and

(d) a person who is the subject of a petition for commitment under 53-21-121, when counsel is assigned to represent the person.

(2) These expenses are separate from district court expenses assumed under 3-5-901 and must be allocated to and paid by the department of administration."

(2) If Senate Bill No. 19 and [this act] are both passed and approved, then [section 4] of Senate Bill No. 19, amending 3-5-902, is void.

Section 12. Effective date. [This act] is effective July 1, 2003.

Section 13. Retroactive applicability. [Section 10] applies retroactively, within the meaning of 1-2-109, to July 1, 2002.

Ap proved May 5, 2003

CHAPTER NO. 584

[HB 536]

AN ACT PROVIDING FOR THE DISCLOSURE OF THE POTENTIAL FOR MOLD IN INHABITABLE PROPERTY WITH AGREEMENTS FOR THE SALE AND PURCHASE OF INHABITABLE PROPERTY; PROVIDING FOR THE DISCLOSURE OF PRIOR TESTING AND MITIGATION AND PROVIDING IMMUNITY FOR SELLERS, LANDLORDS, SELLER'S AGENTS, BUYER'S AGENTS, AND PROPERTY MANAGERS WHO COMPLY WITH THE DISCLOSURE REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3] may be cited as the "Montana Mold Disclosure Act".

Section 2. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Inhabitable real property" means any real property that includes a building affixed to land. The building must be designed to be primarily occupied by humans, either as a dwelling or as a place of business.

(2) "Mold" means any mold, fungus, mildew, or spores.

(3) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

Section 3. Mold disclosure statement on real estate documents — disclosure of prior testing — immunity from liability. (1) A mold disclosure statement may be provided on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase and sale, rental, or lease of inhabitable real property. The seller, landlord, seller's agent, buyer's agent, or property manager may provide the following disclosure statement to the buyer or tenant, and the buyer or tenant shall acknowledge receipt of this disclosure statement by signing a copy of the disclosure statement:

MOLD DISCLOSURE: There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. The seller, landlord, seller's agent, buyer's agent, or property manager cannot and does not represent or warrant the absence of mold. It is the buyer's or tenant's obligation to determine whether a mold problem is present. To do so, the buyer or tenant should hire a qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent, or lease.

(2) Whenever a seller or landlord or an agent of either has knowledge that a building has mold present, the seller, landlord, or agent of either shall, prior to or upon entry into a contract for the purchase, rent, or lease, disclose to the buyer or renter the presence of the mold. Whenever a seller or landlord knows that a building has been tested for mold, the seller or landlord, prior to or upon entry into a contract for the purchase, rent, or lease of that building, shall advise the buyer or tenant that testing has occurred and shall provide to the buyer or tenant a copy of the results of that test, if available to the seller or landlord, and evidence of any subsequent mitigation or treatment. A prospective buyer or tenant who contracts for the testing may receive the results of that testing and shall provide a copy of the results of that test, if available, to the seller or landlord. The furnishing of test results and evidence of mitigation or treatment is not to be construed as a promise, warranty, or representation of any sort by the seller, landlord, seller's agent, buyer's agent, or property manager that the test results are accurate or that the mitigation or treatment is effective. This section does not create a contingency on the purchase of the property or any

right to rescind a contract for purchase unless the contingency or right to rescind is an express term of the applicable contract.

(3) A seller, landlord, seller's agent, buyer's agent, or property manager who provides the disclosure in subsection (1) and complies with subsection (2) is not liable in any action based on the presence of or propensity for mold in the building.

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved May 5, 2003

CHAPTER NO. 585

[HB 489]

AN ACT PROVIDING FOR THE CONTINUED PAYMENT OF DISTRICT COURT EXPENSES ASSOCIATED WITH CIVIL JURY TRIALS AFTER STATE ASSUMPTION OF DISTRICT COURTS COSTS; AMENDING SECTION 3-5-901, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program. Under this program, the state shall fund all district court costs, except as provided in subsection (2). These costs include but are not limited to:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases, fees for transcripts of proceedings, as provided in 3-5-604, witness fees and necessary expenses, juror fees, and expenses for psychiatric examinations;

(c) the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) all district court expenses associated with civil jury trials if ~~those~~ *similar* expenses were paid out of the district court ~~budget~~ *fund or the county general fund* in ~~fiscal year 1998 or fiscal year 1999~~ *any previous year*; and

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors, costs of the youth court and youth division offices, and costs of training for persons listed in subsections (1)(a)(i) through (1)(a)(v), but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125.

(2) For the purposes of subsection (1), district court costs do not include:

(a) one-half of the salaries of county attorneys;

(b) salaries of deputy county attorneys;

(c) salaries of employees and expenses of the office of county attorney;

(d) costs for clerks of district court and employees and expenses of the office of the clerks of district court; or

(e) costs of providing district court office space.

(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund:

(a) the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.

(b) district court expenses related to involuntary commitment proceedings and youth court proceedings in an annual amount not to exceed the district court expense for those proceedings in fiscal year 2001 plus a 3% growth factor each year. Any amount that exceeds the district court expense for those proceedings is the responsibility of the county.

(4) (a) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties:

(i) in district court criminal cases only, expenses for indigent defense; and

(ii) in proceedings under subsection (1)(e):

(A) expenses for appointed counsel for the youth; and

(B) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth.

(b) If money appropriated for the expenses listed in subsection (4)(a) is insufficient to fully fund those expenses, the county is responsible for payment of the balance. (Subsections (3)(b) and (4)(b) terminate June 30, 2003—sec. 65, Ch. 585, L. 2001.)"

Section 2. Coordination instruction. If Senate Bill No. 134 and [this act] are both passed and approved, then [this act] is void.

Section 3. Effective date. [This act] is effective July 1, 2003.

Ap proved May 6, 2003

CHAPTER NO. 586

[HB 5]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2005; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING THAT FOR THE PURPOSE OF FOSTERING PRIVATE EFFORTS TO RESTORE, MAINTAIN, AND DEVELOP THE OLD MAIN BUILDING AT THE MONTANA VETERANS' HOME, THE DEPARTMENT OF ADMINISTRATION MAY WAIVE REQUIREMENTS PERTAINING TO BIDDING AND BONDING FOR STATE BUILDING PROJECTS IN TITLE 18, MCA, TO LABOR REQUIREMENTS IN TITLE 18, MCA, AND TO CONTRACTOR REGISTRATION IN TITLE 39, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 12], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 12].

(2) "LRBP" means the long-range building program account in the capital projects fund type.

(3) "Other funding sources" means money other than LRBP money, including special revenue fund money, which accrues to an agency under the provisions of law.

Section 2. Capital projects appropriations. (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP		Other Funding Sources
DEPARTMENT OF ADMINISTRATION			
Roof Repair and Replacement, Statewide	$956,000		
Code/Deferred Maintenance & Disability Access, Statewide	515,000		
Repair/Replace Deteriorated Campus Infrastructure, Statewide	300,000	300,000	Auxiliary Funds
Capitol Renovation Arbitration	305,000		

Hazardous Material Mitigation Fund, Statewide	220,000		
State Public Health Laboratory		1,474,000	Federal Special Revenue
Upgrades, Phase 2			
Repair Front Stairs, State Capitol		400,000	Capitol Land Grant Revenue
		130,000	Federal Special Revenue
Land Acquisition, Capitol Complex		600,000	Capitol Land Grant Revenue
DEPARTMENT OF CORRECTIONS			
Dairy Expansion, Montana State Prison		725,000	Proprietary Funds
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Hatchery Maintenance, Statewide		575,000	State Special Revenue
		575,000	Federal Special Revenue
Montana Wildlife Rehabilitation and Nature Center Complex		100,000	State Special Revenue
		500,000	Federal Special Revenue
		2,600,000	Donations
Administrative Facilities Repair and Maintenance		800,000	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Federal Spending Authority		2,000,000	Federal Special Revenue
Reroof Armories Statewide		90,212	Federal Special Revenue
MONTANA UNIVERSITIES AND COLLEGES			
Replace Primary Electrical Radial System, UM-Butte	240,500	120,000	Auxiliary Funds
Replace/Update Health Sciences HVAC, UM-Missoula	202,000		
Reconstruct Canal Bridge, MSU-Billings	150,000	150,000	Federal Special Revenue, Donations, Grants, State Funds, and Higher Education Funds
Schematic Design, UM-Helena College of Technology	175,000		
Addition to Skaggs Building, UM-Missoula		11,500,000	Federal Special Revenue, Donations, Grants, State Funds, and Higher Education Funds
Crown of the Continent Ecosystem Interpretive Center and Natural Trail, Yellow Bay		3,700,000	Federal Special Revenue, Donations, Grants, State Funds, and Higher Education Funds
Herrick Hall Renovation, MSU-Bozeman		10,000,000	Federal Special Revenue, Donations, Grants, State Funds, and Higher Education Funds
Sherrick Hall Renovation, MSU-Bozeman		5,000,000	Federal Special Revenue, Donations, Grants, State Funds, and Higher Education Funds
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
Upgrade Spratt Building and Campus Electrical, MSH-Warm Springs	218,000		
Demolish Old Dormitory at Montana Veterans' Home, Columbia Falls		231,600	State Special Revenue

Renovate Historic "Old Main" Building at Montana Veterans' Home, Columbia Falls	2,252,000	State Special Revenue, Federal Special Revenue, Donations, and Grants
DEPARTMENT OF TRANSPORTATION		
New Equipment Storage Facilities, Statewide	2,725,000	State Special Revenue

(2) (a) The department of administration, for the purpose of fostering the restoration, maintenance, and further development of the old main building at the Montana veterans' home in Columbia Falls, may waive, in whole or in part, the requirements pertaining to:

(i) bidding and bonding for state building projects in Title 18;

(ii) labor requirements in Title 18; and

(iii) contractor registration in Title 39.

(b) The waiver pursuant to subsection (2)(a) may be exercised in the following circumstances:

(i) to obtain the volunteer services and donated materials from members of the public, civic organizations, and other federal, state, or local governmental entities;

(ii) to obtain the compensated services of contractors that are donating significant amounts of labor, time, and materials; and

(iii) to meet the terms and conditions for receipt of major sums of money from private or public funding sources, inclusive of individual donors.

Section 3. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Future Fisheries	$910,000	State Special Revenue
Fishing Access Site Maintenance, Statewide	275,000	State Special Revenue
Fishing Access Site Protection, Statewide	600,000	State Special Revenue
Community Fishing Ponds	50,000	Federal Special Revenue
Upland Game Bird Program	2,300,000	State Special Revenue
Wildlife Habitat Maintenance	800,000	State Special Revenue
Migratory Bird Stamp Program	225,000	State Special Revenue
Motorboat Recreation Site Improvements	1,250,000	State Special Revenue

The appropriation for motorboat recreation site improvements must include the following road improvement projects: $100,000 for miscellaneous chip seal projects at Thompson Falls, Logan, West Shore, and Lake Mary Ronan recreational sites; $60,000 for Cooney Reservoir state park; and $200,000 for Hell Creek state park.

Cultural and Historic Park Improvements	800,000	State Special Revenue

The appropriation for cultural and historic park improvements must include the following road improvement projects: $60,000 for Giant Springs state park; $100,000 for Travelers' Rest state park; $80,000 for Clark's Lookout state park; and $200,000 for Ulm Pishkun state park.

Land and Water Conservation Fund Grants	2,900,000	Federal Special Revenue
Federal Trails Grants	1,900,000	Federal Special Revenue

Off-Highway Vehicle Trails Grants	375,000	State Special Revenue
Federal Wallop/Breaux Projects	1,500,000	Federal Special Revenue

(2) The following money is appropriated to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
General Spending Authority, All Campuses	$3,500,000	Federal Special Revenue, Donations, Grants, State Funds, and Higher Education Funds

(3) The following money is appropriated to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
General Spending Authority, All Campuses	$2,500,000	Federal Special Revenue, Donations, Grants, State Funds, and Higher Education Funds

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Facility Maintenance, Repair, and Small Projects, Statewide	$1,620,860	State Special Revenue

Section 4. Land acquisition appropriations. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreement:

Agency/Project	LRBP	Other Funding Sources
Fishing Access Site Acquisition, Statewide	$550,000	State Special Revenue
	200,000	Federal Special Revenue
Habitat Montana	6,900,000	State Special Revenue
Big Horn Sheep Enhancements	75,000	State Special Revenue
Brush Lake Acquisition	180,000	State Special Revenue

Section 5. Dams. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amount for department dams:

Agency/Project	LRBP	Other Funding Sources
FWP Dams Repair	500,000	State Special Revenue

(2) In accordance with 85-1-101, the department of natural resources and conservation shall coordinate and manage the projects.

Section 6. Transfer of funds. The department of fish, wildlife, and parks and the department of transportation are authorized to transfer money appropriated in [sections 3 through 5] among fund types.

Section 7. Capital land grant revenue. (1) The appropriation of $530,000 to the department of administration to repair the front stairs of the state capitol building consists of $400,000 of state capitol land grant revenue and $130,000 of federal community transportation enhancement program special revenue (CTEP). If CTEP revenue falls below this amount, the shortfall

must be funded with capitol land grant revenue, if available, and the federal authority will be reduced by a like amount. The department is authorized to transfer money appropriated for this purpose between the two fund types.

(2) The appropriation of $600,000 in capitol land grant revenue to the department of administration for capitol complex land acquisition is the last priority for use of these funds during the 2005 biennium and is dependent upon the availability of revenue. If necessary, both of these projects may be phased in as capitol land grant revenue becomes available.

Section 8. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 9. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 2 through 5] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2005 biennium long-range building program presented to the 58th legislature.

Section 10. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [sections 2 through 5] for potential inclusion in the state building energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 11. Sale of old Dillon armory. The 57th legislature appropriated $3,800,000 of federal special revenue and $1,940,000 of bonds for construction of a new Dillon armory. All proceeds derived from the sale of the national guard armory located in Dillon must be used to pay the general obligation debt service on the bonds issued for construction of the new Dillon armory. The proceeds of the sale must be deposited in the general fund for this purpose. In the event that the facility is sold prior to issuance of the bonds, the board of examiners may use all or a portion of the amount deposited in the general fund to reduce the amount of the bond issue required to finance the construction.

Section 12. Legislative consent. The appropriations authorized in [sections 1 through 11] constitute legislative consent for the capital projects contained in [sections 1 through 11] within the meaning of 18-2-102.

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 587

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM AND APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; APPROPRIATING FUNDS FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; TERMINATING CERTAIN TREASURE STATE ENDOWMENT GRANTS; AMENDING SECTION 1, CHAPTER 213, LAWS OF 1995; REPEALING SECTION 9, CHAPTER 435, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from treasure state endowment special revenue account. (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program 2005 biennium report to the 58th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment special revenue account during the 2005 biennium are expended.

(3) The following applicants and projects are authorized for grants in the order of their priority:

Applicant/Project	Grant Amount
1. Lewis and Clark County (bridge)	$170,575
2. Judith Basin County/Geyser District (water)	330,000
3. Madison County (bridge)	174,529
4. Chinook, City of (wastewater)	500,000

5. Sweet Grass County (bridge)	235,954
6. Stillwater County (bridge)	500,000
7. Power-Teton County District (water)	500,000
8. Richland County (bridge)	351,625
9. Stanford, Town of (water)	500,000
10. Hamilton, City of (water)	500,000
11. Troy, City of (water)	500,000
12. Scobey, City of (wastewater)	500,000
13. Missoula, City of (wastewater)	500,000
14. Blaine County (bridge)	322,782
15. Upper-Lower River Road District (water and wastewater)	500,000
16. Polson, City of (water)	500,000
17. Conrad, City of (water)	500,000
18. Glendive, City of (storm water)	139,133
19. Sheaver's Creek District (water)	500,000
20. Gallatin County (bridge)	500,000
21. Gardiner/Park County District (water)	500,000
22. Phillips County Green Meadow District (water)	112,500
23. Geraldine, Town of (water)	500,000
24. Missoula County (wastewater)	499,335
25. Ramsay County District (water)	255,000
26. Cooke City-Park County District (water)	500,000
27. Worden-Ballantine District (water)	500,000
28. Wolf Point, City of (wastewater)	500,000
29. Ryegate, Town of (water)	478,700
30. Cascade County (bridge)	230,840
31. Libby, City of (water & wastewater)	500,000
32. Beaverhead County District-Wisdom (wastewater)	500,000
33. Hill County (bridge)	175,803
34. Jordan, Town of (water)	459,883
35. Pablo-Lake County District (wastewater)	500,000
36. Ekalaka, Town of (wastewater)	154,197
37. Pondera County (bridge)	137,500
38. Black Eagle District (wastewater)	214,200
39. Lake County Solid Waste District (solid waste)	500,000
40. Sheridan County (bridge)	210,775
41. Whitefish, City of (water)	500,000
42. Belgrade, City of (wastewater)	500,000
43. Yellowstone County (bridge)	172,710

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 2005 biennium under 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2005, are insufficient to fully fund the projects numbered 1 through 40 in subsection (3) that have satisfied the conditions described in [section 3(1)] by June 30, 2005, the 59th legislature is encouraged to give priority to funding these projects from deposits into the treasure state endowment special revenue account made during the 2007 biennium, before projects authorized by the 59th legislature receive funding from the account. However, any of the projects numbered 1 through 40 listed in subsection (3) that have not completed the conditions described in [section 3(1)] by January 1, 2005, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Projects numbered 41 through 43 listed in subsection (3) that have satisfied the conditions described in [section 3(1)] may not receive grant funds unless sufficient funds have been deposited into the treasure state endowment special revenue account to fully fund the projects numbered 1 through 40 in subsection (3). However, if a subsequent legislature withdraws funding for any of the projects numbered 1 through 40 listed in subsection (3), those funds could be made available to projects numbered 41 through 43 listed in subsection (3) that have completed the conditions described in [section 3(1)], unless that subsequent legislature designates that those funds are to be used to fund applications under its review.

(7) In the event that any remaining funds deposited into the treasure state endowment special revenue account are insufficient to fully fund one of the grant recipients listed in subsection (3), the department may make the remaining funds from the treasure state endowment special revenue account available to the grant recipient on condition that the grant recipient is able to firmly commit the balance of the amount necessary to fund the project in its entirety.

Section 2. Approval of grants — completion of appropriation. (1) The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(3)].

(2) The authorization of these grants completes an appropriation from the treasure state endowment special revenue account provided for in 17-5-703(4)(c).

Section 3. Conditions and manner of disbursement of grant funds. (1) The disbursement of grant funds under [sections 1 through 3] for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The scope of work and budget for the project as approved by the department in the grant agreement must be consistent with the intent and circumstances under which the application was originally ranked by the department and approved by the legislature. The department may not approve amendments to the scope of work or budget affecting activities or improvements

that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by the legislature.

(c) The grant recipient must have a project management plan that is approved by the department.

(d) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(e) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(f) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2005 biennium report to the 58th legislature.

(g) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) The department shall commit grant funds to projects authorized in the order of priority listed in [section 1(3)] to grant recipients that have met the conditions in subsection (1) as treasure state endowment special revenue account interest income becomes available during the 2005 biennium.

(3) If a grant recipient authorized in [section 1(3)] has not met the conditions in subsection (1), the department shall move down the list of projects in the order of priority listed in [section 1(3)] to the next project that has met the conditions in subsection (1).

(4) The department may not commit grant funds to a grant recipient authorized in [section 1(3)] unless sufficient funds will be available in the treasure state endowment special revenue account.

(5) The department shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(6) In the event that actual project expenses are lower than the projected expense of the project, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided to grant recipients in proportion to all other project funding sources. In the alternative, the department may authorize the use of the remaining authorized treasure state endowment program grant amount for the construction of additional, directly related components that will further enhance the overall system.

(7) In the event that actual project expenses are lower than the projected expense of a project as presented in the grant recipient's treasure state endowment program application, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

Section 4. Appropriations from treasure state endowment regional water system special revenue account. (1) There is appropriated to the department of natural resources and conservation the interest earnings of the treasure state endowment regional water system special revenue account to

finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) Up to $3,865,333 is authorized for the 2005 biennium to provide the state's share for regional water system projects.

(4) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 6(1)].

(5) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the 2005 biennium under 17-7-302.

Section 5. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 4(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(4)(d).

Section 6. Conditions and manner of disbursement of funds. (1) The disbursement of funds under [sections 4 through 6] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority's project must be authorized by the federal government.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses. The regional water authority shall document that local matching funds are committed in equal proportion to the department's disbursement.

Section 7. Appropriations from treasure state endowment special revenue account for emergency grants. (1) There is appropriated to the department of commerce $100,000 for the biennium beginning July 1, 2003, from the interest earnings of the treasure state endowment special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

(2) The projects eligible for emergency grants must be necessary to remedy conditions that if allowed to continue until legislative approval could be obtained would endanger the public health or safety and expose the applicant to substantial financial risk.

(3) The department may not make an emergency grant if it determines that through the implementation of reasonable management practices, the applicant can forestall the risks to health or safety until the legislative approval can be obtained.

(4) The department shall inform the governor and the legislative finance committee of emergency grants that are awarded during the biennium.

Section 8. Section 1, Chapter 213, Laws of 1995, is amended to read:

"**Section 1. Appropriations from the treasure state endowment special revenue account.** (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the local government entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program January 1995 report to the 54th legislature. The legislature, pursuant to 90-6-710, approves the grants listed in subsection (3), in the order indicated in the list of projects. The department shall award funds up to the amounts approved in this section in order of priority until available funds are expended. The department shall provide funds not accepted or used by local governments with higher-ranked projects to local governments whose projects are in lower positions on the priority list and that would not otherwise receive funding. When additional funds become available for the grants listed in subsection (3), they must be awarded to projects in the order of the projects' priority when the lower-ranked projects meet the startup conditions of the department's grant agreement and are ready to proceed to construction.

(3) The following are the authorized projects in the order of their priority:

Applicant/Project	Matching Grant
~~1. Hill County Water Dist. (water)~~	~~$500,000~~
~~2.~~ *1.* East Glacier Wtr. & Sewer Dist. (water)	306,555
~~3.~~ *2.* City of Lewistown (water)	500,000
~~4.~~ *3.* City of Troy (sewer)	500,000
~~5.~~ *4.* City of Conrad (water)	180,000
~~6.~~ *5.* City of Whitehall (water)	500,000
~~7.~~ *6.* Seeley Lake Water Dist. (water)	464,364
~~8.~~ *7.* City of Hamilton (sewer)	137,632
~~9.~~ *8.* Gardiner Water Dist. (water)	300,000
~~10.~~ *9.* City of Thompson Falls (sewer)	400,644
~~11.~~ *10.* Butte-Silver Bow (sewer)	500,000
~~12.~~ *11.* Beaverhead County (bridge)	23,000
~~13.~~ *12.* Powell County (bridge)	51,334
~~14.~~ *13.* Town of Fairview (water)	500,000
~~15.~~ *14.* Town of Hysham (sewer)	127,500

(4) This section constitutes a valid obligation of funds to the entities listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 1997 biennium under 17-7-302."

Section 9. Repealer. Section 9, Chapter 435, Laws of 2001, is repealed.

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1, 4, and 7] are effective July 1, 2003.

Ap proved May 9, 2003

CHAPTER NO. 588

[HB 363]

AN ACT AMENDING THE DEFINITION OF "ADEQUATELY FUNDED" TO ELIMINATE THE REQUIREMENT THAT THE STATE COMPENSATION INSURANCE FUND RESERVE AN ADDITIONAL AMOUNT EQUAL TO 10 PERCENT OF THE TOTAL COST OF FUTURE BENEFITS REMAINING TO BE PAID FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990, AND THE COSTS OF ADMINISTERING THE CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1, 1990; TRANSFERRING TO THE GENERAL FUND MONEY FROM CLAIMS OCCURRING BEFORE JULY 1, 1990; IMMEDIATELY TRANSFERRING THE EXISTING 10 PERCENT RESERVE TO THE STATE GENERAL FUND; AMENDING SECTION 39-71-2352, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit — authorizing transfer of money ~~for payment of claims~~. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid; *and*

(b) the cost of administering the claims~~; and~~

~~(c) an additional amount equal to 10% of the total of the amounts in subsections (4)(a) and (4)(b)~~.

(5) Based on audited financial statements adjusted for unrealized gains and losses for ~~the~~ *each* fiscal year, ~~ending June 30, 2002,~~ funds in excess of the adequate funding amount established in subsection (4) must be transferred as follows:

(a) Prior to June 30, 2003:

(i) the amount of $1.9 million must be transferred to the general fund to be transferred to the state library equipment account and appropriated to the university system and the department of public health and human services;~~and~~

(ii) the amount of $2.1 million must be transferred to the school flexibility fund, provided for in 20-9-543*; and*

(iii) the amount of $9,178,000 must be transferred to the general fund.

(b) Prior to June 30, 2004, an amount up to $4.3 million in available excess funds from fiscal year 2003 must be transferred to the general fund.

(c) Prior to June 30, 2005, an amount up to $3.78 million in available excess funds from fiscal year 2004 must be transferred to the general fund.

~~(b)~~*(d)* In the fiscal ~~year ending June 30, 2003,~~ *years 2004 and 2005,* ~~the~~ *any* remaining amount, and in subsequent fiscal years, an amount of funds in excess of the adequate funding amount established in subsection (4), *based on audited financial statements adjusted for unrealized gains and losses,* must be transferred to the ~~account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990. The total amount of funds transferred under this subsection may not exceed $63.8 million~~ *general fund.*

(6) ~~If~~ *If* in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."

Section 2. Transfer of excess reserves. On [the effective date of this act], the state compensation insurance fund shall transfer the 10% of funds that was required to be reserved pursuant to 39-71-2352(4) as follows:

(1) $3,522,295 to the state general fund; and

(2) the remainder to the state general fund.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 589

[HB 424]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AND ENFORCE A TELEPHONE SOLICITATION NO-CALL LIST; PROHIBITING TELEPHONE SOLICITATION OF RESIDENTIAL SUBSCRIBERS WHO ARE ON THE NO-CALL LIST; PROVIDING THAT THE NO-CALL LIST DATABASE IS NOT A PUBLIC RECORD; PROVIDING THAT RESIDENTIAL SUBSCRIBERS MAY BE PLACED ON THE NO-CALL LIST WITHOUT COST; PROHIBITING INTERFERENCE WITH CALLER IDENTIFICATION SERVICES; PROVIDING FOR CIVIL, CRIMINAL, AND INJUNCTIVE ACTIONS AGAINST PERSONS OR ENTITIES VIOLATING TELEPHONE SOLICITATION NO-CALL PROVISIONS; PROVIDING FOR DISSEMINATION OF INFORMATION ON THE NO-CALL LIST; CREATING A TELEPHONE SOLICITATION NO-CALL LIST ADMINISTRATION ACCOUNT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 6] the following definitions apply:

(1) "Caller identification service" means a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Residential subscriber" means a person who has subscribed to residential telephone service from a local exchange company and the other persons living or residing with the person.

(4) "Telephone solicitation" means any voice communication over a telephone line from a live operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does not include communications:

(a) to any residential subscriber with that subscriber's prior express invitation or permission;

(b) by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship;

(c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the charitable purpose for which the entity was established and provided that a bona fide member of the exempt organization makes the voice communication;

(d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

(i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through telemarketing; and

(ii) the entity is required by law or rule to develop and maintain a no-call list;

(e) by a natural person responding to a referral or working from the person's primary residence; or

(f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state.

Section 2. Telephone solicitation of residential subscribers on no-call list prohibited. A person or entity may not make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the department, in accordance with rules promulgated pursuant to [section 3], of the residential subscriber's objection to receiving telephone solicitations.

Section 3. Department to create no-call list database — rules — inclusion of national database — database not public record — no cost to subscribers. (1) The department shall establish and provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. The department must have the database in operation no later than January 1, 2004. A residential subscriber may be listed in the database without cost to the subscriber.

(2) Not later than January 1, 2004, the department shall promulgate rules and regulations governing the establishment of a state no-call database that are necessary and appropriate to fully implement the provisions of [sections 1 through 6]. The rules must include but are not limited to rules specifying:

(a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the notice;

(b) the length of time for which a notice of objection is effective and the effect of a change of telephone number on the notice;

(c) the methods by which pertinent information may be collected and added to the no-call database;

(d) the methods for obtaining access to the no-call database by any person or entity desiring to make telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in the no-call database;

(e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database; and

(f) other matters relating to the no-call database that the department considers desirable.

(3) If the federal communications commission establishes a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. 227(c)(3), the department shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with [section 2] and this section or in a proceeding or action pursuant to [section 5]. The information may not be considered a public record pursuant to Title 2, chapter 6.

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list.

Section 4. Interference with caller identification service prohibited. (1) Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of the call, state clearly the identity of the person or entity initiating the call.

(2) A person or entity who makes a telephone solicitation to the telephone line of a residential subscriber in this state may not knowingly use any method to block or otherwise circumvent the residential subscriber's use of a caller identification service.

Section 5. Penalties — department to enforce civil, criminal, and injunctive relief — private actions — defenses — statute of limitations. (1) (a) The department or a county attorney may initiate proceedings relating to a knowing violation or threatened knowing violation of [section 2 or 4].

(b) The proceedings may include a request for any of the following:

(i) an injunction;

(ii) a civil penalty up to a maximum of $5,000 for each knowing violation;

(iii) additional relief that a court of competent jurisdiction may order.

(c) The department may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of [section 2 or 4].

(2) In addition to the penalties provided in subsection (1), any person or entity that violates [section 4] is subject to all penalties, including criminal penalties, remedies, and procedures provided in the unfair trade practices and consumer protection laws, as provided for in Title 30, chapter 14, parts 1 and 2. The remedies available in this section are cumulative and in addition to any other remedies available by law.

(3) Any residential subscriber who has received more than one telephone solicitation within any 12-month period by or on behalf of the same person or entity in violation of [section 2 or 4] may bring an action to:

(a) enjoin the violation; and

(b) recover the greater of:

(i) the actual monetary loss from a knowing violation; or

(ii) $5,000 in damages for each knowing violation.

(4) It is a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of [section 2 or 4].

(5) An action or proceeding may not be brought pursuant to this section more than 2 years after:

(a) the person bringing the action knew or should have known of the occurrence of the alleged violation; or

(b) the termination of any proceeding or action arising out of the same violation or violations by the state of Montana.

(6) A court of this state may exercise personal jurisdiction, in the manner provided by law, over any nonresident or the nonresident's executor or administrator as to an action or proceeding authorized by this section.

(7) The remedies, duties, prohibitions, and penalties provided in [sections 1 through 6] are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(8) A provider of telephone caller identification service may not be held liable for violations of [section 2 or 4] that are committed by other persons or entities.

Section 6. Telephone solicitation no-call list administration account — purpose and administration. (1) There is a telephone solicitation no-call list administration account in the state special revenue fund for administration of [sections 1 through 6] by the department.

(2) Revenue generated from fees collected from persons or entities obtaining access to the no-call list database and any civil penalties recovered by the department pursuant to [section 5] must be deposited into the telephone solicitation no-call list administration account.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 6].

Section 8. Effective date. [This act] is effective July 1, 2003.

Ap proved May 9, 2003

CHAPTER NO. 590

[HB 452]

AN ACT PROVIDING A TAX CREDIT FOR CONTRIBUTIONS TO AN ACCOUNT TO BE USED FOR PROVIDING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; PROVIDING FOR THE USE OF MONEY IN THE ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Developmental disability services account — funding — use — limitation. (1) There is a developmental disability services account in the state special revenue fund. Money is payable into the account from donations for purposes of providing services to individuals with developmental disabilities. The department of public health and human services shall provide the department of revenue with a list of taxpayers making donations to the account.

(2) Subject to subsection (3), money in the account must be used to provide services to individuals pursuant to this chapter. The department of public health and human services shall seek federal matching funds for expenditures from the account. Thirty percent of the money in the account for which a tax credit will be claimed must be transferred to the general fund for reimbursement of the tax credit. At the end of each calendar year, the department shall determine the amount of tax credits claimed and any funds transferred to the general fund in excess of the amount of the credit taken in the

previous tax year must be transferred back to the account. The remaining money in the account must be used to supplement existing funding.

(3) Expenditures from the account in the previous biennium may not be included in the base budget, as defined in 17-7-102, of the department for the current biennium.

Section 2. Credit for contributions to developmental disability services account. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, is allowed a credit against taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 30% of the amount donated by the taxpayer during the year to the developmental disability services account established in [section 1]. The maximum credit that may be claimed by the taxpayer is $10,000. The credit may not exceed the taxpayer's income tax liability. A taxpayer claiming a credit under this section may not claim a deduction under 15-30-121(1), 15-30-136(2), or 15-31-114 for the contribution for which a credit is claimed.

(2) There is no carryback or carryforward of the credit provided for in this section. The credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

Section 3. Codification instructions. (1) [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

Section 6. Termination. [This act] terminates January 1, 2006.

Ap proved May 9, 2003

CHAPTER NO. 591

[HB 558]

AN ACT REVISING THE TERMS OF THE NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT; REMOVING THE REGISTRATION EXEMPTION FOR SNOWMOBILES REGISTERED IN ANOTHER STATE OR COUNTRY THAT ARE INTENDED TO BE TEMPORARILY USED WITHIN THIS STATE FOR NOT MORE THAN 30 DAYS; INCREASING THE FEE FOR A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT AND DIRECTING EXPENDITURE OF THE FEE FOR SNOWMOBILE TRAIL GROOMING ASSISTANCE IN IMPACTED AREAS, FOR INCREASED ENFORCEMENT OF SNOWMOBILE LAWS, AND FOR THE STATEWIDE SNOWMOBILE TRAIL GROOMING PROGRAM; PROVIDING THAT A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT IS VALID DURING THE FISCAL YEAR IN WHICH IT IS ISSUED; PROVIDING THAT A NONRESIDENT TEMPORARY-SNOWMOBILE-USE PERMIT IS NOT REQUIRED FOR A SNOWMOBILE THAT WILL BE USED ONLY ON TRAILS THAT ARE MANAGED JOINTLY BY AGREEMENT BETWEEN

MONTANA AND ANOTHER STATE; AMENDING SECTIONS 23-2-614 AND 23-2-615, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) *(a)* The provisions of 23-2-601 through 23-2-644, with respect to registration, tax-paid decals, and certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision ~~thereof, any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or to any snowmobile registered in another state of the United States but to be temporarily used within this state for not more than 30 days~~ *of the United States or another state*.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision ~~thereof~~ *of the state* are exempt only from the payment of fees and ~~shall~~ *must* otherwise comply with all the requirements of 23-2-601 through 23-2-644.

(2) The provisions of 23-2-601 through 23-2-644 with respect to registration, tax-paid decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 2. Section 23-2-615, MCA, is amended to read:

"23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address; *and*

~~(ii) the make, model, year, and serial number of the snowmobile; and~~

~~(iii)~~*(ii)* an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of ~~$6~~ *$15*, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be ~~displayed~~ *permanently affixed* in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid ~~for a consecutive 30-day period as designated by the permit~~ *during the fiscal year in which it is issued.*

(3) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(4) *(a)* A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(b) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that will be used only on trails that are managed jointly by agreement between Montana and another state.

(5) ~~All money~~ *Money* collected by payment of fees under this section must be ~~remitted to the department of revenue and~~ deposited in the state ~~general fund~~ *special revenue fund to the credit of the department and used as follows:*

(a) $8 must be expended in areas that are impacted by nonresident snowmobile use to assist in offsetting snowmobile trail grooming costs;

(b) $2 must be used by the department for the enforcement of snowmobile laws pursuant to 23-2-641;

(c) 50 cents must be remitted to the license agent who sold the nonresident temporary-snowmobile-use permit; and

(d) $4.50 must be used by the department for the statewide snowmobile trail grooming program.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 3. Coordination instruction. If Senate Bill No. 112 and [this act] are both passed and approved, then [section 4] of Senate Bill No. 112, amending 23-2-615, is void and [section 2 of this act], amending 23-2-615, is amended to read:

"Section 2. Section 23-2-615, MCA, is amended to read:

"23-2-615. Nonresident temporary-use permits — use of fees. (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department. The forms must include but are not limited to:

(i) the applicant's name and permanent address; *and*

~~(ii) the make, model, year, and serial number of the snowmobile; and~~

~~(iii)~~*(ii)* an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of ~~$6~~ *$15, of which 50 cents is a search and rescue surcharge*, a nonresident temporary-snowmobile-use sticker must be issued. The sticker must be ~~displayed~~ *permanently affixed* in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid ~~for a consecutive 30-day period as designated by the permit~~ *during the fiscal year in which it is issued.*

(3) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(4) *(a)* A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under 23-2-622.

(b) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that will be used only on trails that are managed jointly by agreement between Montana and another state.

(5) ~~All money~~ *Except as provided in subsection (1)(b), money* collected by payment of fees under this section must be ~~remitted to the department of revenue and~~ deposited in the state ~~general fund~~ *special revenue fund to the credit of the department and used as follows:*

(a) $8 must be expended in areas that are impacted by nonresident snowmobile use to assist in offsetting snowmobile trail grooming costs;

(b) $1.50 must be used by the department for the enforcement of snowmobile laws pursuant to 23-2-641;

(c) 50 cents must be remitted to the license agent who sold the nonresident temporary-snowmobile-use permit; and

(d) $4.50 must be used by the department for the statewide snowmobile trail grooming program.

(6) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."“

Section 4. Effective date. [This act] is effective July 1, 2003.

Ap proved May 9, 2003

CHAPTER NO. 592

[HB 559]

AN ACT REVISING PROVISIONS RELATING TO REGISTRATION OF CERTAIN MOTOR VEHICLES, MOTOR BOATS, SAILBOATS, PERSONAL WATERCRAFT, AND SNOWMOBILES; PROVIDING FOR A REGISTRATION DECAL AS EVIDENCE OF PAYMENT OF FEES IMPOSED FOR A VEHICLE OR VESSEL REGISTRATION PERIOD; PRESCRIBING PLACEMENT OF THE REGISTRATION DECAL; SIMPLIFYING THE FEES IN LIEU OF TAX IMPOSED ON BOATS AND CERTAIN OTHER WATERCRAFT, SNOWMOBILES, OFF-HIGHWAY VEHICLES, TRAVEL TRAILERS AND CERTAIN OTHER TRAILERS, AND MOTORCYCLES AND QUADRICYCLES; CHANGING FROM ANNUAL TO ONE-TIME-ONLY THE REGISTRATION, LICENSING, AND IMPOSITION OF THE FEE IN LIEU OF TAX AND CERTAIN OTHER FEES PAYABLE ON CERTAIN BOATS AND OTHER WATERCRAFT, SNOWMOBILES, OFF-HIGHWAY VEHICLES, TRAVEL TRAILERS AND CERTAIN OTHER TRAILERS, AND MOTORCYCLES AND QUADRICYCLES; ELIMINATING THE FEE IN LIEU OF TAX ON CERTAIN WATERCRAFT; ELIMINATING THE REGISTRATION OF AND VARIOUS FEES PAYABLE ON CAMPERS; INCREASING FEES FOR ANNUALLY REGISTERED MOTOR VEHICLES; AMENDING SECTIONS 15-1-122, 15-16-202, 23-2-502, 23-2-510, 23-2-511, 23-2-512, 23-2-513, 23-2-514, 23-2-515, 23-2-516,23-2-517, 23-2-518, 23-2-519, 23-2-601, 23-2-612, 23-2-614, 23-2-616, 23-2-617, 23-2-626, 23-2-642, 23-2-803, 23-2-804, 23-2-807, 23-2-809, 23-2-817, 61-1-129, 61-3-303, 61-3-311, 61-3-312, 61-3-313,61-3-317, 61-3-321, 61-3-332, 61-3-333, 61-3-463, 61-3-474, 61-3-521, 61-3-523, 61-3-526, 61-3-527, 61-3-530, 61-3-535, 61-3-560, AND 61-3-570, MCA; REPEALING SECTIONS 23-2-520, 23-2-618, 23-2-620, 23-2-810, 61-3-519, 61-3-524, 61-3-525, AND 61-3-606, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Registration decal. "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, as

defined in 61-1-102, as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

Section 2. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $75,000 in fiscal year 2003;

(b) $2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For ~~fiscal year 2002 and for~~ each ~~succeeding~~ fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW *that is* registered for licensing pursuant to Title 61, chapter 3, part 3*, and $5 for each permanently registered light vehicle*. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 *in fiscal year 2006 and, in each subsequent year, $2.75* for each off-highway vehicle ~~subject to payment of~~ *for which* the fee in lieu of tax *is paid*, as provided for in 23-2-803; and

(ii) *for vehicles registered or reregistered pursuant to 61-3-321:*

(A) $1.50 for each *registered* light vehicle, truck or bus weighing less than 1 ton, logging truck, ~~vehicles~~ *vehicle* weighing more than 1 ton, *and motor home; and*

(B) $1.50 in fiscal year 2006 and, in each subsequent year, $3.65 for each motorcycle~~,~~ *and* quadricycle~~, and motor home subject to registration or reregistration pursuant to 61-3-321~~; *and*

(C) $7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 *in fiscal year 2006 and, in each subsequent year, $14.50* for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 *in fiscal year 2006 and, in each subsequent year, $19* for each snowmobile registered under 23-2-616, with ~~$2.50~~ *50% of the amount* to be used for enforcing the purposes of 23-2-601 through 23-2-644 and ~~$2.50~~ *50% of the amount* designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile *registration* decal issued under 23-2-617;

(iv) $5 *in fiscal year 2006 and, in each subsequent year, $13.25* for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 *in fiscal year 2006 and, in each subsequent year, $8* for each recreational vehicle, ~~camper,~~ motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 ~~or 61-3-524~~; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than*:*

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562; and

(f) 25 cents a year for each *registered* vehicle *and $1.25 for each permanently registered vehicle* subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

~~(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.~~

~~(5)~~*(4)* For each fiscal year, ~~beginning with fiscal year 2002,~~ the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). *The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered.* ~~Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000.~~ Transfer amounts in each ~~succeeding~~ fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available. *Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.*

~~(6)~~*(5)* The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 3. Section 15-16-202, MCA, is amended to read:

"15-16-202. Boats, snowmobiles, and motor vehicles — payment of ~~current and back~~ fees. (1) The fee in lieu of personal property taxes assessed against a ~~boat~~ *motorboat, sailboat, or personal watercraft described in 23-2-517* for the year in which application for ~~decals~~ *a registration decal* is made ~~and the immediately previous year~~ must be paid before ~~license decals~~ *the registration decal* may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made ~~and the immediately previous year~~ must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) *(a)* Except for mobile homes and manufactured homes as defined in 15-1-101 *and except as provided in subsection (3)(b) of this section*, the light vehicle registration fee or fee in lieu of tax imposed ~~or assessed~~ against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(b) The vehicle registration fees or fee in lieu of tax imposed against a motor vehicle described in 61-3-303(6) must be paid before a motor vehicle may be registered pursuant to 61-3-303.

(4) The provisions of subsections (1) ~~through~~ *and* (3)*(a)* do not require payment of the immediately previous year's fees if the fees have already been paid."

Section 4. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued ~~annually~~ by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning ~~such~~ *the* motorboat an identifying number and containing ~~such~~ *other* information as required *by the department of justice.*

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means ~~any~~ *a* person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel ~~which~~ *that* has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

~~(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.~~

~~(8)~~*(7)* "Lienholder" means a person holding a security interest.

~~(9)~~*(8)* "Manufacturer" means ~~any~~ *a* person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

~~(10)~~*(9) (a)* "Motorboat" means ~~any~~ *a* vessel, including a ~~canoe, kayak,~~ personal watercraft~~, rubber raft,~~ or pontoon, propelled by any machinery, motor, or engine of any description, whether or not ~~such~~ *the* machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines. ~~but~~

(b) The term does not include a vessel ~~which~~ *that* has a valid marine document issued by the U.S. coast guard ~~of the United States government~~ or any federal agency successor ~~thereto~~.

~~(11)~~*(10)* "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(12)~~*(11)* "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(13)~~*(12) (a)* "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation~~, but the~~.

(b) The term ~~excludes~~ *does not include* a lessee under a lease not intended as security.

~~(14)~~*(13)* "Passenger" means ~~every~~ *each* person carried on board a vessel other than:

(a) the owner or ~~his~~ *the owner's* representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have *not* contributed ~~no~~ *any* consideration for their carriage and who are paid for their services; or

(d) ~~any~~ *a* guest on board a vessel ~~which~~ *that* is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for ~~his~~ *the guest's* carriage.

~~(15)~~*(14)* "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(16)~~*(15)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(16) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a motor boat, sailboat, or personal watercraft as proof of payment of all fees imposed on the motor boat, sailboat, or personal watercraft for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(17) *(a)* "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(18) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(19) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(20) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(21) "Waters of this state" means any waters within the territorial limits of this state."

Section 5. Section 23-2-510, MCA, is amended to read:

"23-2-510. Transfer of interest. (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within 30 calendar days after endorsement, the transferee shall ~~make application~~ *apply* for *a* transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and ~~also make application~~ *apply* for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the application upon receipt. A certificate of ownership may not be issued by the department of justice until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $5 for each application for transfer of ownership, which must be forwarded to the department of justice for deposit in the general fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 30 calendar days from the date of purchase to register the motorboat or sailboat, ~~make application~~ *apply* for a certificate of ownership, and obtain a *registration* decal ~~indicating that the fee in lieu of property tax has been paid on the vessel for the current year~~. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and *registration* decal during the 30-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat constructed after October 31, 1972, a sticker as prescribed by the department of

justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for the dealer's records and shall send a copy of the sticker to the department of justice.

(5) A purchaser of a new or used motorboat or sailboat who is unable to record a transfer of ownership with the county treasurer ~~at the time of making an application~~ *when applying* for registration of the motorboat or sailboat because the certificate of ownership is lost, in the possession of *a* third ~~parties~~ *party*, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the department of justice and upon the payment of the applicable fee in lieu of tax plus a fee of $2 to be collected by the county treasurer and remitted to the department of justice for deposit in the general fund, obtain from the county treasurer of the county in which the boat is to be registered a temporary boat sticker. *The sticker must be* of a size, color, and design as *prescribed by* the department of justice ~~may prescribe, to~~ *and* be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker conspicuously on the motorboat or sailboat, may operate the motorboat or sailboat during the period for which the boat sticker has been validated without displaying the numbers and ~~license~~ *registration* decal for the current year. The county treasurer may not sell, and a person may not purchase, more than one 60-day temporary boat sticker for any motorboat or sailboat, the ownership of which has not changed since the issuance of the previous 60-day boat sticker.

(6) The provisions of subsection (2) do not apply ~~in the event of~~ *if* the transfer of a motorboat or sailboat 12 feet in length or longer *is* to a licensed dealer ~~intending~~ *who intends* to resell the motorboat or sailboat and who operates it only for demonstration purposes~~, but~~. *However,* a dealer, upon transferring the dealer's interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

(7) ~~When~~ *If* the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(8) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to ~~any~~ *a* certificate of ownership transferred under this section."

Section 6. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats prohibited — display of ~~decals~~ *registration decal.* (1) ~~Every~~ *A* motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display *a* valid ~~license decals~~ *registration decal*. ~~No~~ *A* person may *not* operate or give permission for the operation of any motorboat on ~~such~~ *the* waters *of this state* unless the motorboat is numbered and displays *a* valid ~~license decals~~ *registration decal* in accordance with this part~~, with~~ *and* applicable federal law~~,~~ or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat is in ~~full force and~~ effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on ~~such~~ *the* motorboat; and

(c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat from a registered boat dealer or manufacturer, the transferred motorboat may be operated on the waters of this state for 30 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and ~~license~~ *registration* decal required by subsection (1) ~~provided that~~ *if* when the motorboat is operated during those 30 consecutive calendar days, a bill of sale or other evidence of transfer reciting the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request."

Section 7. Section 23-2-512, MCA, is amended to read:

"23-2-512. Identification number. (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of $3.50 *in calendar year 2004 and, in each subsequent year, $15.50*. Any alteration, change, or false statement contained in the application ~~will render~~ *renders* the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required *under 23-2-517* for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft ~~for the current year of certification~~ before the application for certification or, *if applicable,* recertification may be accepted by the county treasurer.

(3) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) ~~Every~~ *A* certificate of number and ~~the license decals assigned~~ *a registration decal issued* under this part ~~continue in effect~~ *are effective* ~~for a period not to exceed 1 year~~ unless terminated or discontinued in accordance with the provisions of this part. ~~Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.~~

~~(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.~~

~~(7)~~*(6)* ~~In the event of a transfer of~~ *If* ownership *is transferred,* the purchaser shall ~~furnish~~ *notify* the county treasurer ~~notice~~ within a reasonable time of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

~~(8)~~*(7)* A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

~~(9)~~*(8)* (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the number ~~and license decal~~ assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft. *A registration decal issued under this part must be placed next to the identifying number located on the left side of a motorboat, sailboat, or personal watercraft or, if there are no sides, at the corresponding location on the left outboard side of the foredeck of the motorboat, sailboat, or personal watercraft.*

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

~~(10)~~*(9)* Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

~~(11)~~*(10)* An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name ~~when~~ *if* the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 8. Section 23-2-513, MCA, is amended to read:

"23-2-513. Dealer's identification number — premises — inspection — bond — judgment. (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number ~~shall~~ *must* be displayed on ~~his~~ *a dealer's or manufacturer's* boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include ~~his~~ *the dealer's or manufacturer's* name and business address. Each dealer or manufacturer ~~will~~ *must* have one identifying number assigned to ~~his~~ *the dealer's or manufacturer's* business.

(3) An application for *a* dealer's or manufacturer's identifying number and *a* certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and ~~set of license decals~~ *registration decal*, $5;

(b) for each additional certificate of number and ~~set of license decals~~ *registration decal* applied for in any application, $2.

(4) The department of justice shall issue certificates of number for the identifying ~~numbers~~ *number* assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and ~~(9)~~*(8)*, ~~as amended,~~ except that ~~no~~ *a* boat may *not* be described in ~~the~~ *a* certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number ~~shall~~ *must* be displayed in the same manner as provided in 23-2-512~~(9)~~*(8)*, ~~as amended,~~ except that the number may be temporarily attached. The last three letters ~~shall~~ *must* be "DLR" for dealer and "MFR" for manufacturer. These letters ~~shall~~ *must* be included, respectively, in dealer or manufacturer identification numbers ~~only~~.

(6) ~~No~~ *A* person other than a dealer or manufacturer or an employee of a dealer or manufacturer may *not* display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) ~~No~~ *A* dealer or manufacturer or employee of a dealer or manufacturer may *not* use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) ~~of this section~~.

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where ~~he maintains~~ all business

records *are maintained* and ~~where he~~ *where the dealer* displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer's principal place of business must be inspected by an official of the department of justice to ~~assure~~ *ensure* compliance with this section.

(9) ~~In order to~~ *To* qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice upon application for renewal that ~~he~~ *the dealer* sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of $50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with ~~his~~ *the* application a bond of $5,000. The bond must be conditioned that the applicant ~~shall~~ *will* conduct ~~his~~ business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage ~~due to~~ *because of* the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

Section 9. Section 23-2-514, MCA, is amended to read:

"23-2-514. Exemption from numbering provisions. A motorboat is not required to be numbered under this part if it is:

(1) covered by a number in ~~full force and~~ effect that has been assigned to it pursuant to federal law or a federally approved numbering system of another state~~, provided that such vessel shall~~ *if the motorboat has* not ~~have~~ been within this state for a period in excess of 90 consecutive days. After 90 consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number, and ~~license~~ *registration* decal.

(2) a motorboat from a country other than the United States temporarily using the waters of this state;

(3) a motorboat whose owner is the United States, a state, or *a* subdivision ~~thereof~~ *of a state*; *or*

(4) a ship's lifeboat."

Section 10. Section 23-2-515, MCA, is amended to read:

"23-2-515. ~~License decals~~ *Registration decal* to be displayed. (1) ~~Every~~ *A* Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 or 23-2-513 ~~shall be required to~~ *must* display ~~license decals~~ *a registration decal.* For this purpose the county treasurer, upon proof of payment of the fee in lieu of tax as required by 15-16-202 for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, or personal watercraft, shall issue a ~~pair of decals~~ *registration decal* prepared and furnished by the department of justice with all new certificates of number and*, if applicable, all* renewals ~~thereof~~ *of the certificates of number*.

(2) *(a)* The ~~decals shall~~ *registration decal must* be of a style and design prescribed by the department of justice ~~and shall *must* be a color differing from the preceding year~~.

(b) The ~~license decal will~~ *registration decal must* be serially numbered ~~and have the expiration date of December 31 of the appropriate year printed thereon~~.

(c) The registration decals issued for a motorboat or sailboat do not expire while the motorboat or sailboat remains in the same ownership.

(3) ~~License decals shall~~ *A registration decal must* be displayed ~~only in the following manner: one valid license decal on each~~ *on the left* side of the forward half, 3 inches aft of the identifying numbers."

Section 11. Section 23-2-516, MCA, is amended to read:

"23-2-516. Fee in lieu of tax for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, ~~motorized canoes, motorized rubber rafts,~~ and motorized pontoons. (1) *(a)* There is a fee in lieu of property tax as prescribed in 23-2-517 imposed on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, ~~motorized canoes, motorized rubber rafts,~~ and motorized pontoons.

(b) The fee is in addition to the ~~annual~~ fee required by 23-2-512 for filing of the application for a certificate of number *and is a one-time fee.*

(2) The fee imposed by subsection (1) need not be paid by a dealer for motorboats, sailboats, personal watercraft, ~~motorized canoes, motorized rubber rafts,~~ or motorized pontoons that constitute inventory of the dealership."

Section 12. Section 23-2-517, MCA, is amended to read:

"23-2-517. Fees for motorboats, sailboats, personal watercraft, ~~motorized canoes, motorized rubber rafts,~~ and motorized pontoons. (1) The owner of a motorboat 10 feet in length or longer, ~~or~~ a sailboat 12 feet in length or longer, *a personal watercraft, or a motorized pontoon* shall pay a fee ~~based on the length and age of the motorboat or sailboat~~ as follows:

(a) ~~The~~ *Regardless of the vessel's age, the* fee ~~schedule~~ for a motorboat at least 10 feet in length but less than ~~14~~ *16* feet in length, ~~or~~ *a* sailboat at least 12 feet in length but less than ~~14~~ *16* feet in length, *a personal watercraft less than 16 feet in length, or a motorized pontoon less than 16 feet in length* is ~~as follows:~~

~~(i) for a motorboat or sailboat less than 5 years of age, $7.50;~~

~~(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $5.65; and~~

~~(iii) for a motorboat or sailboat 10 years of age or older, $3.75~~ *$25 in calendar year 2004 and, in each subsequent year, $50 and, except as provided in subsection (2), is a one-time fee*.

(b) ~~The~~ *Regardless of the vessel's age, the* fee ~~schedule~~ for a motorboat or sailboat at least ~~14~~ *16* feet in length but less than ~~16~~ *19* feet in length, *a personal watercraft 16 feet in length or longer, or a motorized pontoon 16 feet in length or longer* is ~~as follows:~~

~~(i) for a motorboat or sailboat less than 5 years of age, $15;~~

~~(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $11.25; and~~

~~(iii) for a motorboat or sailboat 10 years of age or older, $7.50.~~

~~(c) The fee schedule for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is as follows:~~

~~(i) for a motorboat or sailboat less than 5 years of age, $32;~~

~~(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $24; and~~

~~(iii) for a motorboat or sailboat 10 years of age or older, $16.~~

~~(d) The fee schedule for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is as follows:~~

~~(i) for a motorboat or sailboat less than 5 years of age, $3 a foot or fraction of a foot;~~

~~(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $2.25 a foot or fraction of a foot; and~~

~~(iii) for a motorboat or sailboat 10 years of age or older, $1.50 a foot or fraction of a foot~~ *$55 in calendar year 2004 and, in each subsequent year, $110 and, except as provided in subsection (2), is a one-time fee.*

~~(e)~~*(c)* The fee schedule for a motorboat or sailboat 19 feet in length or longer is ~~as follows:~~

~~(i) for a motorboat or sailboat less than 5 years of age, $4 a foot or fraction of a foot;~~

~~(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $3 a foot or fraction of a foot; and~~

~~(iii) for a motorboat or sailboat 10 years of age or older, $2 a foot or fraction of a foot~~ *$140 in calendar year 2004 and, except as provided in subsection (2), in each subsequent year, $280.*

~~(2) The owner of a personal watercraft shall pay a fee based on the age of the watercraft as follows:~~

~~(a) The fee for a personal watercraft less than 4 years of age is $22.~~

~~(b) The fee for a personal watercraft 4 years of age or older is $15.~~

~~(3) (a) Except as provided in subsection (3)(b), the age of a motorboat, sailboat, or personal watercraft is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(b) If the purchase year of a motorboat, sailboat, or personal watercraft precedes the designated model year of the motorboat, sailboat, or personal watercraft and the motorboat, sailboat, or personal watercraft is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

~~(4) The fee for a motorized canoe or a motorized rubber raft is $7.50, regardless of its length or age.~~

~~(5) The fee for a motorized pontoon is $20, regardless of its length or age.~~

(2) Whenever a transfer of ownership of a vessel described in subsection (1) occurs, the one-time fee required under subsection (1) must be paid by the new owner."

Section 13. Section 23-2-518, MCA, is amended to read:

"23-2-518. (Temporary) Disposition of fees in lieu of tax. The county treasurer shall transfer all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, ~~motorized canoes, motorized rubber rafts,~~ and motorized pontoons pursuant to

23-2-516 and 23-2-517 to the state general fund. (Terminates June 30, 2006—secs. 2, 3, Ch. 95, L. 2001.)

23-2-518. (Effective July 1, 2006) Disposition of fees in lieu of tax. The county treasurer shall transfer all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, ~~motorized canoes, motorized rubber rafts,~~ and motorized pontoons pursuant to 23-2-516 and 23-2-517 to the state general fund."

Section 14. Section 23-2-519, MCA, is amended to read:

"23-2-519. (Temporary) Penalty — disposition. (1) Failure to pay the fee in lieu of tax as provided for in 23-2-517 is a misdemeanor, punishable by a fine equal to four times the fee in lieu of tax that is due on the motorboat, sailboat, personal watercraft, ~~motorized canoe, motorized rubber raft,~~ or motorized pontoon for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat, sailboat, personal watercraft, ~~motorized canoe, motorized rubber raft,~~ or motorized pontoon is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part. (Terminates June 30, 2006—sec. 4, Ch. 95, L. 2001.)

23-2-519. (Effective July 1, 2006) Penalty — disposition. (1) Failure to pay the fee in lieu of tax as provided for in 23-2-517 is a misdemeanor, punishable by a fine equal to five times the fee in lieu of tax that is due on the motorboat, sailboat, personal watercraft, ~~motorized canoe, motorized rubber raft,~~ or motorized pontoon for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat, sailboat, personal watercraft, ~~motorized canoe, motorized rubber raft,~~ or motorized pontoon is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part."

Section 15. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in 23-2-601 through 23-2-644, the following terms ~~shall~~ have the meanings indicated ~~herein~~, unless the context otherwise clearly requires that another meaning is intended:

(1) "Certificate of ownership" means the document issued by the department of justice as prima facie evidence of ownership.

(2) "Certificate of registration" means the owner's receipt evidencing payment of ~~taxes, decal fees, and registration~~ fees ~~for a given registration year~~ *due in order for the snowmobile to be validly registered.*

(3) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "New snowmobile" means ~~any~~ *a* snowmobile that has not been previously sold to an owner~~, as defined in subsection (7)~~.

(6) "Operator" ~~includes every~~ *includes each* person who operates or is in actual physical control of the operation of a snowmobile.

(7) "Owner" ~~includes every~~ *includes each* person ~~as defined herein~~, other than a lienholder or other person having a security interest only, holding a certificate of ownership to a snowmobile and entitled to the use or possession ~~thereof~~ *of the snowmobile*.

(8) "Person" ~~includes~~ *means* an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

(9) "Registration decal" means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

~~(9)~~*(10)* "Roadway" ~~includes~~ *means* only those portions of ~~any~~ *a* highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

~~(10)~~*(11)* "Snowmobile" ~~includes any~~ *means a* self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, which may be steered by skis or runners and which is not otherwise registered or licensed under the laws of the state of Montana."

Section 16. Section 23-2-612, MCA, is amended to read:

"23-2-612. Transfer of interest. (1) Except as provided in subsection (3), upon ~~a~~ transfer of ~~any~~ *a* certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall ~~make application~~ *apply* for *a* transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also ~~make application~~ *apply* for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file the application upon receipt. A certificate of ownership may not be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $5 for each application for transfer of ownership, which must be forwarded to the department of justice for deposit in the *state* general fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, ~~make application~~ *apply* for a certificate of ownership, and obtain a *registration* decal indicating that the fee in lieu of property tax has been paid on the snowmobile ~~for the current year~~. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, a certificate of registration, and a *registration* decal during the 20-day period. During this period, the sticker provided for in subsection (4) must remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker ~~(~~in a form to be prescribed by the department of justice~~)~~. The sticker ~~shall~~ *must* contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for the dealer's records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply~~in the event of~~ *to* the transfer of a snowmobile to a licensed snowmobile dealer who is intending to resell the snowmobile and who operates it only for demonstration purposes~~, but~~. *However,* a dealer, upon transferring the dealer's interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

(6) ~~When~~ *If* the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(7) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to ~~any~~ *a* certificate of ownership transferred under this section."

Section 17. Section 23-2-614, MCA, is amended to read:

"23-2-614. Exemptions. (1) The provisions of 23-2-601 through 23-2-644, with respect to registration, ~~tax-paid~~ *registration* decals, and certification of ownership, do not apply to snowmobiles owned or used by the United States or another state or ~~any~~ *an* agency or political subdivision ~~thereof~~ *of the United States or another state*, ~~any~~ *a* snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or to ~~any~~ *a* snowmobile registered in another state ~~of the United States~~ but to be temporarily used within this state for not more than 30 days. Snowmobiles owned by the state of Montana or ~~any~~ *an* agency or political subdivision ~~thereof~~ *of the state* are exempt only from the payment of fees and ~~shall~~ *must* otherwise comply with all the requirements of 23-2-601 through 23-2-644.

(2) The provisions of 23-2-601 through 23-2-644 with respect to registration, ~~tax-paid~~ *registration* decals, and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of ~~the state of~~ Montana who either:

(a) display visual proof that a nonresident temporary-use permit has been purchased; or

(b) use the snowmobile only in races and for not more than 30 days in the state. "Race" means an organized competition on a predetermined course that is run according to accepted rules."

Section 18. Section 23-2-616, MCA, is amended to read:

"23-2-616. Registration and ~~decals~~ *registration decal* — application and issuance — use of certain fees. (1) Except for a snowmobile registered under 23-2-621, a snowmobile may not be operated on public lands by any person in Montana unless it has been registered and ~~there~~ *a registration decal* is

displayed in a conspicuous place on ~~both sides~~ *the left side* of the cowl ~~a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202~~.

(2) Application for registration must be made to the county treasurer upon forms ~~to be~~ furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application must contain the following information:

(a) the name and address of the owner;

(b) the certificate of ownership number;

(c) the make of the snowmobile;

(d) the model name of the snowmobile;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) other information that the department of justice may require.

(3) The application must be accompanied by a ~~decal registration~~ *registration* fee of $6.50 *in calendar year 2004 and, in each subsequent year, $20.50*~~,~~ and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt that ~~must contain~~ *contains* information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer ~~for reregistration~~ or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a *registration* decal in the style and design prescribed by the department of justice ~~and. of a different color than the preceding year, numbered in sequence.~~

(5) The county treasurer may not accept any application under this section until the applicant has paid the ~~decal registration~~ *registration* fee and the fee in lieu of property tax on the snowmobile ~~for the current year and the immediately previous year~~ as required by 15-16-202.

(6) All money collected from payment of ~~decal registration~~ *registration* fees and all interest accruing from use of this money must be forwarded to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the state general fund.

(8) The fee imposed in subsection (3) is a one-time fee except on change of ownership. When ownership of the snowmobile changes, the new owner must pay the fee in subsection (3)."

Section 19. Section 23-2-617, MCA, is amended to read:

"23-2-617. Duplicate decal. ~~In the event any~~ *If a registration* decal ~~indicating that the fee in lieu of property tax has been paid on a snowmobile for the current year~~ is lost, mutilated, or becomes illegible, the person to whom the ~~same~~ *registration decal* was issued shall immediately make application for and

may obtain a duplicate ~~thereof~~ *of the registration decal*~~,~~ upon payment of a fee of $1 to the county treasurer."

Section 20. Section 23-2-626, MCA, is amended to read:

"23-2-626. ~~Fee~~ *One-time fee* in lieu of tax on snowmobiles — *exception*. (1) ~~There~~ *Except as provided in subsections (3) and (4), there* is a *one-time* fee in lieu of tax on snowmobiles *of $20 in calendar year 2004 and, in each subsequent year, $40*.

~~(2) The fee for a snowmobile less than 4 years old is $22. In all other cases the fee is $15.~~

~~(3) (a) Except as provided in subsection (3)(b), the age of a snowmobile is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(b) If the purchase year of a snowmobile precedes the designated model year of the snowmobile and the snowmobile is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

(2) Except as provided in subsection (3), whenever a transfer of ownership of a snowmobile occurs, the fee required under subsection (1) must be paid by the new owner.

~~(4)~~*(3)* The fee need not be paid by a dealer for snowmobiles that constitute inventory of the dealership.

(4) A snowmobile that is licensed by a Montana business and that is owned exclusively for the purpose of daily rental to customers is assessed:

(a) a 1-year fee in lieu of tax of $20 in the first year of registration; and

(b) if the business reregisters the snowmobile for a second year, the fee in lieu of tax imposed in subsection (1)."

Section 21. Section 23-2-642, MCA, is amended to read:

"23-2-642. Penalties. (1) The failure to display a current *registration* decal ~~indicating that the fee in lieu of property tax has been paid~~ on ~~the~~ *a* snowmobile ~~for the current year during the time provided in 23-2-601 through 23-2-644~~ is a misdemeanor, punishable by a fine in an amount equal to five times the applicable fee in lieu of tax payable under 23-2-626.

(2) A person who violates any other provision of 23-2-601 through 23-2-644 or a rule adopted pursuant to those sections shall pay a civil penalty of not less than $15 or more than $500 for each separate violation. If the violation is willful, the person shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile ~~can meet~~ *meets* the sound level limitations imposed by 23-2-601 through 23-2-644 is subject to the penalty provisions of subsection (2) if ~~any~~ *the* machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601 through 23-2-644 constitutes a separate violation."

Section 22. Section 23-2-803, MCA, is amended to read:

"23-2-803. ~~Fee~~ *One-time fee* in lieu of tax on off-highway vehicles — exception — disposition of fees. (1) ~~There~~ *Except as provided in subsection (2), there* is a *one-time* fee in lieu of tax on off-highway vehicles, other than

off-highway vehicles constituting the inventory of a dealership licensed under 23-2-818, to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

~~(a)~~ The *one-time* fee for an off-highway vehicle ~~less than 3 years old is $19. In all other cases the fee is $9~~ *is $20 in calendar year 2004 and, in each subsequent year, $40.*

~~(b) Except as provided in subsection (1)(c), the age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(c) If the purchase year of an off-highway vehicle precedes the designated model year of the off-highway vehicle and the off-highway vehicle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

(2) Whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under subsection (1) must be paid by the new owner.

~~(2)~~*(3)* The county treasurer shall transfer all fees in lieu of tax collected on off-highway vehicles pursuant to this section to the state general fund."

Section 23. Section 23-2-804, MCA, is amended to read:

"23-2-804. Decal required. (1) Except as provided in 23-2-802, an off-highway vehicle may not be operated by ~~any~~ *a* person for off-road recreation on public lands in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department of justice and issued by the county treasurer, as visual proof that the following fees have been paid ~~for the current year~~:

(a) (i) the fee in lieu of tax provided for in 23-2-803; and

(ii) the registration fee provided for in 61-3-321; or

(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321, as evidenced by presentation of an owner's certificate of registration and payment receipt.

(2) The decal must be serially numbered ~~and have the expiration date of December 31 of the appropriate year printed on the decal~~."

Section 24. Section 23-2-807, MCA, is amended to read:

"23-2-807. Penalty — disposition. (1) The failure to display a ~~current~~ *valid* decal indicating that the fee in lieu of tax, registration fees, decal fees, and, when applicable, taxes on licensed vehicles have been paid on the off-highway vehicle ~~for the current year~~, as provided in 23-2-804, is a misdemeanor punishable by a fine of $50.

(2) All fines collected under this section must be transmitted to the department of revenue for deposit in the state general fund."

Section 25. Section 23-2-809, MCA, is amended to read:

"23-2-809. Duplicate decal. If a decal required in 23-2-804 indicating that the off-highway vehicle fee has been paid ~~for the current year~~ is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate decal upon payment of a fee of $5 to the county treasurer, who shall distribute the fee as provided in ~~23-2-804(3)~~ *23-2-803*."

Section 26. Section 23-2-817, MCA, is amended to read:

"23-2-817. Registration fee — application and issuance — disposition. (1) Each off-highway vehicle is subject to ~~an annual~~ *a* registration fee of $2.

(2) The county treasurer shall collect the ~~annual~~ fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

(a) the name and home mailing address of the owner;

(b) the certificate of ownership number;

(c) the name of the manufacturer of the off-highway vehicle;

(d) the model number or name;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax; and

(g) ~~such~~ other information ~~as~~ *that* the department of justice may require.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt~~, which must contain~~ *containing* the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer ~~for reregistration~~ or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(5) All registration fees collected must be forwarded to the department of justice and deposited in the *state* general fund."

Section 27. Section 61-1-129, MCA, is amended to read:

"61-1-129. Camper. *(1)* The term "camper" as used in 61-1-102~~, 61-3-524, and 61-3-525~~ includes but is not limited to truck camper, chassis-mounted camper, cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(2) The term does not include a truck canopy cover or topper."

Section 28. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) ~~Each~~ *An* owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file in the office of the county treasurer in the county where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, ~~and~~ type of body, and~~,~~ if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and

(f) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) *except as provided in subsection (6),* the immediately ~~previous~~ *preceding* year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department may make full and complete investigation of the status of the vehicle. An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.

(5) Revenue that accrues from the voluntary donation provided in subsection (2)(c) must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(6) (a) Except as provided in subsection (6)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle [other than a motorcycle or quadricycle with special license plates

issued under section 1 of House Bill No. 767] or a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the vehicle is owned by the same person who registered the vehicle. Once registered, a vehicle described in this subsection (6)(a) is registered permanently unless ownership of the vehicle is transferred.

(b) Whenever ownership of a vehicle described in subsection (6)(a) is transferred, the new owner is required to register the vehicle as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees."

Section 29. Section 61-3-311, MCA, is amended to read:

"61-3-311. Time for making application. *(1) (a)* ~~Registration~~ *Except as provided in subsection (1)(b), the registration of a vehicle* must be renewed annually, and ~~license~~ *registration* fees must be paid annually.

(b) Once registered, a vehicle described in 61-3-303(6)(a) is registered permanently unless ownership of the vehicle is transferred. A transfer of ownership of a vehicle described in 61-3-303(6)(a) requires the new owner to register the vehicle as provided in this title.

(2) Except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526, ~~and~~ *61-3-560, 61-3-562,* 61-3-721*, and subsection (1)(b) of this section*, all registrations expire on December 31 of the year in which they are issued and application for registration or reregistration must be filed with the county treasurer not later than February 15 of each year.

(3) If the ownership of a motor vehicle is transferred during the registration year, the motor vehicle must be reregistered ~~and relicensed~~ as provided by statute."

Section 30. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in *61-3-311(2) and (3),* 61-3-314, 61-3-318, 61-3-526, *61-3-560, 61-3-562,* and 61-3-721, a vehicle registration under this chapter expires on December 31 of each year and must be renewed annually upon application and payment of ~~license~~ *registration* fees as provided in 61-3-303 and 61-3-321. The renewal takes effect on January 1 of each year. The certificate of registration is valid only during the registration year for which it is issued.

(2) The owner of a vehicle registered under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration ~~certificate~~ *decal* of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year."

Section 31. Section 61-3-313, MCA, is amended to read:

"61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c)(i)(A), 61-3-411, or 61-3-421;

(4) trucks exceeding a 1-ton rated capacity;

(5) trailers, semitrailers, tractors, *and* buses~~, motorcycles, quadricycles, and motor-driven cycles~~;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318; and

(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733."

Section 32. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. *(1)* Except as otherwise provided in this section, the new owner of a transferred motor vehicle has a grace period of 20 calendar days from the date of purchase to make application and pay the registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year.

(2) The new owner of a vehicle described in 61-3-303(6) shall make application and pay the registration fees, fees in lieu of tax, and other fees required by part 5 of this chapter and local option taxes, if applicable, whether or not the fees and taxes have been paid previously.

(3) If the motor vehicle was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, ~~provided that~~ *if* at all times during that period, a vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department, reciting the date of purchase is clearly displayed in the rear window of the motor vehicle.

(4) Registration ~~and license~~ fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.

(5) Failure to make application within the time provided in this section subjects the purchaser to a penalty of $10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund."

Section 33. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from ~~license or~~ registration fees — disposition of fees. (1) Registration ~~or license~~ fees must be paid upon registration or, *if applicable*, reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, $13.75 *in calendar year 2004 and, in each subsequent year, $17*;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, $8.25~~;~~. *For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.*

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) over 2,850 pounds, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9~~;~~ *in calendar year 2004 and, in each subsequent year, $19.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.*

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75 *in calendar year 2004 and, in each subsequent year, $22*;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75~~;~~ *[for a motorcycle or quadricycle with special license plates issued under section 1 of House Bill No. 767 and for a motorcycle or quadricycle under one-time registration, $9.75] in calendar year 2004 and, in each subsequent year, $11.25. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.*

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25~~;~~. *For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.*

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, $16.25~~;~~. *For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.*

(k) travel trailers, $11.75~~; and~~. *This fee is a one-time fee, except upon transfer of ownership of a travel trailer.*

(l) recreational vehicles, $3.50 *in calendar year 2004 and, in each subsequent year, $9.75. If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer*.

(2) *(a)* ~~If~~ *Except as provided in subsection (2)(b), if* a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration ~~or license~~ fee for the remainder of the year is one-half of the regular fee.

(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.

(3) An additional fee of $5 *[for a motorcycle or quadricycle with special license plates issued under section 1 of House Bill No. 767 and for a motorcycle or quadricycle under one-time registration $5] in calendar year 2004 and, in each subsequent year, $16* must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a

vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the *state* general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) ~~The following vehicles are not subject to the fee imposed in subsection (6)(a):~~ *The following vehicles are not subject to the fee imposed in subsection (6)(a):*

~~(i) trailers~~*(i) trailers* and semitrailers registered in other jurisdictions and registered through a proportional registration agreement~~; and~~*; and*

(ii) ~~travel~~ *travel* trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(8) A person qualifying under 61-3-332(10)(d) is exempt from the fees required under this section.

(9) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund."

Section 34. Section 61-3-332, MCA, is amended to read:

"61-3-332. (Temporary) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in 61-3-479 and subsections*(3)(b),* (4)(c), and (4)(d) of this section, all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the department. In years when number plates are not issued, the department shall provide ~~nonremovable stickers bearing appropriate registration numbers~~ *a*

registration decal that must be affixed to the ~~license plates in use~~ *rear license plate of the vehicle*.

(b) For ~~motorcycles, quadricycles, and~~ light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562 *and vehicles described in 61-3-303(6) that are permanently registered*, the department shall provide *a* distinctive ~~nonremovable stickers~~ *registration decal* indicating that the vehicle is permanently registered. The ~~stickers~~ *registration decal* must be affixed to the ~~license plates in use~~ *rear license plate of the permanently registered vehicle*.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A ~~motorcycle, quadricycle, or~~ light vehicle *described in subsection (3)(b)* that is permanently registered~~, as provided in 61-3-527 or 61-3-315 and 61-3-562,~~ may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) ~~In the case of~~ *For* passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" must be placed on each plate. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, and generic specialty license plates, the distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration ~~or license~~ fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they ~~may be~~ *are* formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, *with the registration decal affixed to the rear license plate of the vehicle,* and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member

shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the

applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability. *If the vehicle to which the license plate is attached is permanently registered, the owner of the vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the vehicle.*

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

(12) Fees collected under this section must be deposited in the state general fund. (Terminates July 1, 2005—sec. 21, Ch. 402, L. 2001.)

61-3-332. (Effective July 1, 2005) Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle.

(2) In addition to special license plates and collegiate license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";

(d) trailers, bearing the letters "TR" or the word "TRAILER";

(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";

(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";

(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";

(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and

(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER".

(3) (a) Except as provided in subsections *(3)(b),* (4)(c), and (4)(d), all number plates for motor vehicles must be issued for a maximum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide ~~nonremovable stickers bearing appropriate registration numbers~~ *a registration decal* that must be affixed to the ~~license plates in use~~ *rear license plate of the vehicle*.

(b) For ~~motorcycles, quadricycles, and~~ light vehicles that are permanently registered as provided in 61-3-527 or 61-3-315 and 61-3-562 *and vehicles described in 61-3-303(6)*, the department shall provide *a* distinctive ~~nonremovable stickers~~ *registration decal* indicating that the vehicle is permanently registered. The ~~stickers~~ *permanent registration decal* must be affixed to the ~~license plates in use~~ *rear license plate of the permanently registered vehicle*.

(4) (a) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(c) A light vehicle that is registered for a 24-month period, as provided in 61-3-315 and 61-3-560, may display the number plate and plate design in effect at the time of registration for the entire 24-month registration period.

(d) A ~~motorcycle, quadricycle, or~~ light vehicle *described in subsection (3)(b)* that is permanently registered~~, as provided in 61-3-527 or 61-3-315 and 61-3-562,~~ may display the number plate and plate design in effect at the time of registration for the entire period that the vehicle is permanently registered.

(5) In the case of passenger vehicles and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be

used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(6) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(7) For the use of exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a), in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration ~~or license~~ fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44;

Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (6), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, *with the registration decal affixed to the rear license plate of the vehicle,* and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) (i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation

to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10.

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability. *If the vehicle to which the license plate is attached is permanently registered, the owner*

of the vehicle shall maintain evidence of continued eligibility to use the license plate, which must be attached to the registration document in the vehicle.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.

(12) Fees collected under this section must be deposited in the state general fund."

Section 35. Section 61-3-333, MCA, is amended to read:

"61-3-333. Replacing number plates. ~~In the event of~~ *If* loss, mutilation, or destruction of number plate~~s, and/or validation devices~~ *or a motor vehicle's registration decal occurs*, the owner of the registered motor vehicle may obtain from the department ~~duplicates or~~ replacements of the number plates *or a duplicate registration decal* upon filing *a* sworn declaration ~~showing~~ *stating* that fact and payment of a fee of $2. ~~In the event of~~ *If* loss, mutilation, or destruction of pioneer plates *occurs*, duplicates may be obtained in the same manner upon payment of a fee of $5."

Section 36. Section 61-3-463, MCA, is amended to read:

"61-3-463. Collegiate license plates. (1) Subject to the provisions of 61-3-332(4) and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution's distinctive color and insignia provided in subsection (2), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a ~~nonremovable sticker~~ *registration decal* denoting the correct county designation under 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) An issue of collegiate license plates may not be ordered or manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid."

Section 37. Section 61-3-474, MCA, is amended to read:

"61-3-474. (Temporary) Responsibility for design of generic specialty license plates — numbering — rulemaking — approval — ~~county designation by sticker~~ *registration decal* — listing of plate sponsors. (1) The department shall:

(a) design the background and general format of generic specialty license plates;

(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;

(c) use a numbering system for generic specialty license plates that is distinctive from the numbering system required under 61-3-332 or used for collegiate license plates;

(d) adopt rules that prescribe:

(i) the minimum and maximum number of characters that a generic specialty license plate may display;

(ii) the general placement of the sponsor's name, identifying phrase, and graphic; and

(iii) any specifications or limitations on the use or choice of color or detail in the sponsor's graphic design.

(2) All sponsor names, identifying phrases, and graphics intended for use on generic specialty license plates must be approved by the department prior to the manufacture of the plates.

(3) Upon the issuance of generic specialty license plates, the department shall provide ~~nonremovable stickers~~ *registration decals* bearing the appropriate county designation as provided in 61-3-332. The ~~stickers~~ *registration decal* must be affixed to the license plates in use in accordance with instructions by the department.

(4) The department shall maintain a list of the organizations that it has approved as sponsors of generic specialty license plates, including the name and address of a generic specialty license plate liaison for each organization. The department shall, upon request, make copies of this list available to interested members of the public.

(5) The department may, in its discretion, revoke its previous approval of an organization's generic specialty license plate sponsorship if the organization fails to comply with the provisions of 61-3-472 through 61-3-481 or if the department has reliable information that the organization may no longer be qualified for sponsorship under 61-3-472 through 61-3-481. (Terminates June 30, 2005—sec. 21, Ch. 402, L. 2001.)"

Section 38. Section 61-3-521, MCA, is amended to read:

"61-3-521. Fee in lieu of tax for certain vehicles. (1) There is a fee in lieu of property tax imposed on motor homes~~,~~ *and* travel trailers~~, and campers~~ and on trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds. The fee is in addition to annual*or one-time* registration fees, *as applicable*.

(2) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute inventory of the dealership."

Section 39. Section 61-3-523, MCA, is amended to read:

"61-3-523. ~~Schedule of fees~~ *One-time fee* for travel trailers ~~and campers.~~ (1) ~~The~~ *Except as provided in subsection (2), the* fee imposed by 61-3-521 on a travel trailer ~~that is less than 3 years old is $60. In all other cases the fee is $22.50~~ *is a one-time fee and is:*

(a) for a travel trailer under 16 feet in length, $25 in calendar year 2004 and, in each subsequent year, $50; and

(b) for a travel trailer 16 feet in length or longer, $65 in calendar year 2004 and, in each subsequent year, $130.

~~(2) The fee imposed by 61-3-521 on a camper that is less than 3 years old is $52.50. In all other cases the fee is $22.50.~~

~~(3) (a) Except as provided in subsection (3)(b), the age of a travel trailer or camper is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(b) If the purchase year of a travel trailer or camper precedes the designated model year of the travel trailer or camper and the travel trailer or camper is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

(2) Except as provided in subsection (3), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (1) must be paid by the new owner.

(3) The fee need not be paid by a dealer for travel trailers that constitute inventory of the dealership."

Section 40. Section 61-3-526, MCA, is amended to read:

"61-3-526. Registration of motor homes and travel trailers — reregistration by mail allowed. (1) All registrations of motor homes ~~and travel trailers~~ expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. Reregistration may be made by mail in the manner provided in 61-3-535. If the ownership of a motor home ~~or travel trailer~~ is transferred during the registration year, it must be reregistered ~~and relicensed~~ as provided by statute.

(2) The owner of a motor home ~~or travel trailer~~ registered under the provisions of this section ~~is entitled to~~ *may* operate ~~such~~ *the* vehicle between May 1 and June 15 without displaying the *certificate of* registration ~~certificate~~ of the current registration year if the owner, during that period, displays upon the motor home ~~or travel trailer~~ the number plates~~,~~ *or* plate~~,~~ or *the registration* decal assigned ~~thereto~~ *to the motor home* for the previous registration year.

(3) A travel trailer that is initially registered under this chapter remains registered unless ownership of the travel trailer is transferred. If ownership is transferred, the new owner shall register the travel trailer as if the travel trailer were being registered for the first time."

Section 41. Section 61-3-527, MCA, is amended to read:

"61-3-527. ~~Fee~~ *One-time fee* in lieu of tax for motorcycles and quadricycles ~~— schedule of fees —~~ permanent registration. (1) (a) There is a *one-time* fee in lieu of property tax *of $20 in calendar year 2004 and, in each*

subsequent year, $40 imposed on motorcycles and quadricycles *[that are subject to one-time registration]*. The fee is in addition to ~~annual~~ registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

~~(2) The owner of a motorcycle or quadricycle shall pay a fee based on the age of the motorcycle or quadricycle and the size of the engine, as follows:~~

~~(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:~~

~~(i) less than 5 years old, $30;~~

~~(ii) 5 years old and less than 11 years old, $15; and~~

~~(iii) 11 years old and older, $6.~~

~~(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:~~

~~(i) less than 5 years old, $55;~~

~~(ii) 5 years old and less than 11 years old, $20; and~~

~~(iii) 11 years old and older, $6.~~

~~(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:~~

~~(i) less than 5 years old, $90;~~

~~(ii) 5 years old and less than 11 years old, $50; and~~

~~(iii) 11 years old and older, $6.~~

~~(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.~~

~~(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

~~(4) (a) The owner of a motorcycle or quadricycle that is 11 years old or older and that is subject to the fee in lieu of tax under this section may permanently register the motorcycle or quadricycle upon payment of a $30 fee in lieu of tax, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed or amounts calculated for each of the following:~~

~~(i) the motorcycle safety fee under 61-3-321 to be deposited in the account provided for in 20-25-1002;~~

~~(ii) weed control under 15-1-122(3)(b);~~

~~(iii) $1 for the former county motor vehicle computer fee; and~~

~~(iv) if applicable, renewal fees for personalized plates under 61-3-406.~~

[(2) The owner of a motorcycle or quadricycle with special license plates issued under section 1 of House Bill No. 767 shall pay an annual fee based on the age of the motorcycle or quadricycle and the size of the engine, according to the following schedule:

(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than 5 years old, $30;

(ii) 5 years old but less than 11 years old, $15; and

(iii) 11 years old and older, $6.

(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than 5 years old, $55;

(ii) 5 years old but less than 11 years old, $20; and

(iii) 11 years old and older, $6.

(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than 5 years old, $90;

(ii) 5 years old but less than 11 years old, $50; and

(iii) 11 years old and older, $6.

(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.]

~~(b)~~*(2)* A person who ~~permanently~~ registers a motorcycle or quadricycle as provided in this ~~subsection (4)~~ *section* shall pay an additional ~~$2~~ *one-time* fee *of $1.25* at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the ~~$2~~ *$1.25* fee collected under this subsection ~~(4)(b)~~ from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(3) Whenever a transfer of ownership of a motorcycle or quadricycle occurs, the one-time fees required under this section must be paid by the new owner. (Subsection ~~(4)(b)~~ *(2)* terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)"

Section 42. Section 61-3-530, MCA, is amended to read:

"61-3-530. ~~Schedule of fees~~ *Fee* for trailers — exception. (1) Except as provided in ~~subsection (4)~~ *subsections (2) and (3)*, the owner of a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds shall pay the fee imposed pursuant to 61-3-521. The fee is ~~based on the age and declared weight of the trailer or semitrailer according to the following schedule:~~

~~Age (in years)~~	~~Declared Weight (in pounds)~~		
	~~0-6,000~~	~~6,001-16,000~~	~~16,001-25,999~~
~~Less than 5 years old~~	~~$16~~	~~$55~~	~~$74~~
~~5 years old and less than 10 years old~~	~~11~~	~~32~~	~~41~~
~~10 years old and older~~	~~6~~	~~17~~	~~23~~

~~(2) (a) Except as provided in subsection (2)(b), the age of a trailer, pole trailer, or semitrailer is determined by subtracting the manufacturer's designated model year from the current calendar year. For trailers, pole~~

~~trailers, and semitrailers that do not have a designated model year, the department shall determine a year of manufacture.~~

~~(b) If the purchase year of a trailer, pole trailer, or semitrailer precedes the designated model year of the trailer, pole trailer, or semitrailer and the trailer, pole trailer, or semitrailer is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.~~

~~(3) The declared weight is the total unladen weight of the trailer, pole trailer, or semitrailer plus the maximum load declared by the owner to be carried on the trailer, pole trailer, or semitrailer~~ *a one-time fee and is:*

(a) for a trailer, pole trailer, or semitrailer with a declared weight under 6,000 pounds, $25 in calendar year 2004 and, in each subsequent year, $50; and

(b) for a trailer, pole trailer, or semitrailer with a declared weight of 6,000 pounds or more, $65 in calendar year 2004 and, in each subsequent year, $130.

~~(4)~~*(2)* This section does not apply to a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds and that*:*

(a) is registered through a proportional registration agreement under 61-3-721*; or*

(b) constitutes inventory of a trailer, pole trailer, or semitrailer dealership.

(3) Whenever a transfer of ownership of a trailer, pole trailer, or semitrailer described in subsection (1) occurs, the one-time fee required under subsection (1) must be paid by the new owner.

(4) A person who permanently registers a trailer, pole trailer, or semitrailer as provided in this section shall pay an additional one-time fee of $1.25 at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $1.25 fee collected under this section from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709."

Section 43. Section 61-3-535, MCA, is amended to read:

"61-3-535. Vehicle reregistration by mail — reminder notice and reregistration notice by mail. (1) The department may allow the owner of a motor vehicle to renew the registration of a vehicle by mail when the value, age, length, weight, or other criteria used to determine the tax or fee for a particular type of vehicle is available to the department by electronic means.

(2) Any mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration ~~or recertification~~ and must provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister the owner's vehicle with the county treasurer or to apply for the annual ~~camper~~ *registration* decal.

(3) The department shall adopt rules to implement the mail reregistration and *registration* decal application procedure."

Section 44. Section 61-3-560, MCA, is amended to read:

"61-3-560. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsections (2) and (3), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) The following vehicles are exempt from the fee imposed in subsection (1):

(a) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(b) a light vehicle owned by a 100% disabled veteran or by a 50% or more disabled veteran who has been awarded the purple heart qualifying for one set of special license plates under 61-3-332(10)(c) or 61-3-426;

(c) a light vehicle owned by an ex-prisoner of war qualifying for one set of special plates under 61-3-332(10)(d) or a surviving spouse of an ex-prisoner of war under 61-3-457; and

(d) a light vehicle registered under 61-3-456.

(3) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(4) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321(1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire ~~24-month~~ registration period."

Section 45. Section 61-3-570, MCA, is amended to read:

"61-3-570. Local option flat fee. (1) A *local option* flat fee for each *light* vehicle may be imposed within a county by the board of county commissioners by adoption of a resolution and referral to the electorate. The imposition of the fee must be approved by the majority of the electorate voting in the election.

(2) The flat fee is*:*

(a) applicable annually for light vehicles that are registered annually; and

(b) a one-time fee for light vehicles registered under 61-3-562.

(3) Fees collected under this section must be distributed as provided in 61-3-537."

Section 46. Repealer. Sections 23-2-520, 23-2-618, 23-2-620, 23-2-810, 61-3-519, 61-3-524, 61-3-525, and 61-3-606, MCA, are repealed.

Section 47. Coordination instruction. (1) If House Bill No. 414 and [this act] are both passed and approved, then House Bill No. 414 is void.

(2) (a) If House Bill No. 538 and [this act] are both passed and approved and both amend 61-3-303, then 61-3-303 as amended in House Bill No. 538 is void and 61-3-303 must read as follows:

"Section 28. Section 61-3-303, MCA, is amended to read:

"61-3-303. ~~Application for registration~~ *Registration — process — fees.* (1) ~~Each owner of~~ *A Montana resident who owns* a motor vehicle operated or driven upon the public highways of this state shall~~for each~~ *register the* motor vehicle ~~owned, except as otherwise provided in this section, file~~ in the office of the county treasurer in the county where the owner permanently resides ~~at the time of making the application~~ or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in ~~the taxing jurisdiction of~~ the county where the vehicle is permanently assigned ~~an application for registration or~~

~~reregistration on a form prescribed by the department. The application must contain:~~

~~(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;~~

~~(b) the name and address of the holder of any security interest in the motor vehicle;~~

~~(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;~~

~~(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;~~

~~(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and~~

~~(f) other information that the department may require.~~

(2) (a) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(i) as of the date that the vehicle is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(ii) the county treasurer confirms that the department has an electronic record of title for the vehicle as provided under 61-3-101.

(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data.

(3) (a) A county treasurer shall register a motor vehicle for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the vehicle owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle for which the new owner cannot present the previously issued certificate of title only as authorized by the department under 61-3-342.

(4) The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

~~(2)~~*(5)* A person who ~~files an application for registration or reregistration of~~ *seeks to register* a motor vehicle, except ~~of~~ a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall ~~upon the filing of the application~~ pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year; and

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

~~(3)~~*(6)* The ~~application may not be accepted by the~~ county treasurer *may not issue a registration receipt or license plates for the vehicle to the owner* unless *the owner makes* the payments required by subsection ~~(2)~~ *(5)* ~~accompany the application~~. Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) *except as provided in subsection (9),* the immediately ~~previous~~ *preceding* year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

~~(4)~~*(7)* The department may make full and complete investigation of the *registration* status of the vehicle. ~~An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department.~~ *A person seeking to register a motor vehicle under this section shall provide additional information to support the registration to the department, if requested.*

~~(5)~~*(8)* Revenue that accrues from the voluntary donation provided in subsection ~~(2)(c)~~ *(5)(c)* must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the vehicle is owned by the same person who registered the vehicle. Once registered, a vehicle described in this subsection (9)(a) is registered permanently unless ownership of the vehicle is transferred.

(b) Whenever ownership of a vehicle described in subsection (6)(a) is transferred, the new owner is required to register the vehicle as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees."“

(b) If House Bill No. 538 and [this act] are both passed and approved and both amend 61-3-311, then 61-3-311 as amended in House Bill No. 538 is void and 61-3-311 must read as follows:

"Section 29. Section 61-3-311, MCA, is amended to read:

"61-3-311. ~~Time for making application~~ *Registration — annual renewal — time periods.* *(1)* Registration must be renewed annually, and ~~license~~ *registration* fees must be paid annually. Except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526, and 61-3-721, all registrations expire on December 31 of the year in which they are issued and ~~application for registration or reregistration must be filed with~~ *must be renewed annually upon payment of all required fees to* the county treasurer*or the department's agent* not later than February 15 of each year. If the ownership of a motor vehicle is transferred during the registration year, *the new owner shall apply for a certificate of title and register* the motor vehicle ~~must be reregistered and relicensed~~ as provided by ~~statute~~ *this chapter*.

(2) The department, its authorized agent, or a county treasurer may not renew the registration of a vehicle whose ownership has been transferred and that was originally registered under the provisions of 61-3-342(3), unless:

(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208.""

(3) (a) If Senate Bill No. 112 and [this act] are both passed and approved and both amend 15-1-122, then subsection (3)(g) of 15-1-122 must read as follows:

"(g) to the search and rescue account provided for in [section 1 of Senate Bill No. 112]:

(i) $2 a year for each vessel subject to the search and rescue surcharge in 23-2-517;

(ii) $2 a year for each snowmobile subject to the search and rescue surcharge in 23-2-615(1)(b) and 23-2-616(3); and

(iii) $2 a year for each off-highway vehicle subject to the search and rescue surcharge in 23-2-803; and"

(b) If Senate Bill No. 112 and [this act] are both passed and approved and both amend 23-2-517, 23-2-616, or 23-2-803, the amendments to 23-2-517, 23-2-616, or 23-2-803 in Senate Bill No. 112 are void.

(4) If House Bill No. 767 is not passed and approved, then the bracketed language in the following sections of [this act] is void:

(a) [section 28] amending 61-3-303(6)(a);

(b) [section 33] amending 61-3-321(1)(h) and (3); and

(c) [section 41] amending 61-3-527.

Section 48. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, and the provisions of Title 61, chapter 1, apply to [section 1].

Section 49. Effective date. [This act] is effective January 1, 2004.

Section 50. Applicability. [This act] applies to vehicles and vessels registered on or after January 1, 2004.

Ap proved May 9, 2003

CHAPTER NO. 593

[HB 775]

AN ACT REVISING THE CONDITIONS UNDER WHICH A TAX APPEAL BOARD MAY ADJUST THE ESTIMATED VALUE OF REAL OR PERSONAL PROPERTY; AMENDING SECTION 1, CHAPTER 5, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1, Chapter 5, Laws of 2003, is amended to read:

"**Section 1. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules.** (1) Subject to the conditions and restriction of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the department and acting within the course and scope of the employees' official duties.

(2) A person qualified under subsection (1) may enter private land to appraise or audit property for property tax purposes.

(3) (a) No later than November 30 of each year, the department shall publish in a newspaper of general circulation in each county a notice that the department may enter property for the purpose of appraising or auditing property.

(b) The published notice must indicate:

(i) that a landowner may require that the landowner or the landowner's agent be present when the person qualified in subsection (1) enters the land to appraise or audit property;

(ii) that the landowner shall notify the department in writing of the landowner's requirement that the landowner or landowner's agent be present; and

(iii) that the landowner's written notice must be mailed to the department at an address specified and be postmarked not more than 30 days following the date of publication of the notice. The department may grant a reasonable extension of time for returning the written notice.

(4) The written notice described in subsection (3)(b)(ii) must be legible and include:

(a) the landowner's full name;

(b) the mailing address and property address; and

(c) a telephone number at which an appraiser may contact the landowner during normal business hours.

(5) When the department receives a written notice as described in subsection (4), the department shall contact the landowner or the landowner's agent to establish a date and time for entering the land to appraise or audit the property.

(6) If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land.

(7) A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent*:*

(a) gives permission to the department to enter the land to appraise or audit the property*; or*

(b) provides to the department and files with the county tax appeal board or the state tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal base year provided for in 15-7-103(5) and must establish a separate market value for each improvement and the land.

(8) A person qualified under subsection (1) who enters land pursuant to this section shall carry on the person identification sufficient to identify the person and the person's employer and shall present the identification upon request.

(9) The authority granted by this section does not authorize entry into improvements, personal property, or buildings or structures without the permission of the owner or the owner's agent.

(10) Vehicular access to perform appraisals and audits is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(11) The department shall adopt rules that are necessary to implement [sections 1 and 2]. The rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to respond to notices from the department."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 594

[SB 47]

AN ACT INCREASING THE BID THRESHOLD FOR LOCAL GOVERNMENT CONSTRUCTION CONTRACTS PAID FOR WITH GASOLINE AND VEHICLE FUELS TAX REVENUE; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account

must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population,

considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures ~~followed in all cases in which the contract~~ *followed in all cases in which the contract* for construction, reconstruction, maintenance, or repair ~~is in excess of $4,000~~ *is in excess of $25,000*.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 595

[SB 57]

AN ACT DEFINING "MENTAL DISEASE OR DEFECT" FOR PURPOSES OF CRIMINAL PROCEEDINGS; AND AMENDING SECTION 46-14-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or defect — *purpose — definition.* *(1) The purpose of this section is to provide a legal standard of mental disease or defect under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard:*

(a) in any determination regarding:

(i) a defendant's fitness to proceed and stand trial;

(ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense; and

(b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.

(2) (a) As used in this chapter, "mental disease or defect" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.

(b) ~~As used in this chapter, the~~ *The* term "mental disease or defect" does not include*:*

(i) an abnormality manifested only by repeated criminal or other antisocial behavior*;*

[(ii) a developmental disability, as defined in 53-20-102;]

(iii) drug or alcohol intoxication; or

(iv) drug or alcohol addiction."

Section 2. Coordination instruction. If Senate Bill No. 35 is not passed and approved, the bracketed language in [section 1 of this act] is void.

Ap proved May 9, 2003

CHAPTER NO. 596

[SB 130]

AN ACT PROVIDING AUTHORITY FOR AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO COMPENSATE STATE TRUST LAND BENEFICIARIES FOR THE USE AND IMPACTS ASSOCIATED WITH HUNTING, FISHING, AND TRAPPING ON LEGALLY ACCESSIBLE STATE TRUST LANDS AS DEFINED IN DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RULES; PROVIDING

THAT 10 PERCENT OF THE GROSS REVENUE RECEIVED AS A RESULT OF THE AGREEMENT BE DEPOSITED IN THE STATE LANDS RECREATIONAL USE ACCOUNT AND 90 PERCENT OF THE REVENUE RECEIVED BE ALLOCATED AMONG THE TRUSTS; PROVIDING THAT AN AGREEMENT BETWEEN THE DEPARTMENTS DOES NOT CONSTITUTE CONSIDERATION WITH REGARD TO THE RESTRICTION OF LIABILITY OF A LANDOWNER; INCLUDING FEES FOR HUNTING, FISHING, AND TRAPPING PURPOSES PURSUANT TO AN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AS ONE OF THE ACTIONS FOR WHICH THE BOARD OF LAND COMMISSIONERS SHALL CONSIDER VARIOUS IMPACTS INCLUDING MANAGEMENT EXPENSES, WATER DEVELOPMENT, WEED CONTROL, AND FIRE CONTROL; PROVIDING AN EXEMPTION TO THE REQUIREMENT FOR A RECREATIONAL USE LICENSE FOR RECREATIONAL USE OF STATE TRUST LAND FOR HUNTING, FISHING, AND TRAPPING PURPOSES IF AN AGREEMENT IS REACHED BETWEEN THE TWO DEPARTMENTS; PROVIDING AN ALLOCATION SCHEME FOR REVENUE RECEIVED AS A RESULT OF AN AGREEMENT; ADDING MAINTENANCE OF ROADS NECESSARY FOR PUBLIC RECREATIONAL USE OF STATE TRUST LAND AS A QUALIFIED USE OF FUNDS IN THE RECREATIONAL USE ACCOUNT; INCREASING THE RESIDENT AND NONRESIDENT WILDLIFE CONSERVATION LICENSE FEES BY $2 EACH; AMENDING SECTIONS 70-16-302, 77-1-106, 77-1-801, 77-1-802, 77-1-808, AND 87-2-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, the Department of Natural Resources and Conservation presently authorizes the public to use state school trust land through individual recreational use licenses; and

WHEREAS, the primary recreational uses of state school trust land are hunting and fishing; and

WHEREAS, the Department of Natural Resources and Conservation and the Department of Fish, Wildlife, and Parks wish to provide a more efficient system for authorizing public recreational use for hunting, fishing, and trapping on state trust land and concurrently provide greater benefit to the institutional beneficiaries of the trust; and

WHEREAS, the Department of Fish, Wildlife, and Parks has the discretionary authority in section 87-1-209, MCA, to enter into an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land as defined by department of natural resources and conservation rule; and

WHEREAS, the Department of Fish, Wildlife, and Parks needs additional revenue to offset the cost of an agreement with the Department of Natural Resources and Conservation to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land; and

WHEREAS, the Department of Natural Resources and Conservation and the Department of Fish, Wildlife, and Parks have reached an agreement that, given the legislative authority, they intend to enter into an agreement for the recreational use of school trust land parcels for hunting, fishing, and trapping purposes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Recreational use agreement for hunting, fishing, and trapping on legally accessible state trust land. (1) The board is authorized to enter into an agreement with the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land as defined in department rule. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust lands. Hunting, fishing, and trapping on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) An agreement may be issued to the department of fish, wildlife, and parks for a term of up to 10 years. Through this agreement, the board shall recover for the beneficiaries of the trust the full market value for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land. Ten percent of the gross receipts from the agreement must be deposited in the state lands recreational use account established in 77-1-808. The remaining 90% must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) Any agreement entered into is subject to the following conditions:

(a) The department maintains sole discretion, throughout the term of the agreement, with regard to identifying legally accessible parcels, coordinating uses on state trust land, and any other necessary state trust land management decisions.

(b) An agreement between the department and the department of fish, wildlife, and parks may not convey any additional authority to the department of fish, wildlife, and parks.

(4) During any period that the department of fish, wildlife, and parks and the department have reached an agreement as provided in subsection (1), an individual recreational use license under 77-1-801 or 77-1-802 may not be required for a member of the public to hunt, fish, or trap upon legally accessible state trust land.

Section 2. Section 70-16-302, MCA, is amended to read:

"70-16-302. Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802 *or other funds provided under [section 1].*

(2) As used in this part, "landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or

entities in control of the property or with an agreement to use or occupy property.

(3) As used in this part, "property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(4) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct."

Section 3. Section 77-1-106, MCA, is amended to read:

"77-1-106. Setting of rates or fees — rules. (1) In setting the lease rental rates, *agreement rates,* or fees for the use of state lands and cabin sites, the board shall consider the impact of the uses on the school trust asset, lessee expenses for management, water development, weed control, fire control, the term of the lease, the production capabilities, the conditions on the lease payment, and any other required expenses reasonably borne by the lessee. In setting cabin site lease rates, the board shall consider expenses that are commonly incurred by the lessees to preserve the value of the state land or to provide services commonly provided by private lessors in the area.

(2) All lease rental rates, *agreement rates,* and fees established by the board under 77-1-208, 77-1-802, *[section 1],* 77-6-202, 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state with regard to the long-term productivity of the school trust lands, while optimizing the return to the school trust.

(3) The board shall comply with Title 2, chapter 4, part 3, in setting rental rates, *agreement rates,* and license fees pursuant to 77-1-208, 77-1-802, *[section 1],* 77-6-202, 77-6-501, 77-6-502, and 77-6-507."

Section 4. Section 77-1-801, MCA, is amended to read:

"77-1-801. Recreational use license required to use state lands for general recreational purposes — penalty — *exemption*. (1) ~~A~~ *Except as provided in subsection (3), a* person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) ~~A~~ *Except as provided in subsection (3), a* person shall, upon the request of a peace officer or fish and game warden, present for inspection ~~his~~ *the person's* recreational use license.

(3) If the department and the department of fish, wildlife, and parks consent to and sign an agreement for hunting, fishing, and trapping purposes, as provided in [section 1], a person is not required to obtain a recreational use license for use of legally accessible state trust land for hunting, fishing, and trapping purposes.

~~(3)~~*(4)* A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both."

Section 5. Section 77-1-802, MCA, is amended to read:

"77-1-802. Recreational use ~~license —~~ fee. (1) The fee for ~~a~~ recreational use ~~license~~ *on state trust land* must attain full market value~~.~~ *whether the license is sold on an individual basis or on a group basis through an agreement with the department of fish, wildlife, and parks as provided in [section 1].*

(2) ~~Money~~ *Money* received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage ~~contribution to~~ *of acreage in* the total acreage of all state land trusts.

(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.

(3) ~~The~~ *The* department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

Section 6. Section 77-1-808, MCA, is amended to read:

"77-1-808. State lands recreational use account. (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by 77-1-802; ~~and~~

(b) 10% of the revenue received as a result of an agreement with the department of fish, wildlife, and parks for the use and impacts of hunting, fishing, and trapping as provided in [section 1]; and

~~(b)~~*(c)* money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account must be used by the department for the following purposes:

(a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; ~~and~~

(d) administration and management for the implementation of recreational use of state lands~~.~~*; and*

(e) maintenance of roads necessary for public recreational use of state trust land."

Section 7. Section 87-2-202, MCA, is amended to read:

"87-2-202. (Temporary) Application — fee — expiration. (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~$4~~ *$6*.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~$7~~ *$9*.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates March 1, 2006—sec. 9, Ch. 216, L. 2001;

bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)

87-2-202. (Effective March 1, 2006) Application — fee — expiration. (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of ~~$4~~ *$6*.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of ~~$7~~ *$9*.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 8. Contingent voidness. (1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement.

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the

expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received.

Section 9. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 8, and the provisions of Title 77, chapter 1, part 8, apply to [section 1].

Section 10. Coordination instruction. If Senate Bill No. 112 and [this act] are both passed and approved and if Senate Bill No. 112 includes an amendment to 87-2-202 that increases resident and nonresident wildlife conservation license fees by adding a search and rescue surcharge, then the resident and nonresident wildlife conservation license fees in 87-2-202(3)(a) and (3)(b) of [this act] are increased by the amount of that surcharge.

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective date. [This act] is effective March 1, 2004.

Ap proved May 9, 2003

CHAPTER NO. 597

[SB 271]

AN ACT REQUIRING THAT THE PROCESS ORIENTED INTEGRATED SYSTEM (POINTS) COMPUTER SYSTEM OF THE DEPARTMENT OF REVENUE TO BE REPLACED WITH A DIFFERENT COMPUTER SYSTEM; REQUIRING THAT CURRENT DATA NEEDED FOR THE REPLACEMENT SYSTEM BE CORRECTED; PROVIDING THAT UNEMPLOYMENT INSURANCE TAX COLLECTIONS WILL NOT BE PROCESSED UNDER THE REPLACEMENT SYSTEM BY TERMINATING THE DELEGATION TO THE DEPARTMENT OF REVENUE OF RESPONSIBILITY FOR COLLECTING UNEMPLOYMENT INSURANCE TAXES FOR THE DEPARTMENT OF LABOR AND INDUSTRY; INCREASING THE DEBT LIMIT UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; AUTHORIZING A LOAN TO THE DEPARTMENT OF REVENUE FOR THE REPLACEMENT SYSTEM; REQUIRING THE DEPARTMENT OF REVENUE TO IMPOSE AN ADMINISTRATIVE CHARGE FOR TAX COLLECTION SERVICES; REQUIRING THE ADMINISTRATIVE CHARGE

TO BE DEPOSITED IN AN ACCOUNT TO BE USED TO PAY THE DEBT SERVICE ON LOANS ISSUED FOR THE REPLACEMENT SYSTEM; APPROPRIATING MONEY FOR DEPARTMENT OF REVENUE'S TRANSITION COSTS AND FOR LOAN REPAYMENT; AMENDING SECTIONS 15-1-501, 17-5-1608, 17-5-2001, 39-51-301, 39-51-1109, 39-51-1301, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Department of revenue POINTS computer system replacement. (1) The department of revenue, in conjunction with the chief information officer and the department of administration, shall replace the process oriented integrated system (POINTS) computer system. Unemployment insurance collections must be transferred to the department of labor and industry by February 1, 2005. Subject to department of revenue requirements, the replacement system must be phased in to process all other department tax and debt collection functions. Functioning portions of POINTS may continue to be used for departmental processing requirements until the replacement system becomes operational for those processes.

(2) The department of revenue, in conjunction with the chief information officer and the department of labor and industry, shall plan replacement system requirements and, prior to February 1, 2005, have in operation a base component and at least one tax processing component of the replacement system.

(3) None of the departments or agencies involved in the POINTS computer system replacement may expend any funds authorized for the replacement system by the 58th legislature after June 30, 2005, without obtaining spending authority from the 59th legislature.

(4) The chief information officer, in consultation with the director of the department of revenue and the commissioner of labor and industry, shall require that current withholding, combined oil and gas, and unemployment insurance data determined necessary for the replacement system be corrected. The correction must be verified through an independent audit conducted either directly or under contract by the legislative auditor.

Section 2. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) ~~The~~ *Except as provided in subsection (5), the* state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes distributed to the general fund under 15-36-324;

(d) electrical energy producer's license taxes under chapter 51;

(e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

(5) The administrative assessment provided for in [section 5] must be deposited in an account in the state special revenue fund to the credit of the department."

Section 3. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. (Temporary) Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~$80~~ *$120* million. (Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)

17-5-1608. (Effective July 1, 2011) Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, ~~(~~except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101~~)~~, to exceed ~~$75~~ *$120* million."

Section 4. Section 17-5-2001, MCA, is amended to read:

"17-5-2001. (Temporary) Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $4.5 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in 61-3-550. The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $1,120,000, payable over a term not to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data collection units.

(b) The loan is payable from the department of justice's annual appropriation from the general fund.

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the department of justice's base budget appropriation from the general fund must be sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation.

(4) (a) If bonds are not issued for the project authorized in [section 1], the department of revenue is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed $17 million, payable over a term not to exceed 7 years, for the acquisition of a replacement system for the process oriented integrated system (POINTS) computer system.

(b) The loan is payable from the department of revenue's appropriation from the administrative assessment provided for in [section 5].

(c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue from the administrative assessment provided for in [section 5] must be sufficient to repay the indebtedness with respect to the replacement system over the proposed term of the loan.

(d) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)

17-5-2001. (Effective July 1, 2011) Loans to state agencies. An agency responsible for the procurement and provision of vehicles and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(1) the term of the indebtedness does not exceed the useful life of the items being financed; and

(2) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise."

Section 5. Administrative assessment. (1) The department shall establish a fee of up to 0.45% of selected taxes collected by the department in order to recover costs and expenses associated with the POINTS replacement system described in [section 1]. The fee must be set annually to provide revenue equal to the debt service on the bonds authorized in 17-5-1608 or the projected principal and interest payments on the loan provided for in 17-5-2001.

(2) The department shall deposit the fee in an account in the state special revenue fund to the credit of the department.

(3) The department may adopt rules for identifying which taxes the administrative fee applies to and establishing the rate of the fee.

Section 6. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules~~,~~ to employ persons, make expenditures, require reports, make investigations, and take action as it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and ~~shall~~ *must* have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) The department ~~shall delegate to the department of revenue~~ *may delegate to the department of revenue all* duties associated with the administration of unemployment insurance contributions and the employment security account. ~~so long as the~~ *The* duties ~~are~~ *must be* carried out in conformity with the requirements of the program budget plan with the United States department of labor. *The department of revenue must receive funds from the department for the performance of the delegated duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.* ~~The delegated duties do not include oversight duties such as revenue quality control, risk management, and trust fund management. The department of revenue must receive funds from the department for the performance of the delegated duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.~~

(6) The department may revoke its delegation to the department of revenue at any time.

~~(6)~~*(7)* Employees transferring from the department *of revenue* to the department ~~of revenue~~ as a result of ~~a~~ *the termination of the* delegation of duties in subsection (5) are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department for recruitment purposes for ~~the period from July 1, 1997, through June 30, 1998~~ *1 year from the date of the termination of the delegation of duties in subsection (5).*

~~(7)~~*(8)* The department ~~of revenue~~ shall succeed the department *of revenue* in its rights to property relating to the *termination of the* delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(8)~~*(9)* (a) The *termination of the* delegation of duties in subsection (5) does not affect the validity of any pending judicial or administrative proceeding.

~~(b) Appeals that were filed with the board of labor appeals or the department's hearings bureau before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken. An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and processes in effect on the date the appeal is filed.~~

(b) All appeals that have not been heard prior to the termination of the delegation of duties in subsection (5) must be made in accordance with the procedures identified in 39-51-1109.

(c) The department ~~of revenue~~ must be substituted for the department *of revenue* and succeed to all audits, determinations, and other actions ~~that have not been appealed to the board of labor appeals or the department's hearings bureau prior to~~ *following* ~~July 1, 1997~~ *the date of the termination of the delegation of duties in subsection (5).*

~~(9)~~*(10)* The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the *termination of the* delegation of duties in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department ~~of revenue~~ is substituted for the department *of revenue* and, subject to the provisions of subsection (5), succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection ~~(9)~~ *(10)* do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 7. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals — procedure. ~~(1)~~*(1)* A decision, determination, or redetermination of the department involving *contribution liability, contribution rate, application for a refund,* an employer-employee relationship, or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision,

determination, or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

~~(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested party entitled to notification follows the uniform dispute review procedures as prescribed in 15-1-211 and 15-30-257, if applicable.~~

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested party entitled to notification follows the uniform dispute review procedures as prescribed in 15-1-211 and 15-30-257, if applicable."

Section 8. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals — procedure. (1) A decision, determination, or redetermination of the department involving an employer-employee relationship or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other ~~tax-related~~ *contribution-related* issues must be issued by the department ~~of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision~~ *and* is final unless an interested party entitled to notification ~~follows the uniform dispute review procedures as prescribed in 15-1-211 and 15-30-257, if applicable~~ *submits a written appeal of the decision, determination, or redetermination. An appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by video conference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as provided in 39-51-2403 through 39-51-2410.*"

Section 9. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by 15-1-216.

(2) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations ~~are distributed as provided in 15-30-250 and~~ must be deposited in that account. Money deposited in that account and appropriated to the department or transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(3) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 10. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy will determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 *during the time that the department delegated the duties associated with the administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301.* The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

(5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 11. Deposit of loan proceeds — capital projects appropriation. (1) The proceeds of any loan from the board of investments to the department of revenue for replacement of the POINTS computer system must be deposited in the capital projects fund.

(2) There is appropriated from the capital projects fund to the department of administration up to $17 million for the replacement system described in [section 1].

(3) The department of revenue and the department of administration are prohibited from using any of the proceeds from the loan for the replacement system authorized by [section 1] for agency current level operating expenses.

Loan proceeds appropriated under this section may be expended for project administration and implementation, including software and required hardware, software licensing, and extraordinary personal and contracted services.

(4) The appropriation continues until June 30, 2005.

Section 12. Appropriation. (1) There is appropriated from the general fund to the department of revenue $2,391,385 for the biennium ending June 30, 2005. This appropriation is to provide for the replacement of POINTS and the transfer of responsibility for unemployment insurance collections to the department of labor and industry. The department of revenue may use the appropriated funds for expenses necessary to ensure the smooth transition of existing POINTS data and systems to the replacement systems, including expenses for training, personal and contracted services, data and software cleanup, clearing backlog, correcting and realigning tax and collection data, preparing and executing conversion strategies, maintaining currency, and converting historic data.

(2) There is appropriated $1.9 million from the state special revenue account for administrative assessments provided for in [section 5] to the department of revenue for the biennium ending June 30, 2005, for the payment of debt service on the bonds authorized in 17-5-1608 or the projected principal and interest payments on the loan provided for in 17-5-2001.

Section 13. Codification instruction. [Sections 1 and 5] are intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [sections 1 and 5].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Effective dates — contingency. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 8 through 10] are effective on the date that the commissioner of labor and industry certifies to the governor that the delegation of duties in 39-51-301 is terminated.

(3) [Sections 2, 5, and 12] are effective July 1, 2003.

Section 17. Contingent termination. (1) [Section 7] terminates on the date that the commissioner of labor and industry certifies to the governor that the delegation of duties in 39-51-301 is terminated.

(2) The commissioner of labor and industry shall transmit a copy of the certification of the termination of duties to the code commissioner.

Section 18. Termination. [Sections 1, 4, and 5] terminate June 30, 2011.

Ap proved May 9, 2003

CHAPTER NO. 598

[SB 304]

AN ACT DIRECTING A COMMITTEE TO STUDY THE ROLE OF THE STATE COMPENSATION INSURANCE FUND AND TO DETERMINE IF IT IS COST-EFFECTIVE AND IN THE BEST INTEREST OF THE STATE, MONTANA EMPLOYEES, AND MONTANA EMPLOYERS TO SELL ALL OR A PORTION OF THE STATE COMPENSATION INSURANCE FUND ASSETS AND LIABILITIES AND TO STUDY THE CREATION OF AN ASSIGNED RISK POOL; PROVIDING FOR A REPORT TO THE 59TH LEGISLATURE; REQUIRING LEGISLATIVE APPROVAL OF A SALE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Study committee. (1) There is a committee to study the role and the sale of the state compensation insurance fund and the creation of an assigned risk pool as provided in [section 2]. The committee consists of:

(a) two members of the house of representatives appointed by the speaker, one from each party;

(b) two members of the senate appointed by the president, one from each party;

(c) a representative of the state auditor's office, appointed by the state auditor;

(d) a representative of the governor's office, appointed by the governor;

(e) an insured employer of the state fund who is also a member of the state fund board, appointed by the governor;

(f) a representative of a plan No. 2 insurer, appointed by the governor; and

(g) a representative of plan No. 1, appointed by the governor.

(2) The members of the committee, other than the legislator members, shall serve for no compensation but are entitled to reimbursement for travel, meals, and lodging as provided in Title 2, chapter 18, part 5. The legislator members are entitled to compensation and expenses as provided in 5-2-302.

(3) The costs of the committee and the expenses are the responsibility of the state compensation insurance fund, not to exceed $100,000. The state fund is responsible for providing support functions to the committee and shall provide the support functions under the direction of the committee.

Section 2. Study of role and possible sale of state compensation insurance fund — separate determinations — submission of legislation — legislative approval. (1) Subject to Article VIII, section 13, of the Montana constitution, the committee established in [section 1] shall study the role of the state compensation insurance fund and shall determine if it is cost-effective and in the best interest of the state, Montana employees, and Montana employers to sell all or a portion of the state compensation insurance fund assets and liabilities and to create an assigned risk pool.

(2) The committee shall make separate determinations concerning the role of the state compensation insurance fund and the sale of the assets and liabilities for the portion of the state compensation insurance fund related to claims for injuries resulting from accidents that occurred before July 1, 1990,

and claims for injuries resulting from accidents that occur on or after July 1, 1990, and concerning the creation of an assigned risk pool.

(3) The committee may use the expertise of all executive branch agencies and personnel and any consultants determined to be necessary in making the determinations required by subsections (1) and (2).

(4) The committee shall report to the 59th legislature on the determinations made pursuant to this section. As a part of the report, the committee shall prepare any necessary legislation to implement a recommended sale. A sale of the assets and liabilities of the state compensation insurance fund may not be made unless the sale is approved by the 59th legislature.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 599

[SB 326]

AN ACT GENERALLY REVISING THE LAWS RELATED TO GROWTH POLICIES AND PLANNING BOARDS; REVISING THE DEFINITION OF "GROWTH POLICY"; ELIMINATING THE DEFINITION OF A TERM THAT IS NOT USED IN THE GROWTH POLICY LAWS; REQUIRING THE GOVERNING BODY TO ASSIGN STAFF TO THE PLANNING BOARD AND ELIMINATING THE AUTHORITY OF THE PLANNING BOARD TO APPOINT STAFF; CLARIFYING THAT PREPARATION AND ADOPTION OF A GROWTH POLICY IS OPTIONAL; PROVIDING THAT A GROWTH POLICY MUST INCLUDE REQUIRED ELEMENTS BY OCTOBER 1, 2006, AND CLARIFYING THAT THE EXTENT TO WHICH THE REQUIRED ELEMENTS OF A GROWTH POLICY ARE ADDRESSED IS AT THE FULL DISCRETION OF THE GOVERNING BODY; PROVIDING THAT A GROWTH POLICY MAY COVER PART OF A JURISDICTIONAL AREA; REVISING THE PROCEDURES FOR ADOPTION, REVISION, AND REPEAL OF A GROWTH POLICY; REVISING THE PROVISIONS GOVERNING THE USE OF AN ADOPTED GROWTH POLICY; CONFORMING PROVISIONS IN THE ZONING AND SUBDIVISION LAWS TO THESE REVISIONS IN THE GROWTH POLICY LAWS; ELIMINATING THE REQUIREMENT THAT SUBDIVISION REGULATIONS BE IN ACCORDANCE WITH THE GOALS AND OBJECTIVES OF THE GROWTH POLICY WITHIN 1 YEAR OF ADOPTION OF A GROWTH POLICY; AMENDING SECTIONS 76-1-103, 76-1-106, 76-1-306, 76-1-601, 76-1-603, 76-1-604, 76-1-605, 76-2-201, 76-2-310, 76-3-210, 76-3-504, 76-3-505, 76-4-122, AND 76-4-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Growth policy" means ~~and is synonymous with,~~ a comprehensive development plan, master plan, or comprehensive plan ~~that meets the requirements of 76-1-601~~ *that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999*.

(5) "Mayor" means mayor of a city.

(6) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

(7) "Person" means any individual, firm, or corporation.

(8) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

(9) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

(10) "Public place" means any tract owned by the state or its subdivisions.

(11) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

~~(12) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.~~

~~(13)~~*(12)* "Utility" means any facility used in rendering service that the public has a right to demand."

Section 2. Section 76-1-106, MCA, is amended to read:

"76-1-106. Role of ~~the~~ planning board. (1) To ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development, *if requested by the governing body,* the planning board shall prepare a growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may ~~also~~ propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands; or

(d) the laying out and development of public ways and services to platted and unplatted lands."

Section 3. Section 76-1-306, MCA, is amended to read:

"76-1-306. ~~Board secretary and employees~~ *Staff*— service contracts. ~~(1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.~~

~~(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board and~~ *The governing body shall assign*

staff employed by the governing body to assist the planning board in conducting its duties. The planning board may delegate to ~~employees~~ *assigned staff the* authority to perform ministerial acts in all cases except ~~where~~ *when* final action of the *planning* board is necessary.

~~(3)~~ The ~~board~~ *governing body* may make contracts for special or temporary services and any professional services."

Section 4. Section 76-1-601, MCA, is amended to read:

"76-1-601. Growth policy — contents. (1) ~~The~~ *A* ~~planning board shall prepare and propose a~~ growth policy ~~for the entire~~ *may cover all or part of the* jurisdictional area. ~~The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.~~

(2) A growth policy must include the elements listed in subsection (3) by October 1, 2006. The extent to which a growth policy addresses the elements of a growth policy that are listed in subsection (3) is at the full discretion of the governing body.

~~(2)~~*(3)* A growth policy ~~must~~ *must* include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection ~~(2)(a)~~ *(3)(a)*;

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment

facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); and

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

~~(3)~~*(4)* A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) address the criteria in 76-3-608(3)(a);

(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);

(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and

(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.

~~(4)~~*(5)* The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 5. Section 76-1-603, MCA, is amended to read:

"76-1-603. Adoption of growth policy by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution*:*

(1) recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the *planning* board*;*

(2) recommend that a growth policy not be adopted; or

(3) recommend that the governing body take some other action related to preparation of a growth policy."

Section 6. Section 76-1-604, MCA, is amended to read:

"76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing ~~bodies shall~~ *body shall* adopt a resolution of intention to adopt, ~~revise~~ *adopt with revisions*, or reject the proposed growth policy ~~or any of its parts~~.

(2) If the governing ~~bodies adopt~~ *body adopts* a resolution of intention to adopt ~~the proposed~~ *a* growth policy ~~or any of its parts, they may, in their discretion~~, *the governing body may* submit to the qualified electors of the ~~jurisdictional~~ area covered by the ~~proposed~~ growth policy *proposed by the governing body* at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election. ~~Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.~~

(3) ~~The governing bodies may adopt, revise, or repeal a growth policy under this section.~~ *A governing body may:*

(a) revise an adopted growth policy following the procedures in this chapter for adoption of a proposed growth policy; or

(b) repeal a growth policy by resolution.

(4) The qualified electors of the ~~jurisdictional area included within the growth policy~~ *area covered by the growth policy* may by initiative or referendum~~, as provided in 7-5-131 through 7-5-137,~~ adopt, revise, or repeal a growth policy under this section. *A petition for initiative or referendum must contain the signatures of 15% of the qualified electors of the area covered by the growth policy.*

(5) Except as otherwise provided in this section, the provisions of Title 7, chapter 5, part 1, apply to an initiative or referendum under this section."

Section 7. Section 76-1-605, MCA, is amended to read:

"76-1-605. Use of adopted growth policy. *(1)* ~~After~~ *Subject to subsection (2), after* adoption of ~~the~~ *a* growth policy, the ~~city council, board of county commissioners, or other~~ governing body within the ~~territorial jurisdiction of the board~~ *area covered by the growth policy pursuant to 76-1-601* must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

~~(1)~~*(a)* authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

~~(2)~~*(b)* authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

~~(3)~~*(c)* adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter."

Section 8. Section 76-2-201, MCA, is amended to read:

"76-2-201. County zoning authorized. For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy ~~for the entire jurisdictional area~~ pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part."

Section 9. Section 76-2-310, MCA, is amended to read:

"76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) Except as provided in 76-2-312 and except in locations where a county has adopted zoning or subdivision regulations, a city or town council or other legislative body that has adopted a growth policy pursuant to chapter 1 *for the area to be affected by the regulations* may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:

(a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;

(b) up to 2 miles beyond the limits of a city of the second class; and

(c) up to 1 mile beyond the limits of a city or town of the third class.

(2) When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities."

Section 10. Section 76-3-210, MCA, is amended to read:

"76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within ~~a jurisdictional~~ *an* area that ~~has adopted~~ *is covered by* all of the following are considered to be in the public interest and are exempt from the requirement of an environmental assessment:

(a) a growth policy adopted pursuant to chapter 1;

(b) zoning regulations pursuant to 76-2-201 or chapter 2, part 3; and

(c) a strategy for development, maintenance, and replacement of public infrastructure pursuant to 76-1-601.

(2) (a) A planning board established pursuant to chapter 1 may exempt a proposed subdivision within its jurisdictional area from the requirement for completion of any portion of the environmental assessment if:

(i) the subdivision is proposed in an area for which a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the growth policy; or

(ii) the subdivision will contain fewer than 10 parcels and less than 20 acres.

(b) When an exemption is granted under this subsection (2), the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review.

(c) ~~Where~~ *If* a properly established planning board having jurisdiction does not exist, the governing body may grant exemptions as specified in this subsection (2)."

Section 11. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(b) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(d) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(f) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(iv) the location and installation of utilities;

(g) provide procedures for the administration of the park and open-space requirements of this chapter;

(h) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(i) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(j) except as provided in this subsection, require the subdivider to establish ditch easements in the subdivision that are in locations of appropriate topographic characteristics and sufficient width, to allow the physical

placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots; are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner. Establishment of easements pursuant to this subsection (1)(j) is not required if:

(i) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(ii) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(k) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

~~(l) if the governing body has adopted a growth policy pursuant to chapter 1 of this title, be made in accordance with the goals and objectives established in the growth policy that are within the scope of 76-3-501 within 1 year of adoption of the growth policy;~~

~~(m)~~*(l)* require the subdivider to describe, dimension, and show utility easements in the subdivision on the final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of utility facilities for the provision of utility services within the subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development."

Section 12. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of minor subdivisions. (1) Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.

(2) (a) Except when required by local subdivision regulations, proposed subdivisions eligible for summary review under this section that are located entirely within the ~~jurisdictional~~ area covered by a growth policy adopted pursuant to chapter 1 and zoning regulations adopted pursuant to chapter 2, part 2 or 3, are exempt from:

(i) the requirement to hold a hearing on the preliminary plat pursuant to 76-3-605; and

(ii) review by the governing body of the criteria in 76-3-608(3)(a).

(b) The governing body shall approve, conditionally approve, or disapprove a proposed subdivision that is eligible for review under this subsection (2) within 35 days of submission of the subdivision application."

Section 13. Section 76-4-122, MCA, is amended to read:

"76-4-122. Filing or recording of noncomplying plat or certificate of survey prohibited. (1) The county clerk and recorder may not file or record any plat or certificate of survey subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat or certificate of survey subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat or certificate of survey has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to 76-4-125 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat or certificate of survey has obtained a certificate from the governing body pursuant to 76-4-127 that the subdivision is within ~~a jurisdictional area that has adopted~~ *an area covered by* a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal facilities and adequate storm water drainage; or

(c) the person wishing to file the plat or certificate of survey has placed on the plat or certificate of survey an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption."

Section 14. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, within 20 days after preliminary plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) certification that the subdivision is within ~~a jurisdictional area that has adopted~~ *an area covered by* a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town;

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued;

(i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and

(j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage."

Section 15. Coordination instruction. If Senate Bill No. 340 and [this act] are both passed and approved, then Senate Bill No. 340 is void.

Section 16. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 600

[SB 330]

AN ACT REQUIRING THE PUBLIC SERVICE COMMISSION TO TAKE INTO ACCOUNT THE ECONOMIC BENEFITS ASSOCIATED WITH THE DEFAULT SUPPLIER'S PROCUREMENT OF ELECTRICITY SUPPLY; AMENDING SECTION 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities — electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' ~~distribution services provider~~ *default supplier* shall:

(a) extend any cost-based contract with the ~~distribution services provider's~~ *default supplier's* affiliate supplier for a term of not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(4) (a) Subject to subsection (4)(b), the commission shall, in reviewing the procurement of electricity supply by the default supplier, take into account the statewide economic benefits that are associated with the electricity supply procurement for the default supply stakeholders. The default supply stakeholders include the default supplier, customers of the default supplier, and the public.

(b) The consideration of economic benefits is secondary to the consideration of the costs and benefits to the consumer and other criteria established by law.

~~(4)~~*(5)* If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 601

[SB 336]

AN ACT IMPLEMENTING RECOMMENDATIONS OF THE STATE PARK FUTURES II COMMITTEE TO IMPROVE THE OPERATION AND FUNDING OF THE STATE PARK SYSTEM; ASSESSING AN OPTIONAL $4 FEE FOR EACH PASSENGER CAR OR TRUCK UNDER 8,001 POUNDS GVW THAT IS REGISTERED FOR LICENSING AND DIRECTING THAT THE FEE BE USED FOR STATE PARKS, FOR FISHING ACCESS SITES, AND FOR THE OPERATION OF STATE-OWNED FACILITIES AT VIRGINIA CITY AND NEVADA CITY; ALLOWING THE REGISTRANT OF A PASSENGER CAR OR TRUCK UNDER 8,001 POUNDS GVW TO MAKE A WRITTEN ELECTION NOT TO PAY THE ADDITIONAL $4 FEE IF THE REGISTRANT DOES NOT INTEND TO USE STATE PARKS AND FISHING ACCESS SITES; PROVIDING THAT PERSONS WHO PAY THE OPTIONAL FEE MAY NOT BE REQUIRED TO PAY A DAY-USE FEE FOR ACCESS TO STATE PARKS; AMENDING SECTIONS 15-1-122, 23-1-105, AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) $75,000 in fiscal year 2003;

(b) $2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; ~~and~~

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; *and*

(vii) to the state special revenue fund established in 23-1-105, $4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(10)(a), with $3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

~~(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.~~

~~(5)~~*(4)* For each fiscal year, ~~beginning with fiscal year 2002,~~ the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). ~~Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000.~~ Transfer amounts in each ~~succeeding~~ fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

~~(6)~~*(5)* The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 2. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in ~~subsection~~ *subsections* (2) *and (6)*. All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is not subject to the deposit requirements of 17-6-105. The department shall deposit money collected under this section within a reasonable time after receipt.

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(1)(b)(i), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross

revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321(10)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department."

Section 3. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, $13.75;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, $8.25;

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) over 2,850 pounds, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9;

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75;

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25;

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, $16.25;

(k) travel trailers, $11.75; and

(l) recreational vehicles, $3.50.

(2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(3) An additional fee of $5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(8) A person qualifying under 61-3-332(10)(d) is exempt from the fees required under this section.

(9) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(10) (a) Unless a person exercises the option in subsection (10)(b), an additional fee of $4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. The fee must be deposited in the state general fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(c)(vii).

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (10)(a). If a written election is made, the fee may not be collected."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective January 1, 2004.

Ap proved May 9, 2003

CHAPTER NO. 602

[SB 347]

AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC MENTAL HEALTH SERVICES; PROVIDING FOR DEVELOPMENT OF SERVICE AREA AUTHORITIES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING FOR DEPARTMENT

DUTIES, INCLUDING PREPARATION AND MAINTENANCE OF A COMPREHENSIVE MENTAL HEALTH PLAN, MENTAL HEALTH SERVICE AREAS, AND PROVIDER CERTIFICATION STANDARDS; PROVIDING FOR DEVELOPMENT OF REGIONAL SERVICE AREA AUTHORITIES AND SERVICE PLANS WITH DEPARTMENT SUPPORT; REVISING RESPONSES TO THE MENTAL DISABILITIES BOARD OF VISITORS BY MENTAL HEALTH FACILITIES; REPEALING PROVISIONS REGARDING REGIONAL MENTAL HEALTH CORPORATIONS AND COMMUNITY MENTAL HEALTH CENTERS; AMENDING SECTIONS 19-3-108, 53-1-602, 53-6-101, 53-21-104, AND 53-21-138, MCA; REPEALING SECTIONS 53-21-201, 53-21-202, 53-21-203, 53-21-204, 53-21-205, 53-21-206, 53-21-211, 53-21-212, 53-21-213, AND 53-21-214, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Department" means the department of public health and human services as provided for in 2-15-2201.

(2) "Service area authority" means an entity, as provided for in [section 4], that has incorporated to contract with the department for the planning, oversight, and administration of mental health services within a service area as defined by the department by rule.

Section 2. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Community mental health center" means a licensed mental health center that provides comprehensive public mental health services in a multicounty region under contract with the department, counties, or one or more service area authorities.

(2) "Department" means the department of public health and human services as provided for in 2-15-2201.

(3) "Licensed mental health center" means an entity licensed by the department of public health and human services to provide mental health services and has the same meaning as mental health center as defined in 50-5-101.

(4) "Service area" means a region of the state as defined by the department by rule within which mental health services are administered.

(5) "Service area authority" means an entity, as provided for in [section 4], that has incorporated to contract with the department for the planning, oversight, and administration of mental health services within a service area.

Section 3. Duties of department. The department:

(1) shall take cognizance of matters affecting the mental health of the citizens of the state;

(2) shall initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The department shall initiate and operate services in cooperation with local agencies, service area authorities, mental health professionals, and other entities providing services to persons with mental illness.

(3) shall specifically address:

(a) provider contracting;

(b) service planning;

(c) preadmission screening and discharge planning;

(d) quality management;

(e) utilization management and review;

(f) consumer and family education; and

(g) rights protection;

(4) shall collect and disseminate information relating to mental health;

(5) shall prepare and maintain a comprehensive plan to develop public mental health services in the state and to establish service areas;

(6) must receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(7) shall establish qualified provider certification standards by rule, which may include requirements for national accreditation for mental health programs that receive funds from the department;

(8) shall perform an annual review and evaluation of mental health needs and services within the state by region and evaluate the performance of programs that receive funds from the department for compliance with federal and state standards;

(9) shall coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

(10) shall coordinate the establishment of service area authorities, as provided in [section 4], to assist the department in the coordination and delivery of mental health services.

Section 4. Service area authorities — leadership committees — boards — plans. (1) In the development of a service area authority, public meetings must be held in communities throughout a service area as defined by the department by rule. The purpose of the meetings is to assist the department to establish a stakeholder leadership committee. The meetings must be designed to solicit input from consumers of services for persons with mental illness, advocates, family members of persons with mental illness, mental health professionals, county commissioners, and other interested community members.

(2) The leadership committee within each service area must include but is not limited to a significant portion of consumers of services for persons with mental illness, family members of persons with mental illness, and a mental health services provider. The department shall provide assistance for the development of a leadership committee. The department shall approve a leadership committee within each service area.

(3) The leadership committee within each service area shall establish a service area authority board and create bylaws that describe the board's

functions and method of appointment. The bylaws must be submitted to the department for review.

(4) The service area authority board must be established under Title 35, chapter 2. Upon incorporation, the board may enter into contracts with the department to carry out the comprehensive plan for mental health for that service area. Nonprofit corporations incorporated for the purposes of [sections 1 through 8] may not be considered agencies of the department or the state of Montana.

(5) A service area authority board:

(a) shall define the operation and management of the service area mental health system, including:

(i) provider contracting;

(ii) quality and outcome management;

(iii) service planning;

(iv) utilization management and review;

(v) preadmission screening and discharge planning;

(vi) consumer advocacy and family education and rights protection;

(vii) infrastructure;

(viii) information system requirements; and

(ix) procurement processes;

(b) shall submit a biennial review and evaluation of mental health service needs and services within the service area;

(c) shall keep all records of the board and make reports required by the department;

(d) shall prepare and submit a plan and budget proposal to support mental health services for children and adults within the service area, including proposals within existing allocations and specifically outlining any new funding proposals, to the department and to each county in the service area;

(e) may receive and shall administer funding available for the provision of mental health services, including grants from the United States government and other agencies, receipts for established fees rendered, taxes, gifts, donations, and other types of support or income. All funds received by the board must be used to carry out the purposes of [sections 1 through 8].

(f) shall reimburse board members for actual and necessary expenses incurred in attending meetings and in the discharge of board duties as assigned by the board; and

(g) shall either include a county commissioner or work closely with county commissioners in the service area.

(6) The department shall review the plan and budget proposal provided for in subsection (5)(d) and assess the readiness of the service area authority to assume each duty provided in subsection (5)(a). The department shall certify that the service area authority is capable of assuming the duty before contracting with the service area authority for that duty and may provide for a gradual assumption of the duties by a service area authority within the department's 4-year transition plan, subject to approval of the federal waivers as provided for in [section 15].

(7) A service area authority may not directly provide mental health services.

Section 5. Mental health services contracts. (1) The department shall provide for public mental health services for the purposes of the prevention, diagnosis, and treatment of mental illness to the extent funded by the legislature.

(2) The department may administer the provision of services for prevention, diagnosis, and treatment of mental illness directly or indirectly:

(a) through contract with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers; or

(b) through contract with service area authorities who may contract with or develop cooperative arrangements with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers for the provision of services.

(3) The department is directed to encourage and create incentives for the use of funding generated by local governments to provide mental health services to participate in federal cost-sharing programs.

(4) The department shall make efforts to promote the rights of persons with mental illness who are eligible for services to have a choice among qualified providers of mental health services or support services that are administered or funded by the department or contracted with a service area authority by the department.

(5) The department or a service area authority shall develop contracts to be bid competitively under the Montana Procurement Act for any service administered or funded by the department that will limit a client's choice of a provider of that service in order to ensure accountability and that necessary services are delivered in all areas of the state. Except for the department's ability to contract solely with service area authorities, the exception for human services as provided in 18-4-123(18) does not apply.

Section 6. County commissioners — community mental health centers — licensed mental health centers. (1) The county commissioners in each of the counties in the region or service area that are designated as participating counties pursuant to subsection (4) may appoint, upon request, a person from their respective county to serve as a representative of the county on a community mental health center board or other licensed mental health center board.

(2) A community mental health center board or other licensed mental health center board may establish a recommended proportionate level of financial participation for each of the counties within the region for the provision of mental health services within the limits of financial participation authorized by this section.

(3) Prior to June 10 of each year, the board of a community mental health center or other licensed mental health center may submit an annual budget to the board of county commissioners of each of the counties within their mental health region or service area, specifying each county's recommended proportionate share.

(4) If a board of county commissioners includes in the county budget the county's proportionate share of the community mental health center or other licensed mental health center board's budget, the county must be designated as

a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. Subject to 15-10-420, if the general fund is insufficient to meet the approved budget, a levy may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(5) Each board of county commissioners, after determining the amount of county general fund money to be used for mental health services, may contract with a community mental health center or another licensed mental health center or provider for mental health services in the county.

Section 7. Continuation of services. [Sections 1 through 8] may not be construed to prevent the continuation of services by or the facilities of existing community mental health centers or of any other appropriately certified or licensed mental health center or mental health professional.

Section 8. Availability of services. (1) The services funded by the department are available without discrimination on the basis of race, color, creed, religion, or ability to pay and must comply with Title VI of the Civil Rights Act of 1964.

(2) Services available to individuals unable to pay may be limited by the department based upon availability of funding.

Section 9. Policy directive on transition to service area authorities. (1) The department shall develop a plan by January 31, 2004, for the transition to the administration of the delivery of public mental health services by service area authorities. If the provisions of the plan requiring federal approval, as provided in [section 15], are approved, the department shall implement the plan beginning July 1, 2004, or upon approval of the federal waivers. The plan must address delivery of mental health services for both the child and adult mental health systems. It is expected that service area authorities will be implemented statewide over a 4-year period.

(2) By June 1, 2004, the department shall define the role of the existing community mental health centers, which must be licensed mental health centers, as a part of the transition plan. If the role includes any special designation, the department shall define the special designation and the reasons for any special designation.

(3) The department shall report on the transition plan to the children, families, health, and human services interim committee at each committee meeting and provide the transition plan to the committee by January 31, 2004.

Section 10. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a);

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer~~, except that a nonprofit mental health corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999~~.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 11. Section 53-1-602, MCA, is amended to read:

"53-1-602. Department of public health and human services. (1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital; *and*

(ii) the Montana mental health nursing care center; ~~and~~

~~(iii)~~*(b)* a community services component, consisting of appropriate services for the care and treatment of the mentally ill pursuant to ~~Title 53, chapter 21, part 2~~ *[sections 1 through 8]*;

~~(b)~~*(c)* chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention,

education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

~~(c)~~*(d)* institutional and residential components of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which components consist of:

(i) the Montana developmental center; and

(ii) the Eastmont human services center; and

~~(d)~~*(e)* the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) the Montana veterans' home; and

(ii) the eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 12. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under ~~Title 53, chapter 21, part 2~~ *[sections 1 through 8]*;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;

(o) services of psychologists licensed under Title 37, chapter 17;

~~(o)~~*(p)* inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

~~(p)~~*(q)* any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through ~~(3)(p)~~ *(3)(q)* that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the

amount of funds appropriated by the legislature and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 13. Section 53-21-104, MCA, is amended to read:

"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review that is responsible to ensure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility in Montana is humane, is consistent with established clinical and other professional standards, and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to ensure that each research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An activity considered to be an experimental research project and that involves a person or persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) (a) The board shall inspect every mental health facility that provides treatment or evaluation to any person pursuant to this part.

(b) The board shall annually establish a schedule for the inspection of mental health facilities that enables the board to meet its obligation under subsection (1).

(c) The board's authority to inspect mental health facilities may not be waived or precluded by other treatment review, licensing, or accreditation requirements or protocols. The board may exercise the prerogative to inspect any mental health facility at any time independent of its facility inspection schedule.

(d) The board shall produce a written report of each inspection of a mental health facility that must include specific recommendations for improvements that the board concludes are necessary in order for the inspected facility to meet the requirements in this part.

(e) The board shall provide a draft of each written report within 30 calendar days of the completion of each mental health facility inspection to the professional person in charge of the inspected facility for review prior to publication.

(f) The professional person in charge of the inspected facility shall provide a written response to the board's written report within 30 calendar days of receipt of the report. The response must include one of the following for each recommendation:

(i) a specific plan for implementation of the recommended action; or

(ii) a specific rationale that explains why the recommendation cannot be implemented.

(g) The board shall include the inspected facility's written response in the board's final published written report.

(h) The board shall include in subsequent inspections an assessment of each facility's implementation of the recommendations.

(i) The board shall report in writing to the director of the department and the governor when it determines that a mental health facility has not either implemented written recommendations or provided a specific rationale that explains why any recommendations cannot be implemented.

(4) (a) The board, by applying a sampling process during a scheduled inspection of a mental health facility, shall ensure that a treatment plan and a discharge plan exists and is being implemented for each patient admitted or committed to the mental health facility being inspected under this part.

(b) The board, during a scheduled inspection of a mental health facility, shall review all aspects of the treatment of persons admitted to mental health facilities and review the use of treatment procedures that involve behavior control, including but not limited to the use of any type of mechanical restraints, locked and unlocked seclusion or isolation, time out, or any other procedure involving physical control.

(c) The board shall ensure that the use of treatment procedures described in subsection (4)(b) at inspected mental health facilities is clinically justified, is monitored closely by a medical doctor and other mental health professionals, is implemented only when other less restrictive measures have failed, and is implemented to the least extent necessary to protect the safety and health of the affected individual or others in the immediate environment.

(d) The board may exercise the prerogative to inquire about and ensure the existence and implementation of treatment plans and discharge plans for any person admitted to a mental health facility and to inquire about and ensure the appropriate use of treatment procedures described in subsection (4)(b) with any person admitted to a mental health facility independent of its facility inspection schedule.

(5) The board may assist any person who is receiving or who has received treatment at a mental health facility in resolving any grievance the person may have concerning the person's admission or course of treatment in the facility.

(6) The board shall employ and is responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the state hospital. The board shall ensure that there are sufficient legal staff and facilities to ensure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) ~~(a)~~*(a)* If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any person, it shall report its findings in writing to the professional person in charge of the facility and the director of the department.

~~(b) The professional person in charge of the facility shall submit a written response to the board within 10 working days that includes a specific plan to implement corrective action.~~

~~(c) If the problem is not appropriately resolved to the satisfaction of the board within 15 working days of the written notice provided for in subsection (7)(a), the board shall notify the next of kin or guardian of any person involved, the friend of respondent appointed by the court for any person involved, the district court that has jurisdiction over the facility, and the governor.~~

(b) The professional person in charge of the facility shall submit a written response to the board within 10 working days of the receipt of the board's written findings provided for in subsection (7)(a) that includes an explanation of the facility's point of view regarding the board's concerns, including areas of disagreement and agreement. If the facility is in full or partial agreement with the board's concerns, its written response must include actions that it has taken or that it plans to take to address the concerns.

(c) If the facility's written response does not resolve the concerns to the board's satisfaction, the board and the professional person in charge of the facility shall meet in person within 15 working days of the board's receipt of the facility's response to seek a mutually agreed upon resolution.

(8) The board shall publish standards for its inspections of mental health facilities.

(9) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs that it has inspected since the last annual report; and

(b) occurrences of the administration of medications against the wishes of persons receiving treatment in mental health facilities and the effectiveness of the review procedure required by 53-21-127(6) in protecting persons from unnecessary or excessive medication."

Section 14. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain persons suffering from mental disorders from detention center. (1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest ~~community mental health center, as defined in 53-21-201~~ *qualified mental health care provider as arranged by the county*; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

Section 15. Agreements with federal government pertaining to medicaid funding of services — legislative intent. (1) The department of public health and human services is directed to pursue agreements with the United States department of health and human services, as provided for in Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq., and implementing regulations, for the provision of increased medicaid funding for mental health services and for more flexible administration of mental health services funded with medicaid money. Agreements may be for waivers, demonstrations, or other programs as allowed for in Title XIX and its implementing regulations governing the provision of medicaid funding to the states.

(2) If the department of public health and human services is unable to obtain the federal medicaid waivers necessary to obtain federal matching funds to administer the medicaid program for mental health services as provided in Title 53, chapter 6, and [sections 1 through 8], then the legislature intends that the department shall identify the sections of [this act] that are contrary to federal law in its transition plan as required under [section 9] and that the department shall present recommendations for an alternative plan and suggested legislation to the 2005 legislature for consideration.

Section 16. Repealer. (1) Sections 53-21-202, 53-21-203, 53-21-205, 53-21-206, 53-21-211, 53-21-212, 53-21-213, and 53-21-214, MCA, are repealed.

(2) Sections 53-21-201 and 53-21-204, MCA, are repealed.

Section 17. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 1 through 8].

Section 18. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 19. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2003.

(2) [Sections 2, 6, 10, and 16(2)] are effective July 1, 2005.

Section 20. Termination. [Section 1] terminates June 30, 2005.

Ap proved May 9, 2003

CHAPTER NO. 603

[SB 360]

AN ACT REQUIRING THE STATE FUND TO INCLUDE A PROVISION IN EVERY POLICY OF INSURANCE ISSUED THAT INCORPORATES A RESTRICTION ON THE USE AND TRANSFER OF MONEY COLLECTED BY THE STATE FUND; PROHIBITING THE LEGISLATURE FROM TRANSFERRING THE ASSETS OF THE STATE FUND FOR CLAIMS FOR INJURIES OCCURRING ON OR AFTER JULY 1, 1990, TO OTHER FUNDS OR FOR OTHER PROGRAMS; AMENDING SECTIONS 39-71-2316, 39-71-2320, 39-71-2322, AND 39-71-2327, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. *(1)* For the purposes of carrying out its functions, the state fund may:

~~(1)~~*(a)* insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

~~(2)~~*(b)* sue and be sued;

~~(3)~~*(c)* except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

~~(4)~~*(d)* collect and disburse money received;

~~(5)~~*(e)* adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for

setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

~~(6)~~*(f)* pay the amounts determined to be due under a policy of insurance issued by the state fund;

~~(7)~~*(g)* hire personnel;

~~(8)~~*(h)* declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

~~(9)~~*(i)* adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

~~(10)~~*(j)* upon approval of the board, contract with licensed resident insurance producers;

~~(11)~~*(k)* upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

~~(12)~~*(l)* upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

~~(13)~~*(m)* upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.), the federal Merchant Marine Act, 1920 (Jones Act, 46 U.S.C. 688), and the federal Employers' Liability Act (45 U.S.C. 51, et seq.);

~~(14)~~*(n)* perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

Section 2. Section 39-71-2320, MCA, is amended to read:

"39-71-2320. Property of state fund — investment required — exception. ~~(1) Except as provided in subsection (2), all~~ *All* premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund *for claims for injuries occurring on or after July 1, 1990,* may not be used for any other purpose *and may not be transferred by the legislature to other funds or used for other programs*. However, state fund money must be invested by the board of investments provided for in 2-15-1808, *and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section*.

~~(2) The state fund shall pay to the general fund:~~

~~(a) $10 million in the fiscal year ending June 30, 1998; and~~

~~(b) $10 million in the fiscal year ending June 30, 1999.~~"

Section 3. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter — ~~exception.~~ ~~Except as provided in 39-71-2320, the~~ *The* money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being given to obligations of compensation incurred and existing."

Section 4. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of state fund to be credited to fund — improper use a felony — ~~exception.~~ ~~Except as provided in 39-71-2320, all~~ *All* earnings made by the state fund by reason of interest paid for the deposit of funds or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to policies issued or renewed by the state fund on or after [the effective date of this act].

Ap proved May 9, 2003

CHAPTER NO. 604

[SB 395]

AN ACT PROVIDING FOR THE SPORT HUNTING OF WILD BUFFALO OR BISON AS A MANAGEMENT TOOL THROUGH ESTABLISHMENT OF A SPECIAL WILD BUFFALO OR BISON LICENSE; ESTABLISHING REGULATIONS RELATED TO THE SPECIAL WILD BUFFALO OR BISON LICENSE AND SETTING A PRICE FOR THE LICENSE; CLARIFYING DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN ADMINISTERING THE SPECIAL WILD BUFFALO OR BISON LICENSE, INCLUDING CONSULTATION AND COOPERATION WITH THE DEPARTMENT OF LIVESTOCK IN DEVELOPING AND IMPLEMENTING RULES REGARDING THE SAFE HANDLING OF WILD BUFFALO OR BISON PARTS; AMENDING SECTIONS 81-2-120, 87-1-216, AND 87-2-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature intends that the provisions of the special wild buffalo or bison license be administered and implemented by the Department of Fish, Wildlife, and Parks, after consultation with the Department of Livestock, regarding the management of wild buffalo or bison that have been designated as a species in need of disease control.

Be it enacted by the Legislature of the State of Montana:

Section 1. Special wild buffalo license — regulation. (1) The public hunting of wild buffalo or bison that have been designated as a species in need of

disease control under 81-2-120 is permitted only when authorized by the department of livestock under the provisions set forth in 81-2-120.

(2) The department may issue special licenses to hunt wild buffalo or bison designated as a species in need of disease control when authorized by the department of livestock.

(3) The department shall adopt rules in cooperation with the department of livestock. The rules must provide for:

(a) license drawing procedures;

(b) drawing and application fees consistent with 87-2-113;

(c) notification of license recipients as to when and where they may hunt, but notification may not include information regarding the actual physical location of a wild buffalo or bison other than the prescribed hunting district where the animal may be taken;

(d) fair chase hunting of wild buffalo or bison, including requirements that hunting be conducted on foot and away from public roads and that there be no designation of specific wild buffalo or bison to be hunted;

(e) means of taking and handling of carcasses in the field, which must include provisions for public safety because of the potential for the spread of infectious disease;

(f) tagging requirements for carcasses, skulls, and hides;

(g) possession limits;

(h) requirements for transportation and exportation; and

(i) requirements and criteria for authorization by the state veterinarian and the department of livestock of any public hunting.

Section 2. Section 81-2-120, MCA, is amended to read:

"81-2-120. Management of wild buffalo or bison for disease control. (1) Whenever a publicly owned wild buffalo or bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or bison may jeopardize Montana's compliance with other state-administered or federally administered livestock disease control programs, the department may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) The live wild buffalo or bison may be physically removed by the safest and most expeditious means from within the state boundaries, including but not limited to hazing and aversion tactics or capture, transportation, quarantine, or delivery to a department-approved slaughterhouse.

(b) The live wild buffalo or bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or private property, the animal may be relocated to a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

(c) The live wild buffalo or bison may be taken through limited public hunts pursuant to [section 1] when authorized by the state veterinarian and the department.

~~(c)~~*(d)* The live wild buffalo or bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or bison that are certified by the state veterinarian as brucellosis-free may be:

(i) sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or bison; or

(ii) transferred to qualified tribal entities that participate in the disease control program provided for in this subsection ~~(1)(c)~~ *(1)(d)*. Acquisition of wild buffalo or bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.

~~(d)~~*(e)* Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or bison must be deposited in the state special revenue fund to the credit of the department.

~~(e)~~*(f)* Any revenue generated in excess of the costs referred to in subsection ~~(1)(c)(i)~~ *(1)(d)(i)* must be deposited in the state special revenue fund provided for in 87-1-513(2).

(2) Whenever the department is responsible for the death of a wild buffalo or bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

(a) as first priority, may donate a wild buffalo or bison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of publicly owned wild buffalo or bison that enter Montana on private or public land and that are from a herd that is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with other state-administered or federally administered livestock disease control programs."

Section 3. Section 87-1-216, MCA, is amended to read:

"87-1-216. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease. *The department may, after agreement and authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been exposed to or infected with a contagious disease, pursuant to [section 1].*

~~(3) The department and the department of livestock are strongly urged to enter into an agreement with the national park service for the long-term management of the Yellowstone national park wild buffalo or bison herd. If the national park service does not proceed in good faith in a timely manner to enter a long-term management agreement that, in the determination of the department and the department of livestock, responds adequately to the needs of Montana, the departments are strongly urged to take appropriate court action. The department and the department of livestock shall prepare a joint report to the 55th legislature regarding the present state of wild buffalo or bison management in Montana and any progress on an agreement for the long-term management of the Yellowstone national park herd.~~

~~(4)~~*(3)* The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.

(4) When adopting and implementing rules regarding the special wild buffalo or bison license issued pursuant to [section 1], the department shall consult and cooperate with the department of livestock regarding when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to minimize the potential for spreading any contagious disease to persons or to livestock."

Section 4. Section 87-2-701, MCA, is amended to read:

"87-2-701. (Temporary) Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, $750;

(b) mountain goat—resident, $75; nonresident, $750;

(c) mountain sheep—resident, $75; nonresident, $750;

(d) antelope—resident, $11; nonresident, $200;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black bear—nonresident, $350*;*

(g) wild buffalo or bison—resident, $75; nonresident, $750.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-701. (Effective March 1, 2006) Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, $980;

(b) mountain goat—resident, $75; nonresident, $980;

(c) mountain sheep—resident, $75; nonresident, $980;

(d) antelope—resident, $11; nonresident, $180;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black bear—nonresident, $330*;*

(g) wild buffalo or bison—resident, $75; nonresident, $750.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, chapter 2, part 7, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

Ap proved May 9, 2003

CHAPTER NO. 605

[SB 415]

AN ACT REVISING THE QUALIFICATIONS FOR A GOLF COURSE BEER AND WINE LICENSE; CHANGING THE REQUIREMENTS FOR NUMBER OF HOLES, COURSE LENGTH, AND PROXIMITY TO A MUNICIPALITY; AMENDING SECTION 16-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-109, MCA, is amended to read:

"16-4-109. Golf course beer and wine license. (1) Upon application, the department of revenue shall issue a retail beer and wine license, to be known as

a golf course beer and wine license, for use at a golf course. If the owner of the golf course is not the state, a unit of the university system, or a local government, to qualify for a license under this section:

(a) *(i)* the golf course must consist of at least ~~18~~ *9* holes and ~~6,000~~ *2,500* lineal yards;

~~(b)~~*(ii)* the golf course must be either within the limits of an incorporated city or town or within ~~1 mile~~ *5 miles* of the limits of an incorporated city or town;~~and~~

~~(c)~~*(iii)* the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application*; and*

(iv) the applicant shall pay an initial application fee of $20,000; or

(b) (i) the golf course must consist of at least 9 holes and 2,500 lineal yards;

(ii) the governing body of the golf course is incorporated under section 501(c)(3) of the Internal Revenue Code;

(iii) the golf course must be within 5 miles of the limits of an incorporated city or town; and

(iv) the applicant for a license under this section may not have held a beer and wine or all-beverages license within 12 months of the date of application.

(2) The application must be made by the person or entity that owns and operates the golf course. If the owner of the golf course is not the state, a unit of the university system, or a local government, the owner must be approved by the department as provided in this chapter for the issuance of beer licenses.

(3) (a) Except as provided in subsection (3)(c), a golf course beer and wine license and all retail beer and wine sales under the license are subject to all statutes and rules governing a retail beer license with a wine license amendment.

(b) If the owner of the golf course is not the state, a unit of the university system, or a local government:

(i) retail beer and wine sales may be made only during the time of the year that the golf course is open for business, and sales on days during that time must stop by 1 hour after sunset;

(ii) the seating capacity of the premises where the beer and wine are sold may not exceed 75 persons; and

(iii) gaming or gambling is not authorized under the license issued under this section.

(c) If the owner of a golf course is the state, a unit of the university system, or a local government, the owner may lease the beer and wine license for use at the golf course to an individual or entity approved by the department of revenue.

(4) The department of revenue shall issue a golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable."

Section 2. Effective Date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to license applications filed on or after [the effective date of this act].

Ap proved May 9, 2003

CHAPTER NO. 606

[SB 461]

AN ACT TO MITIGATE THE EFFECTS OF THE PERIODIC PROPERTY TAX REVALUATION CYCLE THAT BEGINS IN 2003; DECREASING THE CLASS FOUR PROPERTY TAX RATE FROM 3.46 PERCENT TO 3.01 PERCENT OVER A 6-YEAR PERIOD; PROVIDING RATE ADJUSTMENTS TO CLASS FOUR PROPERTY TAX RATES FOR CERTAIN RESIDENCES WITH EXTRAORDINARY INCREASES IN MARKET VALUE; ESTABLISHING NEW CLASS FOUR PROPERTY TAX EXEMPTION RATES FOR RESIDENTIAL PROPERTY AND COMMERCIAL AND INDUSTRIAL PROPERTY THAT ADJUST THE EXEMPT PERCENTAGE OF VALUE OVER 6 YEARS; PROVIDING AN EXTENSION OF 2003 ADMINISTRATIVE DEADLINES RELATING TO PROPERTY TAXATION; PROVIDING FOR AN INTERIM PROPERTY TAX REAPPRAISAL STUDY COMMITTEE AND A TAX REFORM STUDY COMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-6-134, 15-6-201, AND 15-7-111, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Extended property tax assistance — phasein. (1) For the purpose of mitigating extraordinary market value increases during the revaluation cycle that ended December 31, 2002, the rate of taxation of class four residential dwellings and appurtenant land not to exceed 5 acres otherwise set in 15-6-134(2)(a) is adjusted in this section for properties with extraordinary increases in market value with owners that meet income requirements.

(2) An annual application on a form provided by the department is required to receive a tax rate adjustment under this section. The application must be signed under oath. A tax rate adjustment may be granted only for the current tax year and may not be granted for a previous year.

(3) A rate adjustment may not be granted for:

(a) any property that was sold or for which the ownership was changed after December 31, 2002, unless the change in ownership is between husband and wife or parent and child with only nominal actual consideration or the change is pursuant to a divorce decree;

(b) the value of new construction, including remodeling, on the property occurring after December 31, 2002, that is greater than 25% of the market value of the improvements; or

(c) a land use change occurring after December 31, 2002, that increases the market value of the land by more than 25%.

(4) For the purposes of determining the adjustment in the class four property tax rate in this section, the following provisions apply:

(a) The change in taxable value before reappraisal is the 2002 tax year value adjusted for any new construction or destruction that occurred in the 2002 tax year. The taxable value before reappraisal for the 2003 tax year and subsequent years is the same as the 2002 tax year value if no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes are made to the property during 2002 or subsequent tax years.

(b) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal in 2003 times 0.69 times 0.0346. The taxable value after reappraisal is calculated by multiplying the 2003 market value after reappraisal times 0.66 times 0.0301.

(c) The dollar increase in tax liability is measured as the change in tax liability before reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before reappraisal in 2003 times 0.69 times 0.0346 times the tax year 2002 mill levy applied to the property. The tax liability after reappraisal is calculated by multiplying the 2003 market value after reappraisal times 0.66 times 0.0301 times the tax year 2002 mill levy applied to the property. The tax year 2002 mill levy is the total of all mills applied to the property for fiscal year 2003.

(d) Total household income is the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.

(e) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

(5) (a) If total household income is $25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2003, the tax rate is 0.03598 times the value before reappraisal divided by the 2003 phase-in value.

(ii) For tax year 2004, the tax rate is 0.03759 times the value before reappraisal divided by the 2004 phase-in value.

(iii) For tax year 2005, the tax rate is 0.03932 times the value before reappraisal divided by the 2005 phase-in value.

(iv) For tax year 2006, the tax rate is 0.04109 times the value before reappraisal divided by the 2006 phase-in value.

(v) For tax year 2007, the tax rate is 0.04289 times the value before reappraisal divided by the 2007 phase-in value.

(vi) For tax year 2008 and after, the tax rate is 0.04485 times the value before reappraisal divided by the 2008 phase-in value.

(b) If total household income is greater than $25,000 but less than or equal to $50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2003, the tax rate is 0.03633 times the value before reappraisal divided by the 2003 phase-in value.

(ii) For tax year 2004, the tax rate is 0.03828 times the value before reappraisal divided by the 2004 phase-in value.

(iii) For tax year 2005, the tax rate is 0.04038 times the value before reappraisal divided by the 2005 phase-in value.

(iv) For tax year 2006, the tax rate is 0.04251 times the value before reappraisal divided by the 2006 phase-in value.

(v) For tax year 2007, the tax rate is 0.04467 times the value before reappraisal divided by the 2007 phase-in value.

(vi) For tax year 2008 and after, the tax rate is 0.04702 times the value before reappraisal divided by the 2008 phase-in value.

(c) If total household income is greater than $50,000 but less than or equal to $75,000, the percentage increase in taxable value is greater than 36%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2003, the tax rate is 0.03668 times the value before reappraisal divided by the 2003 phase-in value.

(ii) For tax year 2004, the tax rate is 0.03898 times the value before reappraisal divided by the 2004 phase-in value.

(iii) For tax year 2005, the tax rate is 0.04143 times the value before reappraisal divided by the 2005 phase-in value.

(iv) For tax year 2006, the tax rate is 0.04392 times the value before reappraisal divided by the 2006 phase-in value.

(v) For tax year 2007, the tax rate is 0.04646 times the value before reappraisal divided by the 2007 phase-in value.

(vi) For tax year 2008 and after, the tax rate is 0.04919 times the value before reappraisal divided by the 2008 phase-in value.

(d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of 1%.

(6) A person who applies for a tax rate adjustment under this section shall provide the department with documentation of total household income and other information that the department considers necessary to determine the person's eligibility for the tax rate adjustment. Documents provided to the department to determine eligibility for a tax rate adjustment are subject to the confidentiality provisions in 15-30-303.

(7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a tax rate adjustment is guilty of false swearing under 45-7-202.

(8) For the purposes of this section, "entity" means:

(a) a corporation, fiduciary, or pass-through entity, as those terms are defined in 15-30-101; and

(b) an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person.

Section 2. Extended property tax assistance — phasein. (1) For the purpose of mitigating extraordinary market value increases during revaluation cycles that begin after December 31, 2008, the rate of taxation of class four residential dwellings and appurtenant land not to exceed 5 acres otherwise set

in 15-6-134(2)(a) is adjusted in this section for properties with extraordinary increases in market value with owners that meet income requirements.

(2) An annual application on a form provided by the department is required to receive a tax rate adjustment under this section. The application must be signed under oath. A tax rate adjustment may be granted only for the current tax year and may not be granted for a previous year.

(3) A rate adjustment may not be granted for:

(a) any property that was sold or for which the ownership was changed after December 31 of the last year of the previous revaluation cycle, unless the change in ownership is between husband and wife or parent and child with only nominal actual consideration or the change is pursuant to a divorce decree;

(b) the value of new construction, including remodeling, on the property occurring after December 31 of the last year of the previous revaluation cycle that is greater than 25% of the market value of the improvements; or

(c) a land use change occurring after December 31 of the last year of the previous revaluation cycle that increases the market value of the land by more than 25%.

(4) For the purposes of determining the adjustment in the class four property tax rate in this section, the following provisions apply for revaluation cycles beginning after December 31, 2008:

(a) (i) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the tax rate before reappraisal. The taxable value after reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the homestead exemption after reappraisal times the tax rate after reappraisal.

(ii) The tax rate before reappraisal is the tax rate that was in effect during the last year of the previous reappraisal cycle.

(iii) The tax rate after reappraisal is the tax rate that will be in effect during the last year of the current reappraisal cycle.

(iv) The homestead exemption before reappraisal is the homestead exemption that was in effect during the last year of the previous reappraisal cycle.

(v) The homestead exemption after reappraisal is the homestead exemption that will be in effect during the last year of the current reappraisal cycle.

(b) The dollar increase in tax liability is measured as the percentage change in tax liability before reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before reappraisal times the result of 1.00 minus the homestead exemption before reappraisal times the tax rate before reappraisal times the mill levy applied to the property before reappraisal. The tax liability after reappraisal is calculated by multiplying the market value after reappraisal times the result of 1.00 minus the homestead exemption after reappraisal times the tax rate after reappraisal times the mill levy applied to the property before reappraisal. The mill levy applied to property before reappraisal is the total of all mills applied to the property in the last year of the previous reappraisal cycle.

(c) Total household income is the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.

(d) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

(5) (a) If total household income is $25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate must be calculated such that the total increase in taxable value over the reappraisal cycle is 24% and such that the change in taxable value is phased in over the reappraisal cycle in equal increments.

(b) If total household income is greater than $25,000 but less than or equal to $50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate must be calculated such that the total increase in taxable value over the reappraisal cycle is 30% and such that the change in taxable value is phased in over the reappraisal cycle in equal increments.

(c) If total household income is greater than $50,000 but less than or equal to $75,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate. The adjusted tax rate will be calculated such that the total increase in taxable value over the reappraisal cycle is 36% and such that the change in taxable value is phased in over the reappraisal cycle in equal increments.

(d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of 1%.

(6) A person who applies for a tax rate adjustment under this section shall provide the department with documentation of total household income and other information that the department considers necessary to determine the person's eligibility for the tax rate adjustment. Documents provided to the department to determine eligibility for a tax rate adjustment are subject to the confidentiality provisions in 15-30-303.

(7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a tax rate adjustment is guilty of false swearing under 45-7-202.

(8) For the purposes of this section, "entity" means:

(a) a corporation, fiduciary, or pass-through entity, as those terms are defined in 15-30-101; and

(b) an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person.

Section 3. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) subject to 15-6-201(1)(z) ~~and (1)(aa)~~ *and (1)(aa)* and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-201(1)(z) ~~and (1)(aa)~~ *and (1)(aa)* and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses ~~but before deducting depreciation or depletion allowance, or both~~ *but before deducting depreciation or depletion allowance, or both*.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-201(1)(z), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) ~~(i)~~ Except as provided in 15-24-1402, 15-24-1501, *and* 15-24-1502, ~~and subsection (2)(a)(ii) of this section,~~ property described in subsections (1)(a), (1)(b), (1)(e), (1)(f), and (1)(g) of this section is taxed at*:*

(i) ~~3.794%~~ *3.40%* of its taxable market value in tax year ~~1999~~ *2003;*

(ii) 3.3% of its taxable market value in tax year 2004;

(iii) 3.22% of its taxable market value in tax year 2005;

(iv) 3.14% of its taxable market value in tax year 2006;

(v) 3.07% of its taxable market value in tax year 2007; and

(vi) 3.01% of its taxable market value in tax years after 2007.

~~(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.0835 percentage points each year until the tax rate is equal to or less than 3.46%.~~

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a)~~(ii)~~ of its *taxable* market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$0 - $ 6,000	$0 - $8,000	20%
6,001 - 9,200	8,001 - 14,000	50%
9,201 - 15,000	14,001 - 20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a)~~(i)~~.

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 4. Section 15-6-201, MCA, is amended to read:

"15-6-201. (Temporary) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental

impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the ~~following~~ *following* percentage of the market value of ~~residential~~ *residential* property ~~as~~ described in ~~15-6-134(1)(e) and (1)(f)~~ *15-6-134(1)(e) and (1)(f)*~~:~~

~~(i) 23% for tax year 2000;~~

~~(ii) 27.5% for tax year 2001; and~~

~~(iii) 31% for tax year 2002 and succeeding tax years;~~

~~(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):~~

~~(i) 9% for tax year 2000;~~

~~(ii) 11% for tax year 2001; and~~

~~(iii) 13% for tax year 2002 and succeeding tax years;~~*;*

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004;

(iii) 13.8% for tax year 2005;

(iv) 14.2% for tax year 2006;

(v) 14.6% for tax year 2007;

(vi) 15% for tax year 2008 and succeeding tax years;

~~(bb)~~*(bb)* personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

~~(cc)~~*(cc)* items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(dd)~~*(dd)* all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility; and

~~(ee)~~*(ee)* light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection ~~(1)(bb)~~ *(1)(bb)*:

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure.

15-6-201. (Effective on occurrence of contingency) Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to

enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the ~~following~~ *following* percentage of the market value of ~~residential~~ *residential* property ~~as~~ described in ~~15-6-134(1)(e) and (1)(f)~~ *15-6-134(1)(e) and (1)(f)*~~:~~

~~(i) 23% for tax year 2000;~~

~~(ii) 27.5% for tax year 2001; and~~

~~(iii) 31% for tax year 2002 and succeeding tax years;~~

~~(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):~~

~~(i) 9% for tax year 2000;~~

~~(ii) 11% for tax year 2001; and~~

~~(iii) 13% for tax year 2002 and succeeding tax years;~~*;*

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

(i) 13% for tax year 2003;

(ii) 13.3% for tax year 2004;

(iii) 13.8% for tax year 2005;

(iv) 14.2% for tax year 2006;

(v) 14.6% for tax year 2007;

(vi) 15% for tax year 2008 and succeeding tax years;

~~(bb)~~*(bb)* personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

~~(cc)~~*(cc)* items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

~~(dd)~~*(dd)* all agricultural implements and equipment;

~~(ee)~~*(ee)* all mining machinery, fixtures, equipment, tools, and supplies except those included in class five;

~~(ff)~~*(ff)* all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

~~(gg)~~*(gg)* all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

~~(hh)~~*(hh)* special mobile equipment as defined in 61-1-104;

~~(ii)~~*(ii)* furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

~~(jj)~~*(jj)* x-ray and medical and dental equipment;

~~(kk)~~*(kk)* citizens' band radios and mobile telephones;

~~(ll)~~*(ll)* radio and television broadcasting and transmitting equipment;

~~(mm)~~*(mm)* cable television systems;

~~(nn)~~*(nn)* coal and ore haulers;

~~(oo)~~*(oo)* theater projectors and sound equipment; and

~~(pp)~~*(pp)* light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection ~~(1)(bb)~~*(1)(bb)*:

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 5. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. ~~The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class.~~

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) ~~Beginning January 1, 2001, the~~ *The* department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, ~~2003~~ *2008, effective for January 1, 2009*, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%. ~~The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.~~"

Section 6. Extension of 2003 deadlines relating to property taxation. As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 58th legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 2003, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes.

Section 7. Interim property tax reappraisal and tax reform study committees. (1) (a) There is an interim property tax reappraisal study committee created to study the effects of cyclical reappraisal and methods for mitigating the changes in taxable value caused by cyclical reappraisal.

(b) The committee is composed of four senators, two from each political party, appointed by the committee on committees, and four representatives, two appointed by the speaker and two appointed by the minority leader.

(2) (a) There is an interim tax reform study committee created to study tax reform that may include revising the existing tax structure and considering alternative forms of taxation. The members must include:

(i) four senators, two from each political party, appointed by the committee on committees;

(ii) four representatives, two appointed by the speaker and two appointed by the minority leader; and

(iii) the following members appointed by the governor:

(A) one representative of small business;

(B) one representative of large industry;

(C) one representative of agriculture; and

(D) one representative of labor.

(b) The members of the committee shall select a presiding officer and may appoint other officers as considered necessary.

(c) The committee shall adopt rules of procedure for conducting meetings.

(d) The purpose of the committee is to conduct a comprehensive examination of taxation in Montana. The committee shall:

(i) develop an inventory of taxes imposed at the state and local level, including but not limited to:

(A) the taxation of property;

(B) the taxation of income;

(C) excise and use taxes; and

(D) taxation of natural resource production, including energy production and transmission;

(ii) provide analyses that evaluate existing taxes in terms of:

(A) their adequacy, efficiency, burden or incidence, fairness, ability to be exported, and effect on economic behavior, including their effect on individual and business decisions; and

(B) costs of administration and compliance;

(iii) examine tax expenditures to assess the ongoing merit of each expenditure; and

(iv) examine alternative methods of taxation from existing sources, as well as new sources of revenue, and evaluate the alternative methods and new sources according to the criteria described in subsection (2)(d)(ii).

(e) The committee shall solicit the knowledge and advice of economists, tax policy experts, and representatives of taxpayer groups, local governments, small business organizations, large industry, agriculture, and economic and business development organizations.

(3) The committees created in this section shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(4) The committees shall submit written reports to the legislature not later than December 1, 2004, that must include recommendations and proposed legislation, if legislation is considered necessary, to mitigate the effects of cyclical reappraisal and to provide tax reform for Montana.

(5) The committees are attached for administrative purposes only to the department of revenue to be staffed by the executive branch with the cooperation of the staff of the legislative branch.

(6) (a) Nonlegislative members of the tax reform study committee must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(7) The members of the committees created in this section must be appointed by July 1, 2003.

Section 8. Appropriation. (1) The committees created in [section 7] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of revenue.

(2) In addition to any money received pursuant to subsection (1), there is appropriated $60,000 from the general fund to the committees created in [section 7] for the biennium for the operating expenses and personnel expenses of the committees.

Section 9. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to [sections 1 and 2].

Section 10. Coordination instruction. If Senate Bill No. 126 and [this act] are both passed and approved, then the amendments contained in 15-6-201(1)(z) and (1)(aa) in [section 2 of Senate Bill No. 126] are void.

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Section 8] is effective July 1, 2003.

(3) [Section 2] is effective January 1, 2009.

Section 13. Applicability. (1) [Sections 1 and 3 through 5] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

(2) [Section 2] applies to tax years beginning after December 31, 2008.

Section 14. Termination. [Section 1] terminates December 31, 2008.

Ap proved May 9, 2003

CHAPTER NO. 607

[SB 483]

AN ACT GENERALLY REVISING LAWS CONCERNING THE BUDGET AND BUDGET ANALYSIS; REQUIRING THE STATE TREASURER TO PROVIDE INFORMATION ON THE STATE WEBSITE ON HOW TO DONATE FUNDS TO ANY STATE FUNCTION; REQUIRING A POSITIVE GENERAL FUND ENDING BALANCE AT THE END OF A BIENNIUM; REVISING THE DEFINITION OF "PROJECTED GENERAL FUND BUDGET DEFICIT"; AND AMENDING SECTIONS 17-1-111, 17-7-102, 17-7-131, AND 17-7-140, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-111, MCA, is amended to read:

"17-1-111. General fiscal duties of state treasurer. (1) The state treasurer is the custodian of all money and securities of the state unless otherwise expressly provided by law.

(2) It is the duty of the state treasurer to:

(a) receive and account for all money belonging to the state, not expressly required by law to be received and kept by some other person;

(b) pay warrants out of the funds upon which they are drawn;

(c) upon payment of any warrant, record the receipt of the person to whom it is paid;

(d) keep an account of all money received and disbursed;

(e) at the request of either house of the legislature or of any legislative committee, give information in writing as to the condition of the treasury or on any subject relating to the duties of the office of state treasurer;

(f) superintend the fiscal concerns of the state;

(g) suggest plans for the improvement and management of the public revenue;

(h) keep an account of all warrants drawn upon the treasury and of other appropriation records that the treasurer determines to be essential for the support of the accounting records maintained in the department;

(i) keep a register of warrants, showing the fund upon which each warrant is drawn, each warrant's number, who received the warrant, and the date issued;

(j) require all persons who have received money belonging to the state but who have not accounted for it to settle their accounts;

(k) draw warrants on the state treasury for the payment of money directed by law to be paid out of the treasury, except that a warrant may not be drawn unless authorized by law;

(l) authenticate with the official seal of the state all warrants drawn and all copies of papers issued from the office of state treasurer;

(m) collect and pay into the state treasury all fees received; and

(n) discharge other duties as may be imposed upon the state treasurer by law*; and*

(o) provide information through the state's official internet website detailing how donations can be made to the state general fund or to any function of state government."

Section 2. Section 17-7-102, MCA, is amended to read:

"17-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget *for the state general fund and state special revenue funds* may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

Section 3. Section 17-7-131, MCA, is amended to read:

"17-7-131. Legislative action — *ending fund balance.* *(1)* The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the agencies of state government and the state institutions ~~shall~~ *must* be based upon the budget and proposed budget bill ~~so~~ submitted *at the request of the governor*. The legislature may amend the proposed budget bill, but it may not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

(2) The adopted budget must be limited so that a positive ending general fund balance exists at the end of the biennium for which funds are appropriated."

Section 4. Section 17-7-140, MCA, is amended to read:

"17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time that the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in spending for the following may not be directed by the governor:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school BASE funding program, including special education; and

(e) salaries of elected officials during their terms of office.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than*:*

(i) 2% of the general fund appropriations for the second fiscal year of the biennium *prior to October of the year preceding a legislative session;*

(ii) 3/4 of 1% in October of the year preceding a legislative session;

(iii) 1/2 of 1% in January of the year in which a legislative session is convened; and

(iv) 1/4 of 1% in March of the year in which a legislative session is convened.

(b) In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

~~(b)~~*(4)* If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-18-107, the budget director shall notify the revenue and transportation interim committee of the estimated amount. Within 20 days of notification, the revenue and transportation interim committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue and transportation interim committee prior to certifying a projected general fund budget deficit to the governor."

Ap proved May 9, 2003

CHAPTER NO. 608

[SB 485]

AN ACT REVISING THE ALLOCATION AND USE OF A PORTION OF TOBACCO SETTLEMENT PROCEEDS FUNDS FOR THE BIENNIUM BEGINNING JULY 1, 2003; TRANSFERRING TOBACCO SETTLEMENT PROCEEDS FUNDS TO A PREVENTION AND STABILIZATION ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO BE USED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO FINANCE, ADMINISTER, AND PROVIDE HEALTH AND HUMAN SERVICES; AUTHORIZING THE USE OF TOBACCO SETTLEMENT PROCEEDS FUNDS TO PROVIDE MATCHING FUNDS FOR THE MEDICAID PROGRAM; ESTABLISHING THE PREVENTION AND STABILIZATION ACCOUNT AND ALLOCATING ACCOUNT PROCEEDS; APPROPRIATING FUNDS FROM THE PREVENTION AND STABILIZATION ACCOUNT; AMENDING SECTION 17-6-606, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-606, MCA, is amended to read:

"17-6-606. Tobacco settlement accounts — purpose — uses. (1) The purpose of this section is to dedicate a portion of the tobacco settlement proceeds to fund a statewide comprehensive tobacco disease prevention program designed to:

(a) discourage children from starting use of tobacco;

(b) assist adults in quitting use of tobacco;

(c) provide funds for the children's health insurance program; ~~and~~

(d) provide funds for the comprehensive health association programs*; and*

(e) fund human services programs.

(2) An amount equal to 32% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for funding a statewide tobacco prevention program designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use *and for funding human services programs*. The department of public health and human services shall manage the tobacco prevention program and shall adopt rules to implement the program. In adopting rules, the department shall consider the standards contained in Best Practices for Comprehensive

Tobacco Control Programs—August 1999 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

(3) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for:

(a) matching funds to secure the maximum amount of federal funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10; ~~and~~

(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513*; and*

(c) matching funds to secure the maximum amount of federal funds for the medicaid program.

(4) Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

(5) The legislature shall appropriate money from the state special revenue accounts provided for in this section ~~for tobacco disease prevention,~~ for the programs referred to in the subsection establishing the account~~,~~ and for funding the tobacco prevention advisory board.

(6) Programs funded under this section that are private in nature may be funded through contracted services."

Section 2. Prevention and stabilization account — allocation of proceeds. (1) There is a prevention and stabilization account in the state special revenue fund provided for in 17-2-102. Money in the account must be used by the department of public health and human services to finance, administer, and provide health and human services.

(2) (a) Funds in the prevention and stabilization account must be used for the following programs in order of priority:

(i) prescription drugs for adults with a serious and disabling mental illness eligible for programs initiated pursuant to 53-21-702(2) and (3);

(ii) child care for low-income families;

(iii) the Montana initiative for the abatement of mortality in infants administered pursuant to 50-19-301;

(iv) independent living;

(v) extended employment;

(vi) child support enforcement state matching funds;

(vii) stabilization of rates for medicaid mental health services;

(viii) medicaid hospice services;

(ix) home health therapy services;

(x) poison control; and

(xi) AIDS funds.

(b) Funds remaining after allocations to the priorities in subsection (2)(a) may be expended for other programs as directed in 17-6-606(1).

(c) Appropriations from the prevention and stabilization account for programs listed in subsection (2)(a) are restricted for the use specified and may not be transferred to other programs pursuant to 17-7-139.

Section 3. Fund transfer. There is transferred from the state special revenue account provided for in 17-6-606(2) to the state special revenue account established in [section 2] $5,831,360 for fiscal year 2004 and $6,057,600 for fiscal year 2005.

Section 4. Appropriations from prevention and stabilization account. (1) The following amounts are biennial appropriations from the prevention and stabilization account for the 2005 biennium:

(a) mental health services and prescription drugs for programs established pursuant to 53-21-702(2) and (3), $6,500,000;

(b) child care, $2,000,000;

(c) the Montana initiative for the abatement of mortality in infants program, $1,100,000;

(d) independent living services, $457,532;

(e) extended employment services, $541,278;

(f) child support enforcement, $1,263,678;

(g) mental health medicaid service rates, $800,000;

(h) medicaid hospice services, $340,000;

(i) medicaid home health therapy services, $68,000;

(j) poison control, $77,908; and

(k) AIDS funding, $84,000.

(2) Funds remaining in the prevention and stabilization account after these appropriations have been made may be used to fund appropriations from the prevention and stabilization account that are authorized in House Bill No. 2.

Section 5. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [section 2].

Section 6. Coordination instruction. If House Bill No. 722 and [this act] are both passed and approved and if both bills create a prevention and stabilization account in the state special revenue fund to be used by the department of public health and human services to finance, administer, and provide health and human services, the code commissioner shall codify the accounts as a single section.

Section 7. Effective date. [This act] is effective July 1, 2003.

Section 8. Termination. [Section 1] terminates June 30, 2005.

Ap proved May 9, 2003

CHAPTER NO. 609

[SB 487]

AN ACT REVISING LAWS RELATED TO WIND ENERGY TAXATION AND ECONOMIC DEVELOPMENT; ELIMINATING THE TAX CREDIT LIMITATION FOR WIND ENERGY DEVELOPMENT; INCREASING THE

MAXIMUM AMOUNT OF OUTSTANDING ECONOMIC DEVELOPMENT BONDS THAT THE BOARD OF INVESTMENTS MAY ISSUE; INCREASING THE ALLOWABLE AMOUNT OF MONEY THAT THE BOARD OF INVESTMENTS MAY USE FOR FINANCING A MAJOR PROJECT; AMENDING SECTIONS 15-32-404, 17-5-1506, AND 17-5-1527, MCA; REPEALING SECTION 15-32-403, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-404, MCA, is amended to read:

"15-32-404. Carryover of credit. (1) The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit~~, subject to the limitation of 15-32-403,~~ has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system."

Section 2. Section 17-5-1506, MCA, is amended to read:

"17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature

more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed ~~$75~~ *$100* million."

Section 3. Section 17-5-1527, MCA, is amended to read:

"17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either ~~$10~~ *$50* million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons;

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision

that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes.

(7) The board is encouraged to consider applications for project financing related to infrastructure and facilities necessary for the development of the state-owned coal assets."

Section 4. Repealer. Section 15-32-403, MCA, is repealed.

Section 5. Effective dates. (1) [Sections 2 and 3 and this section] are effective on passage and approval.

(2) [Sections 1 and 4] are effective July 1, 2005.

Ap proved May 9, 2003

CHAPTER NO. 610

[SB 493]

AN ACT REVISING THE AUTHORIZED USE OF THE MOTOR VEHICLE INFORMATION TECHNOLOGY SYSTEM ACCOUNT; AMENDING SECTION 61-3-550, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-550, MCA, is amended to read:

"61-3-550. (Temporary) Motor vehicle information technology system account. (1) There is a motor vehicle information technology system account in the state special revenue fund provided for in 17-2-102.

(2) Fees received by the department of revenue pursuant to 61-3-103 must be deposited in the account.

(3) The money in the motor vehicle information technology system account must be appropriated by the legislature to the department of justice and must be used by the department for the purpose of:

(a) repaying any indebtedness or loan incurred for the creation of a new information technology system for motor vehicles; ~~or~~

(b) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system*; or*

(c) transfers to the general fund. (Terminates June 30, 2011—sec. 9, Ch. 394, L. 2001.)"

Section 2. Fund transfer. Up to $3.7 million is transferred to the general fund from the motor vehicle information technology system account during the biennium beginning July 1, 2003. The director of the office of budget and program planning may determine the amount and timing of the transfers.

Section 3. Effective date. [This act] is effective July 1, 2003.

Section 4. Termination. [This act] terminates June 30, 2005.

Ap proved May 9, 2003

CHAPTER NO. 611

[SB 362]

AN ACT INCREASING THE PENALTIES FOR ILLEGAL POSSESSION OR CONSUMPTION OF AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE; REQUIRING CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT IN CERTAIN CASES; REQUIRING COURTS TO REPORT THE NAMES OF MINORS WHO ARE CONVICTED OF THE OFFENSE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND REQUIRING THAT DEPARTMENT TO MAKE THE NAMES AVAILABLE UPON REQUEST TO PEACE OFFICERS AND COURTS; AND AMENDING SECTIONS 45-5-624 AND 61-2-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order. (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted ~~of the offense of possession of an intoxicating substance~~ *under this section*:

(i) for the first offense, shall be fined an amount *not less than $100 and* not to exceed ~~$150~~ *$300* and:

(A) ~~may~~ *shall* be ordered to perform *20 hours of* community service; ~~and~~

(B) shall be ordered, *and the person's parent or parents or guardian shall be ordered,* to complete and pay~~, either directly with money or indirectly through court-ordered community service,~~ all costs of participation in a community-based substance abuse information course *that meets the requirements of subsection (9)*, if one is available; *and*

(C) if the person has a driver's license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount *not less than $200 and* not to exceed ~~$200~~ *$600* and:

(A) ~~may~~ *shall* be ordered to perform *40 hours of* community service; ~~and~~

(B) shall be ordered, *and the person's parent or parents or guardian shall be ordered,* to complete and pay~~, either directly with money or indirectly through court-ordered community service,~~ all costs of participation in a community-based substance abuse information course *that meets the requirements of subsection (9)*, if one is available;

(C) if the person has a driver's license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8);

(iii) for a third or subsequent offense, shall be fined an amount not less than $300 or more than ~~$500~~ *$900, shall be ordered to perform 60 hours of community service,* ~~and~~ shall be ordered*, and the person's parent or parents or guardian shall be ordered,* to complete and pay~~, either directly with money or indirectly through court-ordered community service,~~ all costs of participation in a community-based substance abuse information course *that meets the requirements of subsection (9)*, if one is available*, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8)*~~, which may include alcohol or drug treatment, or both, approved by the department of public health and human services, if determined by the court to be appropriate~~. *If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).*

(b) ~~In addition to the penalties provided in subsection (2)(a), the court may order suspension of the offender's driver's license. The duration of the suspension must be set forth by court order and may not be less than 60 days or more than 1 year. Upon recommendation from the court, a restricted probationary driver's license under 61-2-302 may be issued during the suspension period after the person has completed at least 30 days of the suspension period.~~ *If the convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.*

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted ~~of the offense of possession of an intoxicating substance~~ *of the offense of possession of an intoxicating substance*:

(a) for a first offense, shall be fined an amount not to exceed ~~$150~~ *$200,* ~~and~~ *and* ~~may~~ *may* be ordered to perform community service;

~~(b) for a second offense, shall be fined an amount not to exceed $200 and may be ordered to perform community service;~~

(b) for a second offense, shall be fined an amount not to exceed $200 and may be ordered to perform community service;

~~(c)~~*(c)* for a ~~third~~ *third* or subsequent offense, shall be fined an amount not to exceed ~~$300~~ *$500* and:

(i) ~~may~~ *may* be ordered to perform community service;

(ii) shall be ordered ~~to complete~~ *to complete* an alcohol information course at an alcohol treatment program ~~approved by the department of public health and human services~~ *that meets the requirements of subsection (9)*, ~~which may, in the sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both~~ *which may, in the sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both*; and

(iii) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed ~~6~~ *6* months.~~.~~

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section ~~may not~~ *must* be reported by the court to the department of ~~justice under 61-11-101 unless suspension of the offender's driver's license is ordered by the court pursuant to subsection (2)(b)~~ *public health and human services if treatment is ordered under subsection (8)*.

(8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (9).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), or (2)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection (3)(c)(ii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services. (See compiler's comments for contingent termination of certain text.)"

Section 2. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program — department to contract with private entities — participation by offending drivers. (1) (a) The department shall establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(b) The rules must:

(i) provide for the local program courses to be operated by private entities;

(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;

(iii) establish the criteria that private entities must meet in order to be certified by the department; and

(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state ~~or, unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b)~~;

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license; or

(c) subject to suspension as provided in 61-11-204(3).

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).

(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.

(9) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(10) (a) Except as provided in (10)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(11) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Ap proved May 10, 2003

CHAPTER NO. 612

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2005; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 2003".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2005 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated as "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2007 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Biennial", "Restricted", "One Time Only", or "OTO". The designation of "Restricted" is subject to the provisions of [section 7]. The office of budget and program planning shall establish at least one appropriation on the statewide budgeting and accounting system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide budgeting and accounting system, and is identified as a major subdivision of an agency ordinally numbered with an arabic numeral.

Section 6. Personal services funding — 2007 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2007 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2007 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Approved original operating budget. In accordance with the provisions of 17-7-138, the approved original operating budget for each fiscal year of the 2005 biennium may include an amount not more than a prorated share by fund type of any across-the-board reductions or any undesignated reductions among all programs, as defined in [section 5], and among all appropriation items, as defined in [section 4], for the entire agency. This exception to legislative restrictions on appropriation items contained in [this act] is authorized only for preparation and approval of the original operating budget, which is due from all agencies by August 1 of each fiscal year, excluding the university system units.

Section 8. Contingent voidness. Because item 1b, item 4b, and item 12e in the department of public health and human services, item 2s in the office of public instruction, and item 4b and item 7n in the Montana university system appropriate coal severance tax permanent fund principal, Article IX, section 5, of the Montana constitution requires a three-fourths vote of the members of each house of the legislature for approval. If [this act] is not approved by a three-fourths vote of the members of each house of the legislature, then item 1b, item 4b, and item 12e in the department of public health and human services, item 2s in the office of public instruction, and item 4b and item 7n in the Montana university system are void.

Section 9. Statewide FTE reduction. Amounts identified as "statewide FTE reduction" in each agency may be reallocated between agencies at the discretion of the approving authority, as defined in 17-7-102(3).

Section 10. Contingent voidness. (1) The appropriations referred to in subsection (2) are void if Senate Bill No. 485 is passed and approved in a form that, together with other revenue deposited in a prevention and stabilization state special revenue account, will include sufficient revenue and biennial appropriations restricted for the following specified uses:

(a) mental health services and prescription drugs for programs established pursuant to 53-21-702(2) and (3), $6,500,000;

(b) child care, $2,000,000;

(c) the Montana initiative for the abatement of mortality in infants program, $1,100,000;

(d) independent living services, $457,532;

(e) extended employment services, $541,278;

(f) child support enforcement, $1,263,678;

(g) mental health medicaid service rates, $800,000;

(h) medicaid hospice services, $340,000;

(i) medicaid home health therapy services, $68,000;

(j) poison control, $77,908; and

(k) AIDS funding, $84,000.

(2) If Senate Bill No. 485 is passed and approved in a form that meets the conditions established in subsection (1), then the following items in the department of public health and human services are stricken from [this act]:

(a) items 1d, 4a, 6a, 6b, 6c, 9c, 9d, 10d, 11b, 11c, 12b, and 12c; and

(b) appropriation conditions related to the prevention and stabilization account.

Section 11. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 12. Effective date. [This act] is effective July 1, 2003.

Section 13. Appropriations. The following money is appropriated for the respective fiscal years:

Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND TRANSPORTATION											
LEGISLATIVE BRANCH (1104)											
1. Legislative Services (20) (Biennial)											
4,109,709	937,141	0	0	0	5,046,850	4,389,671	379,019	0	0	0	4,768,690
a. Feed Bill Augmentation (Biennial)											
200,000	0	0	0	0	200,000	0	0	0	0	0	0
2. Legislative Committees and Activities (21) (Biennial)											
627,894	0	0	0	0	627,894	0	0	0	0	0	0
3. Fiscal Analysis and Review (27) (Biennial)											
1,252,091	0	0	0	0	1,252,091	1,298,967	0	0	0	0	1,298,967
4. Audit and Examination (28) (Biennial)											
2,094,056	1,402,859	0	0	0	3,496,915	2,198,861	1,304,460	0	0	0	3,503,321
Total											
8,283,750	2,340,000	0	0	0	10,623,750	7,887,499	1,683,479	0	0	0	9,570,978

Item 1 includes a reduction in general fund money of $74,851 in fiscal year 2004 and $74,851 in fiscal year 2005 for the statewide FTE reduction. The branch may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

The legislature requests the legislative audit committee to make it a high priority to conduct a performance audit of the governor's office of economic development and requests that the audit include a review of the office's benchmarks, the basis and accuracy of reported status indicators, statistics, and accomplishments, and the program's effectiveness and outcomes.

CONSUMER COUNSEL (1112)											
1. Administration Program (01)											
0	1,335,683	0	0	0	1,335,683	0	1,343,271	0	0	0	1,343,271
Total											
0	1,335,683	0	0	0	1,335,683	0	1,343,271	0	0	0	1,343,271

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
JUDICIARY (2110)											
1. Supreme Court Operations (01)											
2,873,113	1,979,722	204,341	0	0	5,057,176	2,692,405	1,979,722	204,054	0	0	5,076,181
a. Legislative Audit (Restricted/Biennial)											
34,175	0	0	0	0	34,175	0	0	0	0	0	0
2. Boards and Commissions (02)											
289,139	25,000	0	0	0	384,139	359,143	25,000	0	0	0	384,143
3. Law Library (03)											
772,549	0	0	0	0	772,549	774,371	0	0	0	0	774,371
4. District Court Operations (04)											
6,166,116	150,000	0	0	0	6,316,116	6,151,807	150,000	0	0	0	6,301,807
a. County-Paid Sick and Vacation Leave (Restricted/Biennial)											
0	769,557	0	0	0	769,557	0	0	0	0	0	0
b. District Court Assumption (Restricted/Biennial)											
18,660,784	0	0	0	0	18,660,784	18,660,836	0	0	0	0	18,660,836
5. Water Courts Supervision (05)											
0	721,013	0	0	0	721,013	0	733,776	0	0	0	733,776
6. Clerk of Court (06)											
372,962	0	0	0	0	372,962	372,862	0	0	0	0	372,862
Total											
29,168,838	3,645,291	204,341	0	0	32,988,460	29,101,423	2,878,498	204,054	0	0	32,183,975

Item 1 includes $92,978 of general fund money in fiscal year 2004 and $92,812 of general fund money in fiscal year 2005 to provide funding for administrative support to the supreme court.

If House Bill No. 18 is not passed and approved, item 1 is decreased by $1,829,722 of state special revenue money in fiscal year 2004 and by $1,829,722 of state special revenue money in fiscal year 2005.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
If House Bill No. 18 is passed and approved, item 1 is decreased by $35,500 of general fund money in each year of the biennium. The branch may reallocate this reduction in funding among programs in its 2005 biennium operating plans.											
Item 1 includes a reduction in general fund money of $255,458 in fiscal year 2004 and $255,458 in fiscal year 2005 for the statewide FTE reduction. The branch may allocate this reduction in funding among programs when developing 2005 biennium operating plans.											
The supreme court is requested to report on the accomplishments and progress of implementing the branch information technology strategic plan to the general government and transportation appropriation subcommittee during the 2005 legislative session. The report is to include an analysis of the viability for continuance of the branch information technology effort and a list of accomplishments, including but not limited to the goals and objectives established in the branch information technology strategic plan.											
Item 4a includes $769,557 of state special revenue in fiscal year 2004 as a restricted, biennial appropriation to be used by the judiciary for payment of the state's share of assumed vacation and sick leave for county employees who became state employees on July 1, 2002, under state district court assumption. If legislation is not passed and approved to establish this state special revenue account for county payments to the state for accumulated sick and annual leave, then item 4a is void.											
The judiciary is appropriated in the 2005 biennium up to $1,800,000 in general fund money from reversions of appropriations of general fund money by the judiciary for the 2003 biennium for the purposes of funding expenses related to state district court assumption.											
GOVERNOR'S OFFICE (3101)											
1. Executive Office Program (01)											
1,554,179	0	0	0	0	1,554,179	1,555,203	0	0	0	0	1,555,203
a. Legislative Audit (Restricted/Biennial)											
31,546	0	0	0	0	31,546	0	0	0	0	0	0
b. Economic Development (Restricted)											
688,905	115,660	0	0	0	804,565	689,675	115,926	0	0	0	805,601
c. Computer Equipment (OTO)											
20,933	0	0	0	0	20,933	0	0	0	0	0	0
d. HB 564 — Workforce Training Act											
0	5,000,000	0	0	0	5,000,000	0	5,000,000	0	0	0	5,000,000
2. Mansion Maintenance Program (02)											
79,631	0	0	0	0	79,631	79,604	0	0	0	0	79,604

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Air Transportation Program (03)											
177.860	41.000	0	0	0	218.860	180.000	41.000	0	0	0	221.000
4. Office of Budget and Program Planning (04)											
1.067.353	0	0	0	0	1.067.353	1.067.025	0	0	0	0	1.067.025
a. Legislative Audit (Restricted/Biennial)											
16.834	0	0	0	0	16.834	0	0	0	0	0	0
5. Indian Affairs (05)											
136.878	0	0	0	0	136.878	137.701	0	0	0	0	137.701
a. State-Tribal Economic Development — Carryover (Restricted/Biennial)											
0	154.000	3.000.000	0	0	3.154.000	0	0	0	0	0	0
6. Lieutenant Governor (12)											
246.492	0	0	0	0	246.492	247.150	0	0	0	0	247.150
7. Citizens' Advocate Office (16)											
72.479	0	15.000	0	0	87.479	72.380	0	15.000	0	0	87.380
8. Mental Disabilities Board of Visitors (20)											
205.939	0	95.444	0	0	301.383	205.801	0	95.427	0	0	301.228
Total											
4.298.929	5.310.660	2.110.444	0	0	11.720.033	4.236.339	5.155.926	110.427	0	0	9.502.692

Item 1 includes a reduction in general fund money of $42.712 in fiscal year 2004 and $42.712 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

Item 1d includes a biennial appropriation of $10,000,000 in state special revenue to the governor's office of economic development for the primary sector business workforce training program. If House Bill No. 564 is not passed and approved, item 1d is void.

The governor's office of economic development shall develop a memorandum of understanding with the Montana tribal governments to outline strategies for communications and collaborative efforts that can be implemented to help strengthen the economic development opportunities for Montana's tribal communities.

SECRETARY OF STATE (3201)

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The secretary of state is appropriated up to $20 million of federal special revenue and up to $750,000 of state special revenue for the 2005 biennium to provide voter services under the federal Help America Vote Act of 2002. Federal special revenue funds are contingent upon receiving federal grant authority under the Help America Vote Act. State special revenue funds are contingent upon receiving matching funds from local government voting entities. Funding is restricted for use only on expenditures associated with the Help America Vote Act and are biennial appropriations for the 2005 biennium.

COMMISSIONER OF POLITICAL PRACTICES (3202)

1. Administration (01)											
313,764	0	0	0	0	313,764	313,634	0	0	0	0	313,634
a. Legislative Audit (Restricted/Biennial)											
5,258	0	0	0	0	5,258	0	0	0	0	0	0
Total											
319,022	0	0	0	0	319,022	313,634	0	0	0	0	313,634

Item 1 includes a reduction in general fund money of $3,891 in fiscal year 2004 and $3,891 in fiscal year 2005 for the statewide FTE reduction.

The commissioner of political practices is encouraged to use the department of justice, agency legal services (ALS) for activities needing legal and investigative assistance. The commissioner of political practices shall provide a report of legal expenditure activity in fiscal year 2004 and through December 31, 2004, in fiscal year 2005 by contracted services and ALS services to the general government and transportation appropriation subcommittee during the 2005 legislative session.

OFFICE OF THE STATE AUDITOR (3401)

1. Central Management (01)											
0	533,129	0	0	0	533,129	0	533,676	0	0	0	533,676
a. Legislative Audit (Restricted/Biennial)											
0	5,353	0	0	0	5,353	0	0	0	0	0	0
2. Insurance Program (03)											
0	2,694,089	0	0	0	2,694,089	0	2,695,835	0	0	0	2,695,835
a. Legislative Audit (Restricted/Biennial)											
0	23,344	0	0	0	23,344	0	0	0	0	0	0
b. Contract Examinations (Restricted)											

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	197,000	0	0	0	197,000	0	301,000	0	0	0	301,000
c. Montana Comprehensive Health Association (Restricted)											
0	700,963	0	0	0	700,963	0	689,600	0	0	0	689,600
3. Securities (04)											
0	624,164	0	0	0	624,164	0	620,033	0	0	0	620,033
a. Legislative Audit (Restricted/Biennial)											
0	2,839	0	0	0	2,839	0	0	0	0	0	0
b. Contract Examinations (Restricted)											
0	89,615	0	0	0	89,615	0	89,615	0	0	0	89,615
Total											
0	4,870,506	0	0	0	4,870,506	0	4,899,961	0	0	0	4,899,961
DEPARTMENT OF TRANSPORTATION (5401)											
1. General Operations Program (01) (Biennial)											
0	14,462,680	5,422,198	0	0	19,884,878	0	14,939,662	5,422,277	0	0	20,361,939
a. Legislative Audit (Restricted/Biennial)											
0	110,411	0	0	0	110,411	0	0	0	0	0	0
b. Integrated Financial Systems (Restricted/OTO)											
0	0	2,250,000	0	0	2,250,000	0	0	2,250,000	0	0	2,250,000
2. Construction Program (02) (Biennial)											
0	116,830,815	287,854,080	0	0	404,684,895	0	134,299,655	341,603,530	0	0	465,903,095
a. Conversion to English Measure (OTO)											
0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0
b. Federal Earmark Projects (Biennial/OTO)											
0	548,276	11,000,000	0	0	11,548,276	0	0	0	0	0	0
c. HB 618 — County Drinking and Driving Prevention Programs											
0	383,400	0	0	0	383,400	0	511,200	0	0	0	511,200

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Maintenance Program (03) (Biennial)												
	0	80,475,134	10,038,652	0	0	90,513,786	0	80,768,022	10,038,652	0	0	90,806,674
4. Motor Carrier Services Division (22)												
	0	5,247,636	0	0	0	5,247,636	0	5,293,111	0	0	0	5,293,111
5. Aeronautics Program (40)												
	0	793,704	0	0	0	793,704	0	823,385	0	0	0	823,385
a. Airport Grants (Biennial)												
	0	1,033,000	0	0	0	1,033,000	0	0	0	0	0	0
b. Statewide Plan Update (Biennial)												
	0	20,000	180,000	0	0	200,000	0	0	0	0	0	0
c. West Yellowstone Airport Runway Rehabilitation (Biennial/OTO)												
	0	0	1,800,000	0	0	1,800,000	0	0	0	0	0	0
d. Lincoln Airport Runway Rehabilitation (Biennial/OTO)												
	0	180,000	1,620,000	0	0	1,800,000	0	0	0	0	0	0
6. Transportation Planning Division (50) (Biennial)												
	0	2,838,624	7,105,753	0	0	9,944,377	0	2,538,866	8,984,315	0	0	11,523,181
a. Federal Transit Administration (Restricted)												
	0	0	1,538,000	0	0	1,538,000	0	0	0	0	0	0
b. Federal Earmark (OTO)												
	0	68,664	274,667	0	0	343,331	0	0	0	0	0	0
c. Multimodal Transportation Corridor Technical Assistant (Restricted)												
	0	50,000	200,000	0	0	250,000	0	0	0	0	0	0
Total												
	0	234,042,344	319,333,340	0	0	553,375,684	0	239,113,711	358,298,774	0	0	597,412,485

The department may adjust appropriations in the general operations, construction, maintenance, and transportation planning programs between state special revenue funds and federal special revenue funds if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program. All transfers between state special revenue funds and federal special revenue funds must be fully explained, justified, and reported in accordance with the requirements of 17-7-138 or 17-7-139, as applicable.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
All federal special revenue appropriations in the department are biennial.											
All appropriations in the general operations, construction, maintenance, and transportation planning programs are biennial.											
Item 2 includes a total of $63,690 for the 2005 biennium for the Montana natural resource information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.											
DEPARTMENT OF REVENUE (5801)											
1. Director's Office (01)											
1,677,803	0	93,663	30,072	0	1,801,138	1,681,443	0	93,663	30,072	0	1,805,073
a. Legislative Audit (Restricted, Biennial)											
129,528	0	9,800	0	0	139,328	0	0	0	0	0	0
2. Information Technology (02)											
2,536,650	0	183,365	64,245	0	2,784,460	2,544,528	0	183,365	64,245	0	2,792,138
a. POINTS Phase I Maintenance (OTO)											
300,000	0	0	0	0	300,000	300,000	0	0	0	0	300,000
b. SB 484 — Empowerment Zones (OTO)											
5,474	0	0	0	0	5,474	0	0	0	0	0	0
3. Resource Management (05)											
1,060,173	0	97,296	1,136,301	0	2,294,359	1,062,292	0	97,296	1,142,826	0	2,302,114
4. Customer Service Center (06)											
4,071,916	356,397	878,199	762,765	0	6,069,277	4,081,801	357,110	878,199	762,765	0	6,079,875
5. Compliance Valuation and Resolution (08)											
19,882,566	192,759	1,109,904	0	0	21,185,229	19,788,931	196,053	1,109,904	0	0	21,094,888
a. SB 461 — Property Tax Relief											
34,186	0	0	0	0	34,186	31,032	0	0	0	0	31,032
b. SB 461 — Property Tax Relief (OTO)											
65,157	0	0	0	0	65,157	0	0	0	0	0	0

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total												
	29.733.962	649.166	2.372.117	1.993.353	0	34.648.638	29.490.032	663.163	2.352.317	1.999.608	0	34.405.120

Item 1 includes a reduction in general fund money of $435,648 in fiscal year 2004 and $435,648 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

Item 2b is contingent upon passage and approval of Senate Bill No. 484.

Liquor division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profits and taxes to appropriate accounts are appropriated from the liquor enterprise fund (06005) to the department in amounts not to exceed $67,588,169 in fiscal year 2004 and $70,782,541 in fiscal year 2005.

In the liquor division, upon a termination that requires a payout of accrued leave balances, liquor division proprietary funds are appropriated from the liquor enterprise fund (06005) to the department in the amount equal to the payout of the accrued leave balances, not to exceed $30,000 for each of fiscal years 2004 and 2005.

In the event that the department is unable to meet statutory service levels because of the increase in demand for liquor products, the department may hire additional temporary employees or pay overtime, whichever is determined to be the more cost-effective, to maintain required service levels to stores. In fiscal year 2004 and in fiscal year 2005, the department is appropriated not more than $40,000 each year for additional costs from the liquor enterprise fund.

The department shall present reports to the revenue and transportation interim committee that show the cost of tax compliance staff and the additional revenue generated from providing the associated tax compliance. The department shall identify the costs and revenue separately for the additional staff added during the August 2002 special legislative session. The revenue and transportation interim committee may determine the frequency for reporting by the department on compliance staff revenue.

Items 5a and 5b are contingent upon passage and approval of Senate Bill No. 461.

DEPARTMENT OF ADMINISTRATION (6101)

1. Governor-Elect Program (02)												
	0	0	0	0	0	0	50,000	0	0	0	0	50,000
2. Administrative Financial Services Division (03)												
	1,170,500	411,415	62,708	43,776	0	1,688,399	1,160,653	423,883	63,594	43,688	0	1,690,818
a. Legislative Audit (Restricted/Biennial)												
	9,902	653	0	0	0	10,555	0	0	0	0	0	0
b. Federal Portion of State Fund Dividend (Restricted)												

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	100,000	0	0	100,000	0	0	100,000	0	0	100,000
3. Architecture and Engineering Program (04)											
0	1,318,461	0	0	11,542	1,330,003	0	1,321,118	0	0	18,369	1,339,487
a. Legislative Audit (Restricted/Biennial)											
0	1,769	0	0	0	1,769	0	0	0	0	0	0
4. General Services Program (06)											
584,790	0	0	0	500,000	1,084,790	582,138	0	0	0	500,000	1,082,138
5. Information Technology Services Division (07)											
154,646	0	469,156	0	0	623,802	155,360	0	469,543	0	0	624,903
a. Legislative Audit (Restricted/Biennial)											
3,152	0	1,261	0	0	4,413	0	0	0	0	0	0
b. Public Safety Communications (Restricted/Biennial)											
0	0	3,250,000	0	0	3,250,000	0	0	0	0	0	0
c. Statewide Roadway Centerline GIS (OTO)											
0	0	29,583	0	0	29,583	0	0	30,457	0	0	30,457
6. Banking and Financial Division (14)											
0	2,233,299	0	0	0	2,233,299	0	2,325,940	0	0	0	2,325,940
a. Legislative Audit (Restricted/Biennial)											
0	2,975	0	0	0	2,975	0	0	0	0	0	0
7. Montana State Lottery (15)											
0	0	0	8,307,654	0	8,307,654	0	0	0	7,395,036	0	7,395,036
a. Legislative Audit (Restricted/Biennial)											
0	0	0	81,713	0	81,713	0	0	0	0	0	0
b. Professional Service Contracts (Restricted/Biennial/OTO)											
0	0	0	160,000	0	160,000	0	0	0	0	0	0
8. State Personnel Division (23)											
1,207,161	27,543	0	0	0	1,234,704	1,209,084	27,543	0	0	0	1,236,627
9. State Tax Appeal Board (37)											

Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
327,301	0	0	0	0	327,301	329,786	0	0	0	0	329,786
Total											
3,467,452	3,896,125	2,912,708	8,593,053	511,542	19,370,880	3,487,021	3,998,484	662,594	7,333,724	516,369	16,000,192

There is appropriated from the general fund to the department for payments to the Montana highway patrol pension fund the amount required for this transfer, not to exceed $350,000 for each fiscal year.

If House Bill No. 424 is not passed and approved or if House Bill No. 424 is passed and approved in a form that establishes responsibility for administering a telemarketing no-call list in an agency other than the department, item 2 is reduced by $21,599 of state special revenue in fiscal year 2004 and by $39,659 of state special revenue in fiscal year 2005.

Item 2 includes a reduction in general fund money of $55,138 in fiscal year 2004 and $55,138 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

Item 2 includes a reduction of $229,571 in fiscal year 2004 and $229,571 in fiscal year 2005 of general fund money and like increases in state special revenue. If revenue deposited in the state special revenue fund is less than the amount of state special revenue contained in item 2, there is appropriated from the general fund up to $200,000 in fiscal year 2004 and $200,000 in fiscal year 2005.

The Montana state lottery shall present a report to the joint appropriations subcommittee on general government and transportation of the 59th legislature that documents the return on investment of each lottery game offered during the 2005 biennium and the anticipated return on investment for each lottery game planned for the 2007 biennium. For each lottery game, the report must itemize direct and indirect costs and revenue.

APPELLATE DEFENDER COMMISSION (6102)

1. Appellate Defender (01)											
186,860	0	0	0	0	186,860	186,689	0	0	0	0	186,689
a. Legislative Audit (Restricted/Biennial)											
275	0	0	0	0	275	0	0	0	0	0	0
Total											
186,135	0	0	0	0	186,135	186,689	0	0	0	0	186,689

Item 1 includes a reduction in general fund money of $2,334 in fiscal year 2004 and $2,334 in fiscal year 2005 for the statewide FTE reduction.

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
MONTANA CONSENSUS COUNCIL (6106)												
1. Montana Consensus Council (01)												
	0	269,270	0	0	0	269,270	0	270,743	0	0	0	270,743
Total												
	0	269,270	0	0	0	269,270	0	270,743	0	0	0	270,743
TOTAL SECTION A												
	75,418,056	246,289,036	335,933,960	10,856,435	611,642	669,698,061	74,701,637	349,958,235	371,638,166	9,338,333	618,359	706,154,730

Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				B. HEALTH AND HUMAN SERVICES							
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)											
1. Human and Community Services (02)											
18,499,180	510,251	154,132,941	0	0	173,132,372	20,354,634	510,251	169,633,187	0	0	190,387,072
a. Child Care (Restricted)											
0	0	0	0	0	0	0	0	0	0	0	0
b. Child Care — Coal Tax Trust (Biennial/OTO)											
0	0	0	0	5,760,000	5,760,000	0	0	0	0	0	0
c. Child Care Funding (Restricted)											
3,046,746	0	16,098,664	0	0	19,145,432	0	0	0	0	0	0
d. Child Care Funding — Prevention and Stabilization Fund											
0	1,000,000	0	0	0	1,000,000	0	1,000,000	0	0	0	1,000,000
2. Child and Family Services Division (03)											
19,839,633	1,667,550	27,436,453	0	0	48,943,636	20,051,718	1,994,550	28,117,931	0	0	50,174,199
a. CPS Child Care and Match for Federal Grant (Restricted)											
0	0	0	0	0	0	0	0	0	0	0	0
3. Director's Office (04)											
1,034,392	223,166	1,267,645	0	0	2,524,803	1,037,100	223,138	1,263,529	0	0	2,523,767
a. Refinancing Authority (OTO)											
0	0	5,050,000	0	0	5,050,000	0	0	5,050,000	0	0	5,050,000
4. Child Support Enforcement Division (05)											
276,465	2,366,446	5,226,005	0	0	7,868,916	276,386	2,598,402	5,740,318	0	0	8,615,106
a. Maintain Funding for CSED — Prevention and Stabilization Fund											
0	750,000	1,500,000	0	0	2,250,000	0	513,678	997,140	0	0	1,510,818
b. Maintain Funding for CSED — Coal Tax Trust (Biennial/OTO)											
0	0	0	0	250,000	350,000	0	0	0	0	0	0
5. Fiscal Services Division (06)											

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3,380,668	371,668	3,335,697	0	0	4,839,033	3,315,781	377,380	3,335,799	0	0	4,918,860
a. Legislative Audit (Restricted/Biennial)											
189,701	39,038	135,152	0	0	364,891	0	0	0	0	0	0
6. Health Policy and Services Division (07)											
1,973,403	3,279,340	40,646,464	0	0	45,799,207	1,984,060	3,363,670	40,558,237	0	0	45,905,967
a. MIAMI/Perinatal — Prevention and Stabilization Fund											
0	550,000	0	0	0	550,000	0	550,000	0	0	0	550,000
b. Poison Control System — Prevention and Stabilization Fund											
0	38,964	0	0	0	38,964	0	38,964	0	0	0	38,964
c. AIDS Treatment Services — Prevention and Stabilization Fund											
0	43,000	0	0	0	43,000	0	43,000	0	0	0	43,000
d. Tobacco Control and Prevention											
0	3,300,000	843,305	0	0	4,043,305	0	3,300,000	843,349	0	0	4,043,349
7. Quality Assurance Division (08)											
2,195,819	371,018	5,214,341	0	0	7,630,888	2,193,873	370,963	5,315,130	0	0	7,679,974
8. Operations and Technology Division (09)											
8,506,907	927,614	15,266,054	0	0	24,700,575	8,582,065	937,117	15,320,918	0	0	24,840,100
9. Disability Services Division (10)											
43,425,173	1,216,410	81,035,147	0	0	125,676,730	41,129,209	1,246,803	81,651,679	0	0	124,027,691
a. Eastmont Change of Mission (Restricted/OTO)											
580,000	0	0	0	0	580,000	0	0	0	0	0	0
b. Children's Services Refinancing (OTO)											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
c. Extended Employment Benefits — Prevention and Stabilization Fund											
0	370,639	0	0	0	370,639	0	370,639	0	0	0	370,639
d. Independent Living Services — Prevention and Stabilization Fund											
0	228,766	0	0	0	228,766	0	228,766	0	0	0	228,766
e. Donated Dental Services (Restricted)											

	Fiscal 2004					Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
35,000	0	0	0	0	35,000	35,000	0	0	0	0	35,000
f. Medicaid Match											
1,176,797	0	0	0	0	1,176,797	1,864,975	0	0	0	0	1,864,975
g. MTAP Video Relay (OTO)											
0	144,600	0	0	0	144,600	0	144,600	0	0	0	144,600
10. Child and Adult Health Care Resources (11)											
56,921,236	7,068,146	204,335,065	0	0	268,314,447	59,553,721	9,947,576	217,190,426	0	0	286,691,723
a. Children's Mental Health Services											
16,969,571	728,591	51,670,979	0	0	69,369,141	19,112,294	721,823	57,780,335	0	0	77,614,452
b. Rate Increase for Out-of-Home Care											
101,261	0	272,120	0	0	373,381	103,099	0	270,865	0	0	373,964
c. Children's Mental Health Medicaid Match											
1,314,713	0	3,533,046	0	0	4,847,758	2,083,642	0	5,473,738	0	0	7,557,380
d. Restore Mental Health Medicaid Rates — Prevention and Stabilization Fund											
0	283,380	761,531	0	0	1,044,911	0	318,330	836,006	0	0	1,154,336
e. Primary Care Medicaid Services											
4,483,981	0	12,049,872	0	0	16,533,853	7,105,166	0	18,666,828	0	0	25,771,994
f. Federal Matching Funds for CHIP (Restricted/Biennial)											
0	0	2,100,000	0	0	2,100,000	0	0	0	0	0	0
11. Senior and Long-Term Care Division (22)											
39,255,170	6,714,100	113,627,340	0	0	159,596,610	38,730,653	6,758,075	109,719,360	0	0	155,198,088
a. One-Time Medicaid Payments to Nursing Homes											
0	6,077,957	16,317,456	0	0	22,395,413	0	7,089,713	18,832,208	0	0	25,921,920
b. Hospice Program — Prevention and Stabilization Fund											
0	170,000	467,693	0	0	637,693	0	170,000	467,131	0	0	637,131
c. Home Based Therapy Services — Prevention and Stabilization Fund											
0	34,000	91,359	0	0	125,359	0	34,000	89,322	0	0	123,322
d. Direct Care Worker Increase — HB 721											

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	43,870	117,892	0	0	161,762	0	94,671	348,449	0	0	343,020
e. Restore Community Services Rate — HB 721											
0	118,831	319,337	0	0	438,168	0	117,728	309,287	0	0	427,015
f. Senior/Disabled Services Medicaid Match											
2,793,854	0	7,507,214	0	0	10,300,798	4,427,242	0	11,630,944	0	0	16,058,186
g. Cigarette Tax Revenue — Veterans' Homes (Restricted/Biennial)											
0	260,000	0	0	0	260,000	0	260,000	0	0	0	260,000
12. Addictive and Mental Disorders Division (33)											
38,242,924	4,723,714	33,680,598	0	0	76,647,236	38,948,846	4,813,319	34,606,007	0	0	78,368,172
a. Federal Mental Health Block Grant (Restricted)											
0	0	1,300,635	0	0	1,300,635	0	0	1,300,635	0	0	1,300,635
b. Prescription Drugs for Mentally Ill — Prevention and Stabilization Fund											
0	3,360,000	0	0	0	3,360,000	0	3,360,000	0	0	0	3,360,000
c. Restore Mental Health Medicaid Rates — Prevention and Stabilization Fund											
0	93,455	251,142	0	0	344,597	0	104,945	275,705	0	0	380,650
d. Mental Health Medicaid Match											
433,574	0	1,165,151	0	0	1,598,725	687,124	0	1,805,164	0	0	2,492,288
e. MHSP Prescription Drugs — Coal Tax Trust (Biennial/OTO)											
0	0	0	0	4,000,000	4,000,000	0	0	0	0	0	0
Total											
364,536,698	46,533,704	805,668,119	0	10,000,000	1,136,738,421	370,437,487	51,093,799	836,441,387	0	0	1,157,972,673

If budget reductions are enacted by emergency rule in the 2005 biennium, the legislature urges the department to provide a 30-day public notice and to conduct a public hearing prior to adoption of the emergency rules.

Item 1 includes $31,769,235 of federal funds in fiscal year 2004 and $31,769,235 of federal funds in fiscal year 2005 to fund cash assistance benefits provided under Montana's temporary assistance for needy families (TANF) grant. If caseloads decrease below this level of funding, resulting in a surplus of federal TANF funds, the following priorities may be funded:

(1) child-care subsidies:

	Fiscal 2004					Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(2) a "rainy day" fund of up to $4 million;

(3) training and education programs to achieve employment in higher wage jobs, including programs offered by tribal colleges; or

(4) supportive services needed for employment of TANF recipients.

Item 1 includes a reduction in general fund money of $1,245,030 in fiscal year 2004 and $1,245,030 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

Items 1d, 4a, 6a through 6c, 9c, 9d, 10d, 11b, 11c, 12b, and 12c are contingent upon passage and approval of a bill or bills that establish a state special revenue account for prevention and stabilization of department programs that receives at least $13.7 million of estimated revenue in fiscal year 2004 and $16.5 million of estimated revenue in fiscal year 2005 from reallocation of tobacco settlement proceeds allocated by 17-6-606 (2) and other sources.

Funding in item 1c may be used only to provide child-care subsidies. In an effort to stabilize, decrease, or decrease the rate of growth in the TANF cash assistance caseload, the legislature has appropriated $25,600,000 for child-care services in fiscal year 2004. It is the legislature's intent that this funding is to be fully expended for child-care services in fiscal year 2004.

Items 1b, 4b, and 12e are appropriated from the coal severance tax permanent fund principal. These appropriations are subject to the provisions of [section 8].

Funds in item 1c may be used only to provide child-care subsidies to low-income families, except a portion of this funding may be used to support child-care quality activities at the minimum level required to maintain Montana's eligibility for the federal child-care development fund grant.

Item 2 includes $77,641 in general fund money in fiscal year 2004 and $77,641 in general fund money in fiscal year 2005 that may be used only to support the provision of domestic violence prevention services.

If Senate Bill No. 473 is not passed and approved, the funding in: item 3 is decreased by $6,250 in federal funds in fiscal year 2004; item 5 is decreased by $7,084 in state special revenue in fiscal year 2004 and by $7,084 in federal funds in fiscal year 2004 and by $28,333 in state special revenue in fiscal year 2005 and by $28,333 in federal funds in fiscal year 2005; and item 10 is decreased by $102,700 in state special revenue in fiscal year 2004 and by $278,984 in federal funds in fiscal year 2004 and by $2,069,728 in state special revenue in fiscal year 2005 and by $5,201,130 in federal funds in fiscal year 2005.

Personal services funding for 5 FTE in item 3a is considered a one-time appropriation.

Item 6 includes a biennial appropriation of $250,000 in federal funds for the purchase of radios for ambulances that serve critical access hospitals. The ambulance radios purchased must be modern digital radios that allow encrypted data and voice transmissions from the field unit using a single radio. The appropriations are made from federal bioterrorism and hospital preparedness grant funds.

	Fiscal 2004					Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If Senate Bill No. 464 is not passed and approved, the funding in item 6 is reduced by $161,925 in state special revenue in fiscal year 2004 and by $268,200 in state special revenue in fiscal year 2005.

Item 6d includes $80,000 each year for each federally recognized tribe within Montana in accordance with 17-6-602(3)(b)(ii) that submits and administers a tobacco prevention and control program that meets the conditions required of all community-based contractors. If tobacco prevention and control funds granted to a federally recognized tribe within Montana are not fully expended by the individual grantee within the contract period, these funds may be reallocated for other tobacco use prevention purposes.

If House Bill No. 727 is not passed and approved, funding in item 9 is increased by $1,915,198 of general fund money in fiscal year 2004 and by $1,915,952 of general fund money in fiscal year 2005, which includes funding for an additional 60.27 FTE in fiscal year 2004 and an additional 92.27 FTE in fiscal year 2005. If House Bill No. 727 is not passed and approved, general fund money in item 11 is reduced by $7,452 in fiscal year 2004 and by $7,488 in fiscal year 2005.

Funding in item 9 is decreased by $2,380,962 in federal funds in fiscal year 2004 and by $1,934,019 in federal funds in fiscal year 2005 if House Bill No. 452 is not passed and approved.

Funding in item 9e may be used only to provide donated dental services to individuals with disabilities.

Appropriations in items 9f, 10c, 10e, 11f, and 12d are contingent upon approval and passage of Senate Bill No. 407.

If Senate Bill No. 407 is not passed and approved, item 10 is reduced by $686,357 in general fund money and by $1,844,458 in federal funds in fiscal year 2004 and by $1,320,845 in general fund money and by $3,549,527 in federal funds in fiscal year 2005.

The department shall distribute funds in item 10b in a way that provides reasonable assurance that the funds are used solely for therapeutic out-of-home care for children. Rate increases may vary among types of providers. Funds appropriated in item 10b may be used only for rate increases for therapeutic out-of-home care for children. Funds in item 10b may not be used to fund other programs.

Funds in item 10f must be used to match donations, gifts, grants, or bequests received pursuant to 17-3-1001 and referenced in 17-6-203(5) to provide services for the children's health insurance program established in Title 53, chapter 4, part 10.

Funds in item 11a may be used only to make one-time payments to nursing homes based on the number of medicaid services provided. State special revenue in item 11a may be expended only after the office of budget and program planning has certified that the department has received $2 million each year from counties participating in the intergovernmental transfer program for nursing homes.

Items 11d and 11e are contingent upon passage and approval of House Bill No. 721.

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department shall distribute funds in item 11d in a way that provides reasonable assurance that the funds are used solely for direct-care wage and benefit increases. Not all providers or types of direct-care workers must receive the same rate increase for the biennium. Funds appropriated in item 11d may be used only for direct-care worker wage increases. Funds in item 11d may not be used to fund other programs.

Item 11g may be used only to operate Montana veterans' homes at a capacity to maximize collection of federal revenue and private payments.

Item 12a may be expended only for mental health services. The office of budget and program planning shall certify that the department has received a federal mental health block grant prior to allowing expenditures against the appropriation.

TOTAL SECTION B												
264,636,698	46,633,704	80,668,119	0	10,000,000	1,126,738,421	270,437,487	51,093,799	836,441,387	0	0	1,157,972,673	

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				C. NATURAL RESOURCES AND COMMERCE							
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)											
1. Administration and Finance Division (01)											
0	5,789,888	1,597,300	0	0	7,386,888	0	5,883,614	1,601,074	0	0	7,484,688
a. Legislative Audit (Restricted/Biennial)											
0	67,035	11,830	0	0	78,865	0	0	0	0	0	0
b. SB 112 — Fund Search and Rescue											
0	49,827	0	0	0	49,827	0	99,653	0	0	0	99,653
2. Field Services Division (02)											
0	7,042,675	780,749	0	0	7,823,424	0	7,516,839	781,952	0	0	8,298,791
a. Block Management (OTO)											
0	733,000	0	0	0	733,000	0	733,000	0	0	0	733,000
b. Taxes (OTO)											
0	4,609	13,828	0	0	18,437	0	4,609	13,828	0	0	18,437
c. Public Wildlife Interface (Biennial)											
0	65,000	0	0	0	65,000	0	0	0	0	0	0
3. Fisheries Division (03)											
0	3,625,343	6,606,176	0	0	10,231,519	0	3,745,317	6,609,891	0	0	10,355,208
a. Native Species Landowner Conservation Program (Restricted)											
0	40,000	0	0	0	40,000	0	40,000	0	0	0	40,000
b. Fishing Access Site Assistance (OTO)											
0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
c. Short-Term Federal Contracts (OTO)											
0	0	206,700	0	0	206,700	0	0	10,700	0	0	10,700
4. Law Enforcement Division (04)											
0	6,826,346	228,707	0	0	6,755,053	0	6,551,369	232,291	0	0	6,783,660
a. Commercial Licensing (Restricted/OTO)											

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	33,000	0	0	0	33,000	0	33,000	0	0	0	33,000
b. Snowmobile Enforcement (Restricted)											
0	5,317	0	0	0	5,317	0	5,317	0	0	0	5,317
c. SB 395 — Bison Hunt (Biennial)											
0	10,000	0	0	0	10,000	0	0	0	0	0	0
d. HB 558 — Temporary Snowmobile Permit (Restricted)											
0	6,500	0	0	0	6,500	0	6,500	0	0	0	6,500
5. Wildlife Division (05)											
0	4,068,921	3,724,583	0	0	7,793,504	0	4,125,962	3,741,071	0	0	7,867,033
a. Mountain Lion Research (Restricted/OTO)											
0	38,841	116,542	0	0	155,383	0	38,840	116,523	0	0	155,363
b. Region 1 Wildlife Conflict Specialist (Restricted/OTO)											
0	37,365	0	0	0	37,365	0	37,185	0	0	0	37,185
c. Equipment (Restricted/OTO)											
0	20,000	0	0	0	20,000	0	30,000	0	0	0	30,000
d. Wildlife CWD Management Plan (Restricted/Biennial/OTO)											
0	200,000	0	0	0	200,000	0	0	0	0	0	0
e. Short-Term Federal Contracts (OTO)											
0	0	168,307	0	0	168,307	0	0	47,604	0	0	47,604
f. Nongame Wildlife Program (Restricted/OTO)											
0	39,000	0	0	0	39,000	0	39,000	0	0	0	39,000
g. SB 395 — Bison Hunt (Biennial)											
0	23,500	0	0	0	23,500	0	0	0	0	0	0
6. Parks Division (06)											
0	5,603,957	362,371	0	0	5,966,328	0	6,183,931	353,371	0	0	6,545,302
a. Snowmobile Equipment (Biennial)											
0	332,920	0	0	0	332,920	0	0	0	0	0	0
b. Short-Term Federal Contracts (OTO)											

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	35,600	0	0	35,600	0	0	30,000	0	0	30,000
c. HB 558 — Temporary Snowmobile Permit (Restricted)											
0	175,000	0	0	0	175,000	0	178,800	0	0	0	178,800
7. Conservation Education Division (08)											
0	1,794,414	767,738	0	0	2,562,152	0	1,800,312	767,738	0	0	2,568,050
a. Shooting Range Grants (Biennial)											
0	320,000	0	0	0	320,000	0	0	0	0	0	0
8. Department Management (09)											
0	2,853,015	1,162,842	0	0	4,015,857	0	2,853,297	1,166,959	0	0	4,020,256
a. Office Maintenance (Restricted/OTO)											
0	30,000	0	0	0	30,000	0	30,000	0	0	0	30,000
b. State Wildlife Grant Federal Program (Biennial/OTO)											
0	150,000	1,200,000	0	0	1,350,000	0	0	0	0	0	0
c. Retirement Liability (Restricted/Biennial/OTO)											
0	546,800	240,000	0	0	786,800	0	0	0	0	0	0
Total											
0	40,374,979	17,212,948	0	0	57,487,963	0	39,969,055	15,462,001	0	0	55,431,056

The department is to report to the natural resources and commerce appropriations subcommittee on the projects funded with federal Sikes Act money and state match money. The report is to include an analysis of the viability for continuance of the program and a list of projects funded with the money.

If the department receives additional federal special revenue for services comparable to those with general license revenue, the approving authority shall decrease the state special revenue appropriation by the amount of federal money received and establish the federal funds appropriation. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning.

If the department is required to adjust personal services expenditure costs between state and federal accounts, the approving authority shall adjust the state special revenue appropriation and the federal appropriation by like amounts. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning.

The department shall prepare a biennial report of the expenditure of funds under the nongame wildlife checkoff, which must be made available to the environmental quality council, prior to each regular legislative session.

	Fiscal 2004					Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If Senate Bill No. 130 is not passed and approved, item 1 is increased by $16,513 of state special revenue money in fiscal year 2004 and by $16,513 of state special revenue money in fiscal year 2005.

Item 1b is contingent upon passage and approval of Senate Bill No. 112

If Senate Bill No. 130 is not passed and approved, item 2 is decreased by $460,000 of state special revenue money in fiscal year 2004 and by $920,000 of state special revenue money in fiscal year 2005.

If omnibus federal funding for the purpose of building the warm water fish hatchery at Fort Peck is not passed and approved, item 3 is decreased by $100,000 of state special revenue money in fiscal year 2004 and by $200,000 of state special revenue money in fiscal year 2005.

If House Bill No. 558 is not passed and approved, item 4d is reduced by $6,500 of state special revenue in fiscal year 2004 and by $6,500 of state special revenue in fiscal year 2005 and item 6c is reduced by $175,000 of state special revenue in fiscal year 2004 and by $178,500 of state special revenue in fiscal year 2005.

If House Bill No. 42 is not passed and approved, item 5 is decreased by $64,265 of state special revenue in fiscal year 2004 and by $64,063 of state special revenue in fiscal year 2005.

Item 5f contains an appropriation of $39,000 in state special revenue in fiscal year 2004 and $39,000 in state special revenue in fiscal year 2005 that is restricted to:

(1) $13,000 in fiscal year 2004 and $13,000 in fiscal year 2005 for 25% of a native species specialist position in Billings;

(2) $5,000 in fiscal year 2004 to support publishing the sixth edition of Montana Bird Distribution and an updated list of Montana bird species;

(3) $5,000 in fiscal year 2004 to support publishing of a field guide to reptiles and amphibians;

(4) $5,000 in fiscal year 2004 and $8,000 in fiscal year 2005 to support loon conservation efforts in northwestern Montana;

(5) $3,000 in fiscal year 2004 and $5,000 in fiscal year 2005 to promote placement and maintenance of nesting boxes for bluebirds and other species;

(6) $6,000 in fiscal year 2004 and $10,000 in fiscal year 2005 to inventory and monitor sensitive wildlife species; and

(7) $2,000 in fiscal year 2004 and $3,000 in fiscal year 2005 to study statewide raptor survey routes.

If Senate Bill No. 336 is not passed and approved, item 6 is decreased by $747,798 of state special revenue in fiscal year 2004 and by $1,308,063 of state special revenue in fiscal year 2005.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If federal money becomes available for the wildlife chronic wasting disease management plan, the approving authority shall adjust the state special revenue appropriation and the federal appropriation by like amounts. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning.

If Senate Bill No. 287 is not passed and approved, item 8 is decreased by $72,169 of state special revenue money in fiscal year 2004 and by $72,053 of state special revenue money in fiscal year 2005.

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)

1. Central Management Program (10)											
227,112	227,611	206,553	0	0	661,276	228,064	229,376	208,188	0	0	665,628
a. Environmental Rehabilitation (Restricted/Biennial)											
0	125,000	0	0	0	125,000	0	0	0	0	0	0
b. Federal One-Stop Grant (Biennial/OTO)											
0	0	500,000	0	0	500,000	0	0	0	0	0	0
c. MEPA Projects Base Adjustment (Biennial)											
0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0
2. Planning, Prevention, and Assistance Division (20)											
1,800,663	1,132,636	9,346,043	0	0	12,339,742	1,783,576	1,197,296	9,311,378	0	0	12,292,250
a. TMDL Supplemental Grant (Restricted/OTO)											
0	0	370,000	0	0	370,000	0	0	370,000	0	0	370,000
b. Universal System Benefits Charge (Biennial)											
0	200,000	0	0	0	200,000	0	0	0	0	0	0
3. Enforcement Division (30)											
378,817	208,496	366,247	0	0	953,619	379,533	209,653	371,639	0	0	960,825
4. Remediation Division (40)											
0	4,499,436	6,335,244	0	0	10,834,680	0	4,516,325	6,346,975	0	0	10,863,300
a. Leaking Underground Storage (Biennial/OTO)											
0	34,500	310,500	0	0	345,000	0	0	0	0	0	0
b. Database Consolidation (Restricted/OTO)											

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	23,500	36,500	0	0	60,000	0	23,500	36,500	0	0	60,000
c. Fields Project (Restricted/Biennial/OTO)											
0	11,111	100,000	0	0	111,111	0	0	0	0	0	0
5. Permitting and Compliance Division (50)											
711,769	9,057,496	4,462,474	0	0	14,241,739	728,380	9,119,457	4,524,876	0	0	14,372,693
a. Bond Forfeitures/Settlements (Restricted/Biennial)											
0	30,392,738	0	0	0	30,392,738	0	0	0	0	0	0
b. Hard-Rock Reclamation Bond Proceeds (Restricted/Biennial)											
0	5,500,000	0	0	0	5,500,000	0	0	0	0	0	0
c. Hard-Rock Federal Funds (Restricted/Biennial)											
0	0	4,000,000	0	0	4,000,000	0	0	0	0	0	0
d. Major Facility Siting Adjustment (Restricted/Biennial)											
0	300,000	0	0	0	300,000	0	0	0	0	0	0
e. Hazardous Waste Contract Services (Restricted/Biennial/OTO)											
0	90,000	0	0	0	90,000	0	0	0	0	0	0
f. Waste Management Database Development (Restricted/OTO)											
0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
Total											
3,118,631	82,923,133	36,033,561	0	0	82,074,905	3,119,513	15,345,517	21,186,516	0	0	39,653,546

Item 1 includes a reduction in general fund money of $41,862 in fiscal year 2004 and $41,862 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

In item 5b, up to $2,500,000 of the $5,500,000 must be used to fund the account for perpetual water treatment at the Zortman and Landusky mines. The funds may be used for this purpose only if congress appropriates at least $10,000,000 for this same purpose during the biennium. If congress makes this appropriation, the amount of bond proceeds that must be allocated to this account is the amount that, when added to the amount appropriated by congress, equals $12,500,000.

The department is authorized to decrease federal special revenue money in the water pollution control and the drinking water revolving fund loan programs and to increase state special revenue money by a like amount within the special administration account when:

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
(1) the amount of federal capitalization funds has been expended; or											
(2) federal funds and bond proceeds are designated for use for other program purposes.											
DEPARTMENT OF LIVESTOCK (5603)											
1. Centralized Services Program (01)											
0	2,025,184	65,030	0	0	2,090,814	0	2,041,821	65,030	0	0	2,106,851
a. Legislative Audit (Restricted/Biennial)											
0	27,603	0	0	0	27,603	0	0	0	0	0	0
2. Diagnostic Laboratory Program (03)											
91,911	1,350,017	0	0	0	1,441,928	91,911	1,332,614	0	0	0	1,424,525
3. Animal Health Division (04)											
0	680,465	1,050,000	0	0	1,730,465	0	654,484	1,050,000	0	0	1,704,484
4. Milk and Egg Program (05)											
0	210,163	32,275	0	0	242,438	0	235,940	32,275	0	0	269,215
5. Brands Enforcement Division (06)											
0	2,804,368	0	0	0	2,804,368	0	2,765,738	0	0	0	2,765,738
6. Meat and Poultry Inspection Program (10)											
428,560	6,475	428,561	0	0	863,636	432,093	6,475	432,094	0	0	870,662
Total											
520,471	7,104,665	1,575,866	0	0	9,201,242	524,004	7,029,072	1,579,399	0	0	9,132,475

The department shall report to the 2005 legislature's joint appropriations subcommittee on natural resources and commerce, in a brief summary to be determined by the department, on issues involved with brucellosis management within the state of Montana, including but not limited to bison and elk populations within Yellowstone national park, bison removal activities undertaken by the department in fiscal year 2004 and fiscal year 2005, expenditures within the department for brucellosis management, and the status of federal activities and funding continuity.

Item 2 includes a reduction in general fund money of $7,614 in fiscal year 2004 and $7,614 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)												
1. Centralized Services (21)												
1,555,393	407,200	100,000	0	0	2,062,593	1,554,152	407,200	75,000	0	0	2,036,352	
a. Legislative Audit (Restricted/Biennial)												
89,360	0	0	0	0	89,360	0	0	0	0	0	0	
b. Rewire USF&G Building (Restricted/OTO)												
0	0	18,300	0	0	18,300	0	0	0	0	0	0	
2. Oil and Gas Conservation Division (22)												
0	1,365,731	0	0	0	1,365,731	0	1,383,653	0	0	0	1,383,653	
a. Heating System Replacement (OTO)												
0	25,000	0	0	0	25,000	0	0	0	0	0	0	
b. Coal Bed Methane Water Study (Restricted/Biennial/OTO)												
0	400,000	0	0	0	400,000	0	0	0	0	0	0	
c. Historical Data Acquisition Project (Restricted/OTO)												
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000	
3. Conservation and Resource Development Division (23)												
2,349,656	1,913,056	200,557	0	0	4,463,187	2,353,869	1,867,457	218,814	0	0	4,440,140	
a. Grass Conservation Commission (Biennial)												
0	80,000	0	0	0	80,000	0	0	0	0	0	0	
b. Sheridan County Conservation District (Restricted)												
30,000	0	0	0	0	30,000	30,000	0	0	0	0	30,000	
4. Water Resources Division (24)												
0	1,619,316	108,475	0	0	1,727,791	0	1,633,936	108,855	0	0	1,742,791	
a. Water Resources — General Fund (Biennial)												
5,907,602	0	0	0	0	5,907,602	5,959,122	0	0	0	0	5,959,122	
b. State Water Project Rehabilitation (Restricted/Biennial/OTO)												
0	2,220,000	60,794	0	0	2,280,794	0	0	0	0	0	0	

Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Broadwater Hydropower Maintenance (Biennial)											
0	96,000	0	0	0	96,000	0	0	0	0	0	0
d. Water Rights Verification Project (Restricted OTO)											
0	160,000	0	0	0	160,000	0	168,000	0	0	0	168,000
e. Yellowstone River Compact Water Apportionment (Restricted/Biennial)											
10,000	0	0	0	0	10,000	0	0	0	0	0	0
5. Reserved Water Rights Compact Commission (25)											
713,840	0	0	0	0	713,840	719,344	0	0	0	0	719,344
6. Forestry and Trust Lands (35)											
0	11,848,769	1,325,041	0	0	13,173,810	0	12,069,753	1,328,638	0	0	13,398,391
a. Forestry and Trust Lands — General Fund (Biennial)											
6,432,111	0	0	0	0	6,432,111	6,460,128	0	0	0	0	6,460,128
b. Fire Seasonal Pay Exception (OTO)											
0	66,000	134,000	0	0	200,000	0	66,000	134,000	0	0	200,000
c. SB 409 — Develop Otter Creek Tracts (Biennial/OTO)											
0	300,000	0	0	0	300,000	0	0	0	0	0	0
d. HB 537 — Sustainable Yield (Biennial/OTO)											
0	40,000	0	0	0	40,000	0	0	0	0	0	0
Total											
16,968,091	20,630,081	1,947,167	0	0	39,545,339	17,006,615	17,664,996	1,665,297	0	0	35,535,910

The department is authorized to decrease state special revenue money in the underground injection control program and to increase federal special revenue money by a like amount when the amount of federal EPA funds available for the program becomes known. Any federal special revenue is to be spent before state special revenue.

The department is appropriated up to $600,000 for the 2005 biennium from the state special revenue account established in 85-1-604, MCA, for the purchase of prior liens on property held as loan security as required by 85-1-618, MCA.

Item 1 includes a reduction in general fund money of $209,190 in fiscal year 2004 and $209,190 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

	Fiscal 2004					Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department is authorized to decrease federal special revenue money in the water pollution control and the drinking water revolving fund loan programs and to increase state special revenue money by a like amount within the special administration account when:

(1) the amount of federal capitalization funds has been expended; or

(2) federal funds and bond proceeds are designated for use for other program purposes.

Item 4e contains general fund authority of $10,000 in fiscal year 2004 that is restricted to investigate the apportionment of water between Montana and Wyoming under the Yellowstone River Compact as referenced in House Joint Resolution No. 35.

The department shall present a written quarterly report to the office of budget and program planning and to the legislative fiscal division detailing its fire costs for the current fiscal year. In addition, it shall present this information to the legislative finance committee upon request.

During the 2005 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2005 biennium, up to $70,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2005 biennium, up to $500,000 of funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

If Senate Bill No. 130 is not passed and approved, item 6 is decreased by $21,734 of state special revenue in fiscal year 2004 and by $43,468 of state special revenue in fiscal year 2005.

During the 2005 biennium, up to $70,000 in state special revenue of annual rent received from commercial leasing is appropriated to the department to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases pursuant to [section 5] of Senate Bill No. 137.

DEPARTMENT OF AGRICULTURE (6201)

1. Central Management Division (15)											
146,914	658,847	63,000	56,391	0	835,313	180,330	667,615	63,000	56,396	0	967,341
a. Legislative Audit (Restricted, Biennial)											
34,175	0	0	0	0	34,175	0	0	0	0	0	0

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Agricultural Sciences Division (30)												
	0	4,995,989	1,260,261	0	0	6,256,250	0	5,003,193	1,264,546	0	0	6,267,739
a. USDA Forest Service Weed Control Grants (Biennial)												
	0	0	2,007,278	0	0	2,007,278	0	0	0	0	0	0
b. Weed Control Program for Lands Other Than Fish, Wildlife, and Parks Lands (Restricted)												
	101,341	0	0	0	0	101,341	101,341	0	0	0	0	101,341
3. Agricultural Development Division (50)												
	337,420	3,106,474	220,000	263,818	0	3,927,712	337,423	3,110,381	220,000	265,125	0	3,932,829
Total												
	619,910	8,671,310	3,580,539	320,209	0	13,191,968	619,094	8,681,089	1,647,546	321,821	0	11,269,550

Item 1 includes a reduction in general fund money of $8,804 in fiscal year 2004 and $8,804 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

DEPARTMENT OF COMMERCE (6501)

1. Business Resources Division (51)												
	1,366,611	183,610	3,196,000	0	0	4,736,621	1,367,603	165,000	3,200,000	0	0	4,732,603
a. Legislative Audit (Restricted/Biennial)												
	4,000	1,190	4,000	0	0	9,190	0	0	0	0	0	0
2. Montana Promotion Division (52)												
	0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
a. Legislative Audit (Restricted/Biennial)												
	0	18,341	0	0	0	18,341	0	0	0	0	0	0
3. Community Development Division (60)												
	198,766	573,061	4,730,723	0	0	5,501,550	301,265	514,465	4,738,996	0	0	5,554,726
a. Legislative Audit (Restricted/Biennial)												
	2,269	3,273	2,269	0	0	7,811	0	0	0	0	0	0

b. Hard-Rock Mining Impact Account Reserve (Restricted)

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
c. Coal Board Local Impact Grants (Biennial)											
0	593,333	0	0	0	593,333	0	593,333	0	0	0	593,333
4. Housing Division (74)											
0	20,000	9,260,822	0	0	9,280,822	0	20,000	5,573,736	0	0	5,593,736
a. Legislative Audit (Restricted/Biennial)											
0	0	3,212	0	0	3,212	0	0	0	0	0	0
b. HOME Project Administration Software (OTO)											
0	0	40,000	0	0	40,000	0	0	0	0	0	0
5. Director's Office/Management Services Division (81)											
0	0	417,481	0	0	417,481	0	0	417,338	0	0	417,338
Total											
1,551,646	2,242,006	17,654,507	0	0	21,448,359	1,558,868	2,222,797	13,919,960	0	0	17,701,625

If legislation is not passed in a manner authorizing the payment of administrative costs from the research and commercialization state special revenue account established in 90-3-1002, the department is appropriated general fund money of $88,804 in fiscal year 2004 and $88,343 in fiscal year 2005 for administrative costs of the research and commercialization program.

Item 1 includes a reduction in general fund money of $13,770 in fiscal year 2004 and $13,770 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

If House Bill No. 177 is not passed and approved, the biennial appropriation in item 3c is increased by $490,000 of state special revenue funding.

TOTAL SECTION C											
32,808,959	131,845,966	67,974,633	320,209	0	232,949,767	32,838,094	90,902,638	55,653,719	321,631	0	169,614,862

Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				D. CORRECTIONS AND PUBLIC SAFETY							
CRIME CONTROL DIVISION (4107)											
1. Justice System Support Service (01)											
1,634,819	0	695,563	0	0	2,330,382	1,636,889	0	691,533	0	0	2,328,422
a. Federal Pass-Through Grants (Biennial)											
0	0	9,737,405	0	0	9,737,405	0	0	9,737,405	0	0	9,737,405
Total											
1,634,819	0	10,433,968	0	0	12,067,787	1,636,889	0	10,428,938	0	0	12,065,827

All remaining federal pass-through grant appropriations, including reversions, for the 2003 biennium are authorized to continue and are appropriated in fiscal year 2004 and fiscal year 2005.

Item 1 includes a reduction in general fund money of $10,240 in fiscal year 2004 and $10,240 in fiscal year 2005 for the statewide FTE reduction.

DEPARTMENT OF JUSTICE (4110)

1. Legal Services Division (01)											
3,104,587	306,666	439,267	0	0	3,850,942	3,116,080	307,823	439,474	0	0	3,863,377
a. Major Litigation (Restricted/Biennial)											
399,999	0	0	0	0	399,999	0	0	0	0	0	0
2. Gambling Control Division (07)											
0	1,916,412	0	782,759	0	2,699,171	0	1,907,686	0	779,196	0	2,686,882
3. Motor Vehicle Division (12)											
5,456,173	3,683,041	0	0	0	9,137,819	5,642,278	3,479,091	0	0	0	9,121,369
a. HB 577 — Debt Payment (Biennial)											
0	1,396,000	0	0	0	1,396,000	0	0	0	0	0	0
b. Motor Vehicle Registration Automation (Biennial)											
0	4,400,000	0	0	0	4,400,000	0	0	0	0	0	0
c. HB 711 — Driver's License Renewal											

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
23,635	0	0	0	0	23,635	31,500	0	0	0	0	31,500
4. Highway Patrol Division (13)											
0	18,243,703	819,383	0	0	19,063,086	0	18,380,577	822,589	0	0	19,203,166
a. Prisoner Per Diem (Biennial)											
0	1,166,994	0	0	0	1,166,994	0	1,203,293	0	0	0	1,203,293
5. Division of Criminal Investigation (18)											
2,611,056	1,538,261	1,636,865	0	0	5,786,191	2,617,543	1,542,336	1,640,429	0	0	5,800,308
6. County Attorney Payroll (19)											
1,740,360	0	0	0	0	1,740,360	1,740,360	0	0	0	0	1,740,360
7. Central Services Division (28)											
317,910	443,043	0	15,189	0	776,141	319,503	444,440	0	15,179	0	779,123
a. Legislative Audit (Restricted, Biennial)											
34,869	31,809	0	1,157	0	67,835	0	0	0	0	0	0
8. Information Technology Services Division (29)											
3,891,996	1,069,483	163,309	10,199	0	4,134,986	3,898,367	1,069,364	163,947	10,199	0	4,140,777
a. Motor Vehicle Division Database Programming Updates (OTO)											
183,716	0	0	0	0	183,716	0	0	0	0	0	0
b. IT System and Disaster Recovery Position (OTO)											
49,715	0	0	0	0	49,715	49,715	0	0	0	0	49,715
9. Forensic Sciences Division (32)											
2,316,893	303,304	136,836	0	0	2,557,033	2,332,804	303,304	134,370	0	0	2,770,478
Total											
19,019,646	34,386,611	3,193,690	809,244	0	57,409,191	18,648,110	28,627,614	3,199,809	804,574	0	51,280,107

There is appropriated from the highway patrol retirement clearing account to the department for payments to the Montana highway patrol pension fund the amount required for this transfer, not to exceed $1,200,000 for each fiscal year.

Item 1 includes a reduction in general fund money of $245,489 in fiscal year 2004 and $245,489 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If House Bill No. 559 is not passed and approved, item 3 is increased by $152,457 of general fund money in fiscal year 2004 and $172,730 of general fund money in fiscal year 2005.

Fiscal years 2004 and 2005 state special revenue in item 3 includes $3,237,493 in fiscal year 2004 and $3,046,893 in fiscal year 2005 of the fund balance from revenue sources not restricted to certain purposes by the Montana constitution.

Item 3b is contingent upon passage and approval of House Bill No. 261.

The department shall present to the 59th legislature options for the funding and operation of the fire prevention and investigation bureau.

PUBLIC SERVICE REGULATION (4201)

1. Public Service Regulation Program (01)											
0	2,640,649	13,695	0	0	2,654,344	0	2,644,112	13,634	0	0	2,657,746
a. Legislative Audit (Restricted/Biennial)											
0	18,315	87	0	0	18,402	0	0	0	0	0	0
b. Consultants (Restricted/Biennial)											
0	53,546	0	0	0	53,546	0	0	0	0	0	0
c. SB 247 — Advisory Services (Restricted/Biennial)											
0	500,000	0	0	0	500,000	0	0	0	0	0	0
Total											
0	3,212,510	13,782	0	0	3,226,492	0	2,644,112	13,634	0	0	2,657,746

DEPARTMENT OF CORRECTIONS (6401)

1. Administration and Support Services (01)											
8,861,481	3,630	0	36,943	0	8,941,050	8,934,209	3,796	0	103,755	0	9,041,760
a. Legislative Audit (Restricted/Biennial)											
113,111	3,983	0	7,463	0	123,555	0	0	0	0	0	0
b. HB 220 — Revise Restitution Laws											
0	98,661	0	0	0	98,661	0	69,598	0	0	0	69,598

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Community Corrections (02)											
21,298,386	303,828	0	0	0	21,602,214	21,360,619	303,828	0	0	0	21,664,447
3. Secure Facilities (03)											
53,027,943	1,408,686	80,288	0	0	54,516,919	52,978,625	1,408,686	80,288	0	0	54,467,601
a. Additional General Fund — SB 407 Contingency (Biennial)											
4,600,000	0	0	0	0	4,600,000	0	0	0	0	0	0
4. Montana Correctional Enterprises (04)											
968,410	0	0	444,411	0	1,412,821	969,815	0	0	445,556	0	1,415,371
a. SB 118 — License Plate — Delay Reissue											
570,079	0	0	0	0	570,079	570,079	0	0	0	0	570,079
b. Montana Food Bank Network Cannery (Restricted)											
0	0	100,000	0	0	100,000	0	0	100,000	0	0	100,000
5. Juvenile Corrections (05)											
17,514,200	437,013	316,765	0	0	18,267,978	17,829,269	437,013	316,765	0	0	18,583,047
Total											
106,943,616	3,354,192	497,053	538,816	0	110,333,377	103,382,616	3,343,928	497,053	549,311	0	105,631,903

Item 1 includes a reduction in general fund money of $831,651 in fiscal year 2004 and $831,651 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

The department may reallocate the appropriations in items 1 through 5 among divisions or programs when developing the 2005 biennium operating plans.

Item 3 contains an increase of $3,500,000 of general fund money in each year of the 2005 biennium. These increases are contingent upon passage and approval of House Bill No. 363. The department may reallocate this increase in funding among divisions or programs when developing the 2005 biennium operating plans.

Item 3a is contingent upon passage and approval of Senate Bill No. 407. The department may reallocate this increase in funding among divisions or programs when developing the 2005 biennium operating plans.

Item 4b is contingent upon receipt of federal funds identified specifically for the purpose of funding cannery operations.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Workforce Services Division (01)												
	347,251	7,186,294	24,327,229	0	0	31,860,774	368,671	7,217,476	24,329,500	0	0	31,895,647
a. Legislative Audit (Restricted Biennial)												
	925	25,573	32,380	0	0	58,878	0	0	0	0	0	0
b. HB 564 — Workforce Training Act												
	0	135,000	0	0	0	135,000	0	135,000	0	0	0	135,000
c. SB 484 — Empowerment Zones												
	24,364	0	0	0	0	24,364	33,960	0	0	0	0	33,960
2. Unemployment Insurance Division (02)												
	0	304,955	6,313,899	0	0	6,618,854	0	304,955	6,340,652	0	0	6,645,607
a. Legislative Audit (Restricted Biennial)												
	0	0	17,003	0	0	17,003	0	0	0	0	0	0
b. SB 271 — POINTS/UI Tax Collection (Restricted)												
	0	0	137,853	0	0	137,853	0	0	2,405,000	0	0	2,405,000
3. Commissioner's Office/Centralized Services Division (03)												
	117,010	798,121	426,529	67,829	0	1,409,489	117,902	798,554	427,225	67,851	0	1,411,532
a. Legislative Audit (Restricted Biennial)												
	514	1,541	1,060	127	0	3,243	0	0	0	0	0	0
b. Inclusion of Tribal Labor Market Information												
	0	1,000	0	0	0	1,000	0	1,000	0	0	0	1,000
4. Employment Relations Division (04)												
	689,304	6,478,443	718,068	0	0	7,885,734	660,170	6,488,473	721,000	0	0	7,869,643
a. Legislative Audit (Restricted Biennial)												
	1,839	13,106	2,912	0	0	17,857	0	0	0	0	0	0
5. Business Standards Division (05)												
	0	10,572,136	0	0	0	10,572,136	0	10,567,354	0	0	0	10,567,354
a. Legislative Audit (Restricted Biennial)												
	0	10,869	0	0	0	10,869	0	0	0	0	0	0

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
6. Montana Community Services (07)												
	23,950	743	3,082,767	0	0	3,107,460	23,950	743	3,082,966	0	0	3,107,659
a. Legislative Audit (Restricted, Biennial)												
	0	0	621	0	0	621	0	0	0	0	0	0
7. Workers' Compensation Court (09)												
	0	445,813	0	0	0	445,813	0	445,781	0	0	0	445,781
a. Legislative Audit (Restricted, Biennial)												
	0	932	0	0	0	932	0	0	0	0	0	0
Total												
	1,174,957	25,964,815	35,060,341	67,966	0	62,267,779	1,174,653	25,949,345	37,306,343	67,851	0	64,498,192

Item 1 includes federal special revenue of $605,685 in fiscal year 2004 and $603,539 in fiscal year 2005, from the special Reed Act (a part of the Employment Security Administrative Financing Act of 1954) distribution, that is appropriated for legitimate Wagner-Peyser employment services activities, unemployment insurance benefits, and unemployment insurance administration.

The department is appropriated up to $80,000 in state special revenue from the natural resource workers' tuition scholarship state special revenue fund as a biennial, one-time appropriation to the workforce services division for the purpose of supplementing federal special revenue that becomes available to pay for services for enrollees in the dislocated worker program as a result of the Stimson mill closure.

Item 1 includes a reduction in general fund money of $19,040 in fiscal year 2004 and $19,040 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

Item 1b is contingent upon passage and approval of House Bill No. 564.

Item 1c is contingent upon passage and approval of Senate Bill No. 484.

Item 2b is contingent upon passage and approval of Senate Bill No. 271.

Item 3b is contingent upon the availability and inclusion on the department's website or other public document of bureau of Indian affairs and Montana tribes' labor market information. The department shall collaborate with the bureau of Indian affairs and any appropriate Montana tribal government to provide access to and disseminate bureau of Indian affairs and Montana tribe labor market information through the department.

DEPARTMENT OF MILITARY AFFAIRS (6701)

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Centralized Services (01)												
	389,453	0	97,533	0	0	486,986	388,129	0	97,334	0	0	485,463
a. Legislative Audit (Restricted/Biennial)												
	444	0	0	0	0	444	0	0	0	0	0	0
2. Challenge Program (02)												
	1,119,876	0	1,679,814	0	0	2,799,690	1,119,831	0	1,679,747	0	0	2,799,578
a. Legislative Audit (Restricted/Biennial)												
	11,173	0	0	0	0	11,173	0	0	0	0	0	0
3. Scholarship Program (03)												
a. National Guard Scholarship Program (Restricted/Biennial/OTO)												
	250,000	0	0	0	0	250,000	0	0	0	0	0	0
4. Army National Guard Program (12)												
	1,182,416	296,000	4,654,010	0	0	6,132,426	1,185,272	366,000	4,651,932	0	0	6,223,204
a. Legislative Audit (Restricted/Biennial)												
	25,027	0	0	0	0	25,027	0	0	0	0	0	0
5. Air National Guard Program (13)												
	302,913	0	2,260,264	0	0	2,563,226	308,408	0	2,361,904	0	0	2,670,312
a. Legislative Audit (Restricted/Biennial)												
	5,810	0	0	0	0	5,810	0	0	0	0	0	0
6. Disaster and Emergency Services (21)												
	454,301	13,700	4,312,072	0	0	4,780,073	454,972	13,700	4,312,223	0	0	4,780,895
a. Legislative Audit (Restricted/Biennial)												
	671	0	670	0	0	1,341	0	0	0	0	0	0
b. SB 112 — Fund Search and Rescue												
	0	83,330	0	0	0	83,330	0	160,159	0	0	0	160,159
7. Veterans' Affairs Program (31)												
	666,023	187,325	0	0	0	853,348	666,918	187,489	0	0	0	854,407

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)												
	895	0	0	0	0	895	0	0	0	0	0	0
b. HB 761 — Veterans' Cemetery												
	0	150,000	0	0	0	150,000	0	0	0	0	0	0
c. SB 401 — Revise Duties and Membership of Veterans' Affairs												
	0	279,886	0	0	0	279,886	0	559,173	0	0	0	559,173
Total												
	4,409,063	1,009,941	13,004,363	0	0	18,423,367	4,123,530	1,296,631	13,003,140	0	0	18,423,191

[Note: On May 21, 2003, the governor attached a line item veto to House Bill No. 2 that nullified this appropriation. The line item veto read: "The appropriation of $150,000 in House Bill No. 2 is not necessary because House Bill No. 761 provides for an appropriation in the amount of $150,000, from the special revenue account provided for in Section 10-2-603, MCA, to the Department of Military Affairs for the veterans' cemetery. This same appropriation was inadvertently included in House Bill No. 2."]

Item 1 includes a reduction in general fund money of $48,508 in fiscal year 2004 and $48,508 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

Item 6b is contingent upon passage and approval of Senate Bill No. 112.

TOTAL SECTION D												
	133,181,101	66,838,579	63,193,187	1,416,016	0	264,628,883	137,935,798	60,760,615	64,438,917	1,421,735	0	264,557,065

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					E. EDUCATION						
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)											
1. OPI Administration (06)											
4,443,130	193,855	13,239,646	0	0	16,876,231	4,453,114	194,373	13,328,763	0	0	16,976,250
2. Distribution to Public Schools (09)											
0	0	114,772,613	0	0	114,772,613	0	0	126,619,361	0	0	126,619,361
a. BASE Aid (Restricted/Biennial)											
401,386,894	0	0	0	0	401,386,894	401,402,820	0	0	0	0	401,402,820
b. Special Education (Restricted/Biennial)											
34,912,640	0	0	0	0	34,912,640	36,412,640	0	0	0	0	36,412,640
c. Transportation Aid (Restricted/Biennial)											
12,100,000	0	0	0	0	12,100,000	12,100,000	0	0	0	0	12,100,000
d. School Facility Reimbursement (Restricted/Biennial)											
8,270,735	0	0	0	0	8,270,735	8,411,293	0	0	0	0	8,411,293
e. In-state Treatment (Biennial)											
974,896	0	0	0	0	974,896	974,896	0	0	0	0	974,896
f. Secondary Vocational Education (Biennial)											
715,000	0	0	0	0	715,000	715,000	0	0	0	0	715,000
g. Adult Basic Education (Biennial)											
275,000	0	0	0	0	275,000	275,000	0	0	0	0	275,000
h. Gifted and Talented (Biennial)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
i. School Food (Biennial)											
648,653	0	0	0	0	648,653	648,653	0	0	0	0	648,653
j. School District Audits (Biennial)											
143,475	0	0	0	0	143,475	147,775	0	0	0	0	147,775
k. Traffic Safety Distribution											

	Fiscal 2004						Fiscal 2005					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
l. Community Service Grant Program (Biennial)												
	0	0	350,000	0	0	350,000	0	0	350,000	0	0	350,000
m. Reading First (Biennial)												
	0	0	2,890,000	0	0	2,890,000	0	0	2,975,000	0	0	2,975,000
n. REAP/Rural/Low-Income Schools (Biennial)												
	0	0	456,056	0	0	456,056	0	0	456,056	0	0	456,056
o. Title IV — 21st Century Community Learning Centers (Biennial)												
	0	0	2,800,000	0	0	2,800,000	0	0	2,800,000	0	0	2,800,000
p. Character Education												
	0	0	175,000	0	0	175,000	0	0	175,000	0	0	175,000
q. HB 124 County and District Block Grants (Restricted/Biennial)												
49,465,969	0	0	0	0	49,465,969	49,834,848	0	0	0	0	49,834,848	
r. Flex Fund (Biennial/OTO)												
	0	0	0	0	0	0	0	0	0	0	0	0
s. Flex Fund — Coal Tax Trust (Biennial/OTO)												
	0	0	0	0	5,000,000	5,000,000	0	0	0	0	0	0
Total												
513,379,372	943,656	133,585,214	0	5,000,000	652,908,151	516,836,039	944,373	144,606,180	0	0	661,016,592	

All federal funds are biennial appropriations.

Item 1 includes a reduction in general fund money of $49,649 in fiscal year 2004 and $49,649 in fiscal year 2005 for the statewide FTE reduction.

All revenue received in the state traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5. This appropriation may not exceed $1 million a year.

The office of public instruction may distribute funds from the appropriation in item 2e to public school districts for the purpose of providing for educational costs of children with significant behavioral or physical needs.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

There is appropriated in the 2005 biennium in item 2r an amount equal to any grants designated for school district staff recruitment, retention, or retirement incentives, up to $5 million.

Item 2s is appropriated from the coal severance tax permanent fund principal. This appropriation is subject to the provisions of [section 8].

If Senate Bill No. 424 is not passed and approved, then the following line items will be reduced or increased by the following amounts: item 2a, BASE Aid (6,893,400) fiscal year 2004, (12,730,900) fiscal year 2005; item 2b, Special Education (1,500,000) fiscal year 2005; item 2c, Transportation Aid (1,700,000) fiscal year 2004, (1,700,000) fiscal year 2005; item 2d, School Facility Reimbursement (4,020,735) fiscal year 2004, (4,051,293) fiscal year 2005; and item 2q, HB 124 County and District Block Grants 16,245,180 fiscal year 2004, 16,368,645 fiscal year 2005.

BOARD OF PUBLIC EDUCATION (5101)

1. Administration (01)											
159,647	14,986	0	0	0	174,633	159,846	14,837	0	0	0	174,683
a. Legislative Audit (Restricted, Biennial)											
3,371	0	0	0	0	3,371	0	0	0	0	0	0
2. Advisory Council (03)											
0	166,343	0	0	0	166,343	0	173,015	0	0	0	173,015
a. Legislative Audit (Restricted, Biennial)											
0	1,672	0	0	0	1,672	0	0	0	0	0	0
Total											
161,918	183,003	0	0	0	346,921	159,846	186,852	0	0	0	346,698

Item 1 includes a reduction in general fund money of $1,711 in fiscal year 2004 and $1,711 in fiscal year 2005 for the statewide FTE reduction.

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)											
246,892	581	0	0	0	247,473	246,955	987	0	0	0	247,942
a. Legislative Audit (Restricted, Biennial)											
24,974	0	0	0	0	24,974	0	0	0	0	0	0

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. General Services Program (02)											
348.876	0	0	0	0	348.876	348.542	0	0	0	0	348.542
3. Student Services (03)											
1,004,239	0	27,752	0	0	1,031,991	1,012,210	0	27,752	0	0	1,039,962
4. Education (04)											
1,789,388	341,095	68,944	0	0	2,199,427	1,890,446	341,095	68,944	0	0	2,300,485
a. Montana Telecommunications Access Program Funding (OTO)											
55,995	0	0	0	0	55,995	55,995	0	0	0	0	55,995
Total											
3,471,264	341,676	96,696	0	0	3,909,636	3,455,148	342,082	96,696	0	0	3,893,926

Item 1 includes a reduction in general fund money of $61,868 in fiscal year 2004 and $61,868 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)											
267,719	168,100	599,116	0	0	1,034,935	287,287	153,323	599,086	0	0	1,039,696
a. Legislative Audit (Restricted/Biennial)											
18,402	0	0	0	0	18,402	0	0	0	0	0	0
Total											
286,121	168,100	599,116	0	0	1,053,337	287,287	153,323	599,086	0	0	1,039,696

Item 1 includes a reduction in general fund money of $2,026 in fiscal year 2004 and $2,026 in fiscal year 2005 for the statewide FTE reduction.

All federal funds in item 1 are biennial appropriations.

If legislation is not passed in a manner authorizing the payment of administrative costs from the research and commercialization state special revenue account established in 90-3-1002, the general fund money in item 1 is reduced by $7,543 in fiscal year 2004 and by $8,709 in fiscal year 2005.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
MONTANA STATE LIBRARY COMMISSION (5115)											
1. Statewide Library Resources (01)											
1,671,120	869,615	1,230,694	0	0	3,671,429	1,886,893	865,700	780,694	0	0	3,533,287
a. Legislative Audit (Restricted/Biennial)											
15,773	0	0	0	0	15,773	0	0	0	0	0	0
Total											
1,886,893	869,615	1,230,694	0	0	3,687,402	1,886,893	865,700	780,694	0	0	3,533,287

Item 1 includes biennial appropriations of $251,138 in general fund money and $850,000 in federal funds for grants to local libraries.

Item 1 includes a reduction in general fund money of $10,940 in fiscal year 2004 and $10,940 in fiscal year 2005 for the statewide FTE reduction.

If House Bill No. 177 is not passed and approved, item 1 is increased by $151,351 of state special revenue in fiscal year 2004 and $155,124 of state special revenue authority in fiscal year 2005.

The state library commission is to report semiannually on natural resource information system activities and expenditures to the legislative finance committee during the 2003-04 interim. The report is to include the following:

(1) a listing of current projects with the related project scope and funding amounts;

(2) a listing of active contracts, each contract's purpose, whom the contract is with, and the funding amounts; and

(3) categories and types of data collected.

MONTANA HISTORICAL SOCIETY (5117)											
1. Administration Program (01)											
837,363	184,531	94,000	61,682	0	1,167,476	840,842	184,938	94,000	61,726	0	1,181,506
a. Legislative Audit (Restricted/Biennial)											
28,917	0	0	0	0	28,917	0	0	0	0	0	0
2. Library Program (02)											

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
697,013	3,819	0	56,199	0	656,090	697,010	3,834	0	55,343	0	656,076
3. Museum Program (03)											
181,401	363,983	0	6,700	0	541,084	181,694	365,554	0	6,713	0	544,960
4. Publications (04)											
46,758	0	0	731,504	0	778,262	46,758	0	0	734,501	0	781,259
5. Historic Preservation Program (06)											
45,303	0	646,557	0	0	691,860	46,339	0	647,402	0	0	693,741
Total											
1,736,708	540,333	740,557	856,085	0	3,853,683	1,712,637	544,316	741,402	859,181	0	3,857,536

Item 1 includes a reduction in general fund money of $24,660 in fiscal year 2004 and $24,660 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

It is the intent of the legislature that the department of commerce use lodging facility use taxes to fund $617,008 in fiscal year 2004 and $621,017 in fiscal year 2005 for the Montana historical society. This is to be expended as follows:

Historical Interpretation	$196,857	$193,627
Scriver Collection	120,151	127,390
Lewis and Clark Exhibit and Interpretation	100,000	100,000
Lewis and Clark Bicentennial Commission	200,000	200,000

The first three uses of lodging taxes are budgeted in items 1 and 3. The $200,000 each fiscal year of the biennium for the Lewis and Clark bicentennial commission is a language appropriation.

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

1. OCHE — Administration (01)											
1,295,553	0	0	0	0	1,295,553	1,298,005	0	0	0	0	1,298,005

	Fiscal 2004						Fiscal 2005				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)											
28,917	0	0	0	0	28,917	0	0	0	0	0	0
2. OCHE — Student Assistance (02)											
8,637,679	0	188,965	0	0	8,826,864	8,692,816	0	186,985	0	0	9,061,801
3. OCHE — Dwight D. Eisenhower Mathematics and Science Education Act (03)											
0	0	308,033	0	0	308,033	0	0	308,033	0	0	308,033
4. OCHE — Community College Assistance (04) (Biennial)											
6,205,140	0	0	0	0	6,205,140	6,333,759	0	0	0	0	6,333,759
a. Legislative Audit (Restricted/Biennial)											
28,630	0	0	0	0	28,630	0	0	0	0	0	0
b. State Support per Resident Student — Coal Tax Trust (Biennial/OTO)											
0	0	0	0	706,000	706,000	0	0	0	0	0	0
c. Philipsburg Community College Grant Application (Restricted/OTO)											
10,000	0	0	0	0	10,000	0	0	0	0	0	0
5. OCHE — Talent Search (06)											
92,348	0	2,458,019	0	0	2,551,367	92,228	0	2,458,887	0	0	2,551,115
6. OCHE — C.D. Perkins Administration (08)											
74,299	0	6,812,119	0	0	6,886,418	74,299	0	6,813,607	0	0	6,886,906
7. OCHE — Appropriation Distribution Transfers (09)											
99,603,555	13,435,000	0	0	0	113,037,555	99,839,148	13,563,999	0	0	0	113,403,147
a. Legislative Audit (Restricted/Biennial)											
236,594	0	0	0	0	336,594	0	0	0	0	0	0
b. Agricultural Experiment Station											
9,980,299	0	0	0	0	9,980,299	9,980,299	0	0	0	0	9,980,299
c. Institute for Biobased Products and Food Science											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
d. Extension Service											
4,338,100	0	0	0	0	4,338,100	4,338,100	0	0	0	0	4,338,100

Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
e. Montana Beef Network (Restricted/Biennial)											
90,000	0	0	0	0	90,000	90,000	0	0	0	0	90,000
f. Forestry and Conservation Experiment Station											
919,661	0	0	0	0	919,661	919,661	0	0	0	0	919,661
g. Bureau of Mines and Geology											
1,670,646	666,000	0	0	0	2,336,646	1,670,646	666,000	0	0	0	2,336,646
h. Fire Services Training School											
507,637	0	0	0	0	507,637	507,637	0	0	0	0	507,637
i. Fire Services Training School Moving Expenses (Biennial/OTO)											
49,000	0	0	0	0	49,000	0	0	0	0	0	0
j. Dental Hygiene Program (Restricted/Biennial)											
236,000	0	0	0	0	236,000	236,000	0	0	0	0	236,000
k. Additional General Fund — SB 407 Contingency (Biennial)											
5,800,000	0	0	0	0	5,800,000	0	0	0	0	0	0
l. Yellow Bay — Water Quality Monitoring — Flathead Basin (Restricted/Biennial/OTO)											
85,000	0	0	0	0	85,000	85,000	0	0	0	0	85,000
m. Rocky Mountain Agile Virtual Enterprise Program (Biennial/OTO)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
n. State Support per Resident Student — Coal Tax Trust (Biennial/OTO)											
0	0	0	0	8,178,400	8,178,400	0	0	0	0	0	0
8. Tribal College Assistance Program (11) (Biennial)											
96,500	0	0	0	0	96,500	0	0	0	0	0	0
9. OCHE — Guaranteed Student Loan (12)											
0	0	32,247,755	0	0	32,247,755	0	0	35,249,226	0	0	35,249,226
a. Legislative Audit (Restricted/Biennial)											
0	0	4,732	0	0	4,732	0	0	4,732	0	0	4,732
10. OCHE — Board of Regents (13)											
51,889	0	0	0	0	51,889	51,889	0	0	0	0	51,889

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
139,986,637	13,101,000	43,030,644	0	8,884,400	203,991,681	134,668,487	13,238,999	45,023,470	0	0	192,809,956

Item 1 includes a reduction in general fund money of $22,540 in fiscal year 2004 and $22,540 in fiscal year 2005 for the statewide FTE reduction. The agency may allocate this reduction in funding among programs when developing 2005 biennium operating plans.

General fund money and state and federal special revenue funds appropriated to the board of regents are included in items 1 through 10. All other public funds received by units of the Montana university system (other than plant funds appropriated in House Bill No. 5, relating to long-range building) are appropriated to the board of regents and may be expended under the provisions of 17-7-138(2). The board of regents shall allocate the appropriations to individual university system units, as defined in 17-7-102(13), according to board policy.

Items 1 through 3, 5 through 7a, 7k, 9, and 10 are a single biennial lump-sum appropriation.

In addition to the requirements in 17-1-102(4), all university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the standards of accounting and reporting, as described by the national association of college and university business officers, as a minimum for achieving consistency.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, except for information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g. The Montana university system shall provide the electronic data required for human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

Total audit costs of the office of the commissioner of higher education are estimated to be $28,217.

The budget amount for each full-time equivalent student at the community colleges, including Summitnet, is $5,706 each year of the 2005 biennium, before pay plan, if any. The general fund appropriation in item 4 provides 46% of the budget amount for each full-time equivalent student each year of the 2005 biennium. The remaining 54% of the budget amount for each full-time equivalent student must be paid from funds other than those appropriated in items 4 and 4a.

Total Summitnet costs are estimated to be $25,000 each year for the community colleges. Summitnet costs for each year may not exceed $8,000 each for Dawson and Miles community colleges and $9,000 for Flathead Valley community college.

Total audit costs are estimated to be $54,000 for the community colleges for the biennium. The general fund appropriation for each community college provides 53% of the total audit costs in the 2005 biennium. The remaining 47% of these costs must be paid from funds other than those appropriated in item 4a. Audit costs for the biennium may not exceed $16,000 each for Dawson and Miles community colleges and $22,000 for Flathead Valley community college.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Revenue anticipated to be received by the Montana university system units and colleges of technology includes:

(1) interest earnings of $1,460,000 each year of the 2005 biennium; and

(2) other revenue of $1,183,000 each year of the 2005 biennium.

These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in item 7.

The legislature acknowledges that tuition rates are determined by the board of regents and that tuition revenue is considered private revenue and therefore not subject to legislative appropriation.

Item 7 includes $986,620 for the 2005 biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $157,100 in fiscal year 2004 and $135,100 in fiscal year 2005; Montana tech of the university of Montana, $28,000; Montana state university-northern, $87,800 in fiscal year 2004 and $83,800 in fiscal year 2005; Montana state university-Bozeman $58,000; Montana state university-Billings, $161,500; and western Montana college of the university of Montana, $12,410.

Item 7 includes a total of $44,253 of general fund money for the 2005 biennium for the Montana natural resource information system (NRIS). The Montana university system shall pay an additional $44,253 for the 2005 biennium in current funds in support of NRIS. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Total audit costs are estimated to be $473,188 for the university system, other than the office of the commissioner of higher education. Each unit shall pay a percentage of these costs from funds other than those appropriated in item 7a.

Revenue anticipated to be received by the agricultural experiment station includes:

(1) interest earnings and other revenue of $184,472 each year of the 2005 biennium;

(2) federal revenue of $2,022,075 in fiscal year 2004 and $2,022,078 in fiscal year 2005; and

(3) sales revenue of $939,881 in fiscal year 2004 and $939,881 in fiscal year 2005.

These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7b.

	Fiscal 2004						Fiscal 2005					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
The general fund money in item 7c is appropriated with the condition that, prior to the expenditure of the general fund money, the Montana agricultural experiment station collect $140,000 of nonstate money each year of the 2005 biennium for the purpose of supporting the institute for biobased products and food science.												
Revenue anticipated to be received by the extension service includes:												
(1) interest earnings of $20,606 each year of the 2005 biennium; and												
(2) federal revenue of $2,490,698 in fiscal year 2004 and $2,485,644 in fiscal year 2005.												
These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7d.												
Item 7e is a biennial, restricted appropriation for one staff person and for expenses for the Montana beef network within the extension service.												
Anticipated interest revenue of $4,858 in each year of the 2005 biennium is appropriated to the forestry and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in item 7f.												
Anticipated sales revenue of $29,157 each year of the 2005 biennium is appropriated to the bureau of mines and geology for current unrestricted operating expenses. This amount is in addition to that shown in item 7g.												
Anticipated interest revenue of $1,545 each year of the 2005 biennium is appropriated to the fire services training school for current unrestricted operating expenses. This amount is in addition to that shown in item 7h.												
Item 7k is contingent upon passage and approval of Senate Bill No. 407.												
Items 4b and 7n are appropriated from the coal severance tax permanent fund principal. These appropriations are subject to the provisions of [section 8].												
The general fund money in item 7l is appropriated with the condition that the funds be used by the Yellow Bay biological station to monitor water quality in the Flathead basin.												
TOTAL SECTION E												
660,897,913	16,139,493	178,272,931	866,085	13,384,400	869,760,811	667,386,337	16,265,545	191,846,538	869,181	0	866,367,691
TOTAL STATE FUNDING												
1,165,643,669	801,605,776	1,451,030,810	13,178,746	34,395,942	3,183,754,943	1,153,179,343	468,980,623	1,519,937,717	11,940,770	518,369	3,154,546,822

Section 14. Rates. Internal service fund type fees and charges established by the legislature for the 2005 biennium in compliance with 17-7-123(1)(f)(ii) are as follows:

	Fiscal Year 2004	Fiscal Year 2005
DEPARTMENT OF TRANSPORTATION — 5401		
1. State Motor Pool		
a. Class 02 (small utilities)		
per hour assigned	$2.040	$2.211
per mile operated	$0.098	$0.098
b. Class 04 (large utilities)		
per hour assigned	$2.251	$2.469
per mile operated	$0.099	$0.099
c. Class 06 (mid-size compacts)		
per hour assigned	$1.370	$1.516
per mile operated	$0.067	$0.067
d. Class 07 (small pickups)		
per hour assigned	$1.123	$1.243
per mile operated	$0.110	$0.110
e. Class 11 (large pickups)		
per hour assigned	$1.284	$1.451
per mile operated	$0.123	$0.123
f. Class 12 (vans – all type)		
per hour assigned	$1.372	$1.476
per mile operated	$0.134	$0.134
2. Equipment Program		
b. All of program operations	60-day working capital reserve	
DEPARTMENT OF REVENUE – 5801		
1. Customer Service Center		
a. Delinquent Account Collection Fee (percent of amount collected)	10.0%	10.0%
DEPARTMENT OF ADMINISTRATION — 6101		
1. Administration and Financial Services Division		
a. Legal Services Unit		
Teachers' Retirement	$20,071	$20,071
Personnel Division	$21,504	$21,504
Risk Management & Tort Defense	$1,434	$1,434
General Services	$5,018	$5,018
Architecture & Engineering	$15,770	$15,770
Information Services	$19,354	$19,354
Consumer Affairs	$35,841	$35,841
Banking Division	$8,602	$8,602
Lottery	$14,336	$14,336
Local Government Services	$7,168	$7,168

b. Management Services Unit		
Administrative Financial Services	$53,239	$53,290
Architecture & Engineering	$8,792	$8,788
General Services	$78,474	$78,451
Information Services	$237,023	$236,913
Personnel Division	$21,165	$21,157
Risk Management & Tort Defense	$39,534	$39,517
Banking Division	$28,612	$28,636
Lottery	$29,397	$29,384
State Tax Appeal Board	$4,250	$4,254
Appellate Defender	$2,733	$2,736
Montana Consensus Council	$3,920	$3,924
c. Network Support Unit		
Support per computer	$690	$688
d. Warrant Writer Program		
Mailer Warrants	$0.58624	$0.58017
Non-Mailer Warrants	$0.17803	$0.17195
Duplicate Warrants	$5.63949	$5.63768
External Warrants	$0.15523	$0.14915
Emergency Warrants	$4.26759	$4.26588
e. Human Resources Unit		
Teachers' Retirement	$5,278	$5,299
Public Employees' Retirement	$10,062	$10,101
Administrative Financial Services	$9,568	$9,605
Architecture & Engineering	$5,608	$5,630
General Services	$27,525	$27,633
Banking Division	$8,247	$8,280
Lottery Division	$10,556	$10,598
Risk Management & Tort Defense	$5,278	$5,299
Information Technology Services Division	$29,690	$29,806
Personnel Division	$6,928	$6,955
Montana Consensus Council	$660	$662
2. General Services Division		
a. Facilities Management Bureau		
Office rent ($ per sq. ft.)	$5.988	$6.22
Storage rent ($ per sq. ft.9)	$2.27	$2.29
In-house project management (% of cost)	15%	15%
Contracted project management (% of cost)	5%	5%
b. Mail Services Section		
Interagency mail (total amount allocated to agencies)	$134,012	$134,012
All other operations except interagency mail	60-day working capital reserve	
c. Print Services Section	60-day working capital reserve	

d. Central Stores Program		
All of program operations	60-day working capital reserve	
e. Statewide Fueling Network Program		
All of program operations	45-day working capital reserve	
f. State Procurement Card Program		
Monthly card fee (per card per month)	$1.00	$1.00
3. Information Technology Services Division		
Data Network Fee (per connected terminal per month)	$72.60	$72.60
All other operations except data network	45-day working capital reserve	
4. State Personnel Division		
a. Professional Development Center		
Training Services	$128.12	$125.59
b. Payroll Processing		
State Payroll Unit	$435,310	$461,614
c. State Recruitment Advertising		
Administrative Fee (per FTE per year)	$12	$12
5. Risk Management & Tort Defense		
a. General liability (total allocation to agencies)	$10,566,132	$11,205,485
b. Auto liability, comprehensive, and collision (total allocation to agencies)	$1,072,901	$1,084,370
c. Aviation (total allocation to agencies)	$165,728	$165,822
d. Property/Miscellaneous (total allocation to agencies)	$2,965,254	$2,997,090
DEPARTMENT OF FISH, WILDLIFE, & PARKS — 5201		
1. Administration and Finance (% markup)		
a. Warehouse Overhead	5%	5%
2. Vehicle Account Rates Per Mile		
a. Sedans	$0.28	$0.31
b. Vans	$0.29	$0.32
c. Utilities	$0.36	$0.38
d. Grounds Maintenance	$0.95	$1.00
e. Pickup 1/2 Ton	$0.35	$0.36
f. Pickup 3/4 Ton	$0.36	$0.36
3. Aircraft Per Hour Rates		
a. 2 Place Single Engine	$ 56.72	$ 56.72
b. Partnavia	$283.60	$297.78
c. Turbine Helicopters	$345.72	$345.72
4. Duplicating – Number of Copies (includes paper)		
a. 1-20	$0.045	$0.050
b. 21-100	$0.030	$0.035
c. 101-1000	$0.025	$0.030
d. 1001-5000	$0.020	$0.025
e. Color - per sheet	$0.25	$0.25
5. Bindery		

a. Collating (per sheet)	$0.005	$0.005
b. Hand Stapling (per set)	$0.015	$0.015
c. Saddle stitch (per set)	$0.030	$0.030
d. Folding (per sheet)	$0.005	$0.005
e. Punching (per sheet)	$0.001	$0.001
f. Cutting (per minute)	$0.550	$0.550
6. Parks – Capitol Grounds Maintenance	$0.3696/sq.ft	$0.3696/sq.ft.
DEPARTMENT OF ENVIRONMENTAL QUALITY — 5301		
1. Central Management		
a. Expenses Against Personal Services	23%	23%
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — 5706		
1. Air Operations Program		
a. Bell UH-1H	$875.00	$875.00
b. Bell Jet Ranger	$375.00	$375.00
c. Cessna 180 series	$ 95.00	$ 95.00
DEPARTMENT OF COMMERCE – 6501		
1. Board of Investments		
For the purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:		
a. Administration Charge (total)	$2,915,000	$2,920,000
2. Director's Office/Management Services		
a. Management Services Indirect Charge Rate	15%	15%
DEPARTMENT OF JUSTICE – 4110		
1. Agency Legal Services		
a. Attorney (per hour)	$71.80	$71.80
b. Paralegal (per hour)	$39.80	$39.80
DEPARTMENT OF CORRECTIONS - 6401		
1. Secure Facilities		
a. Cook/chill rate to Montana State Prison	$1.37/meal	$1.37/meal
b. Cook/chill rate to Riverside Youth Correctional Facility	$2.01/meal	$2.01/meal
c. Cook/chill rate to WATCH DUI Unit	$1.59/meal	$1.59/meal
d. Cook/chill rate to Helena Prerelease	$2.01/meal	$2.01/meal
2. Montana Correctional Enterprises		
a. Laundry rate to Montana State Prison	$0.39/lb.	$0.39/lb.
b. Laundry rate to Treasure State Correctional Training Center	$0.39/lb.	$0.39/lb.
c. Laundry rate to Montana State Hospital	$0.38/lb.	$0.38/lb.
d. Laundry rate to Montana Developmental Center	$0.46/lb.	$0.46/lb.
e. Laundry rate to Riverside Youth Correctional Facility	$0.46/lb.	$0.46/lb.
DEPARTMENT OF LABOR AND INDUSTRY – 6602		
1. Centralized Services Division		
a. Cost Allocation Plan	10%	12%
2. Business Standards Division		
a. House Bill No. 2 Programs Recharge Rate	48%	48%

OFFICE OF PUBLIC INSTRUCTION - 3501

1. OPI Indirect-Cost Pool	17%	17%

MONTANA UNIVERSITY SYSTEM - 5100

Because certain employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to maintain employee group benefit plans on an actuarially sound basis, the legislature defines rates and fees for Montana university system employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to maintain the employee group benefit plans on an actuarially sound basis.

Ap proved May 21, 2003

RESOLUTIONS

Passed by the

FIFTY-EIGHTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
Jan u ary 6, 2003, through April 26, 2003

COM PILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED GENERAL FUND REVENUE FOR EACH YEAR OF THE 2004-05 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED GENERAL FUND BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A PRELIMINARY JUNE 30, 2002, UNRESERVED GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THAT THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 2003, 2004, AND 2005.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail for all operating funds the proposed expenditures and estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-18-107, MCA, requires the Revenue and Transportation Interim Committee to estimate the amount of revenue projected to be available for legislative appropriation and to introduce a resolution setting forth the Committee's current revenue estimate for the biennium; and

WHEREAS, section 5-18-107(2), MCA, expresses the Legislature's intent that its revenue estimates and the underlying assumptions used to derive those estimates be used by all agencies in the development of fiscal notes; and

WHEREAS, section 5-12-302(6), MCA, requires the Legislative Fiscal Analyst to assist the Revenue and Transportation Interim Committee in its revenue estimating duties; and

WHEREAS, to assist in its revenue estimating responsibilities, the Revenue and Transportation Interim Committee requested the expert assistance of the Legislative Fiscal Analyst, as allowed in section 5-18-107(3), MCA, to provide information on taxes, the economy, and revenue sources; and

WHEREAS, the Revenue and Transportation Interim Committee obtains the assistance of Executive Branch agencies in the development of the revenue estimates; and

WHEREAS, the Revenue and Transportation Interim Committee has adopted revenue estimates and the underlying assumptions used to derive those estimates for the general fund and for specific nongeneral fund sources that are significant in the development of the state budget for the 2005 biennium; and

WHEREAS, PPL-Montana has disputed the assessed value of its hydroelectric facilities in the state and has paid a portion of its property taxes under protest thereby reducing the amount of revenue available for the state general fund and the Montana University System 6-mill levy; and

WHEREAS, the amount of estimated revenue and the general fund balance affects policy decisions of the Executive Branch and the Legislative Branch; and

WHEREAS, the revenue estimates and the underlying assumptions contained in this resolution provide the basis for a comprehensive analysis of the state's revenue condition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 2003, 2004, and 2005 be estimated to be $1,195,014,000, $1,241,443,000, and $1,296,456,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes the preliminary unreserved fiscal year 2002 fund balance of $81,316,000 for the general fund, prepared according to generally accepted accounting principles.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates and the underlying assumptions contained in this resolution as the official revenue estimates for fiscal years 2003, 2004, and 2005.

GENERAL FUND REVENUE

The projections for total general fund revenue for fiscal years 2003, 2004, and 2005 are based on the assumption of a continuation of Montana law as it existed on January 1, 2003. Except for fiscal year 2003, the revenue estimates contained in the following tables are based on the assumptions listed in the tables that follow the general fund estimates and the assumptions for each general fund revenue source contained in the "Revenue Estimates as Adopted by the Revenue and Transportation Interim Committee" report prepared by the Legislative Fiscal Division.

Current Law
General Fund Revenue Estimates
(In Millions of Dollars)
Adjusted

Source of Revenue	Actual FY 2002	Estimated FY 2003	Estimated FY 2004	Estimated FY 2005
Individual Income Tax	$517.568	$520.764	$556.874	$594.339
Statewide and Vo-Tech Property Taxes	169.339	172.309	182.196	192.538
PPL-Montana Protested Property Tax Payments	0	(2.091)	(2.129)	(2.167)
Vehicle Tax	73.127	74.773	74.540	75.581
Corporation Income Tax	68.173	47.347	64.782	69.223
Common School Interest and Income	48.938	0.000	0.000	0.000
Insurance Tax and License Fees	47.291	51.446	56.038	58.441
Video Gambling Tax	43.666	45.219	44.755	45.811

All Other Revenue	43.216	26.608	23.916	19.885
Permanent Coal Trust Interest Earnings	37.605	36.825	37.249	37.920
Motor Vehicle Fee	27.271	27.703	28.368	29.049
U.S. Mineral Royalty	19.772	22.715	23.469	22.980
Telecommunications Excise Tax	19.594	20.100	20.701	21.674
Tobacco Settlement	18.647	19.025	3.105	3.182
Public Institution Reimbursements	14.283	15.541	13.939	14.046
Estate Tax	13.816	11.015	7.516	4.625
Oil and Natural Gas Production Tax	12.902	18.403	14.600	14.469
Treasury Cash Account Interest	12.414	7.456	14.060	17.331
Liquor Excise and License Tax	9.514	9.854	10.239	10.624
Coal Severance Tax	8.469	10.221	8.384	7.857
Cigarette Tax	7.887	7.870	7.764	7.667
Lottery Profits	7.467	6.210	6.255	6.318
Nursing Facilities Fee	5.918	5.723	5.670	5.624
Liquor Profits	5.600	5.637	5.399	5.365
Investment License Fee	4.992	4.567	4.613	4.659
Electrical Energy Producers' License Tax	4.197	4.329	4.408	4.483
Highway Patrol Fines	4.062	4.142	4.224	4.308
Metalliferous Mines Tax	3.329	4.842	2.967	2.753
Public Contractors Tax	3.267	2.679	3.354	3.356
Wholesale Energy Transaction Tax	2.906	3.373	3.432	3.492
Beer Tax	2.784	2.918	3.058	3.205
Driver's License Fee	2.580	2.355	2.373	2.391
Tobacco Tax	2.183	2.262	2.353	2.444
Railroad Car Tax	1.490	1.577	1.688	1.681
Wine Tax	1.232	1.264	1.283	1.302
Telephone License Tax	0.212	0.033	0.000	0.000
Total General Fund	$1,265.713	$1,195.014	$1,241.443	$1,296.456

SIGNIFICANT ASSUMPTIONS FOR GENERAL FUND REVENUE ESTIMATES

Revenue and Transportation Interim Committee

Year	Assumption	2002	2003	2004	2005
Individual Income Tax					
FY	Income Tax Audit Collections (Millions)	$18.573	$16.800	$18.700	$18.700
CY	Taxpayer Population (Percent Change)	0.73%	0.92%	1.23%	1.39%
FY	30% Bonus Depreciation (Percent Change)	100.00%	(16.67%)	(30.00%)	(119.43%)
	Income Indicators				
CY	Wage and Salary Income (Percent Change)	3.70%	4.20%	4.80%	5.00%
CY	Net Farm Income (Percent Change)	(26.40%)	0.59%	(13.87%)	6.94%
CY	Interest Income (Percent Change)	(22.77%)	(11.22%)	27.20%	10.00%
CY	Dividend Income (Percent Change)	3.58%	4.81%	2.71%	2.34%
CY	Rent, Royalty, and Partnership Income (Percent Change)	7.38%	8.40%	8.06%	7.16%
CY	Net Business Income (Percent Change)	1.22%	0.86%	1.48%	0.72%

CY	Capital Gains and Losses (Percent Change)	(28.00%)	0.00%	7.50%	7.50%
CY	Supplemental Gains (Percent Change)	(11.97%)	(2.80%)	29.38%	(2.62%)
CY	Social Security Income (Percent Change)	7.46%	6.75%	6.18%	5.69%
CY	IRA Income (Percent Change)	0.49%	3.87%	8.04%	8.04%
CY	Pension Income (Percent Change)	0.49%	3.87%	5.89%	5.89%
CY	Other Income (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Bond Interest (Percent Change)	5.30%	4.25%	6.98%	8.04%
CY	Federal Income Tax Refunds (Percent Change)	15.48%	0.37%	8.70%	6.02%
CY	Other Additions to Income (Percent Change)	8.58%	0.67%	5.55%	4.31%
CY	IRA Deduction (Percent Change)	8.55%	5.38%	4.41%	7.37%
CY	Reductions to Income (Percent Change)	(2.91%)	2.75%	4.98%	3.97%
	Deductions From Income				
CY	Medical Premiums (Percent Change)	5.87%	5.87%	5.87%	5.87%
CY	Medical Deductions (Percent Change)	16.85%	8.51%	6.20%	6.78%
CY	Real Estate Tax (Percent Change)	3.00%	3.00%	3.00%	3.00%
CY	Prior Year Federal Tax Payments (Percent Change)	1.31%	3.33%	3.22%	3.12%
CY	Motor Vehicle Taxes and Fees (Percent Change)	2.00%	2.00%	2.00%	2.00%
CY	Home Mortgage (Percent Change)	0.85%	3.78%	9.27%	9.95%
CY	Contributions (Percent Change)	7.84%	9.96%	7.44%	6.98%
CY	Gambling Losses (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Total Itemized Deductions (Percent Change)	(0.20%)	3.79%	4.44%	4.19%
	Credits				
CY	Home Owner and Renter Credit (Millions)	$9.640	$9.736	$9.834	$10.031
CY	All Credits (Percent Change)	(19.19%)	20.31	1.94%	3.57%
CY	Planned Gifts (Percent Change)	(52.93%)	78.98%	(10.40%)	(4.84%)
	Other Individual Income Tax Assumptions				
CY	Tax Liability (Millions)	$505.564	$519.529	$558.116	$590.477
CY	Current Calendar Year to Fiscal Year Conversion	52.1%	52.1%	52.1%	52.1%
CY	Previous Calendar Year to Fiscal Year Conversion	47.9%	47.9%	47.9%	47.9%
FY	Fiscal Year 2002 Base (Millions)	$517.568			
Property Taxes: Taxable Value and Other Property Tax Indicators					
	Taxable Value—40-Mill, 55-Mill, and 1.5-Mill Levies				
FY	Property Class One (Millions)	$7.843	$8.691	$8.691	$8.691
FY	Property Class Two (Millions)	$11.015	$10.669	$8.753	$8.479
FY	Property Class Three (Millions)	$139.057	$138.900	$141.803	$145.361
FY	Property Class Four (Millions)	$954.102	$1,002.874	$1,061.830	$1,143.202
FY	Property Class Five (Millions)	$35.668	$35.382	$36.373	$37.391
FY	Property Class Six (Millions)	$12.459	$3.824	$0.000	$0.000
FY	Property Class Seven (Millions)	$0.189	$0.216	$0.255	$0.300
FY	Property Class Eight (Millions)	$116.605	$120.058	$124.620	$129.356
FY	Property Class Nine (Millions)	$219.956	$206.360	$210.487	$214.697

FY	Property Class Ten (Millions)	$8.199	$7.170	$6.838	$6.894
FY	Property Class Twelve (Millions)	$48.658	$46.688	$47.896	$48.394
FY	Property Class Thirteen (Millions)	$144.488	$137.185	$139.929	$142.727
FY	Total Taxable Value (Millions)	$1,671.590	$1,691.086	$1,758.923	$1,855.234
	Other Property Tax Indicators				
FY	Tax Increment Finance Value (Millions)	$30.530	$30.803	$32.423	$34.129
FY	Property Tax Abatement Value (Millions)	$3.880	$3.870	$3.870	$3.870
FY	Taxable Value in Vo-Tech Counties (Millions)	$563.452	$587.107	$611.232	$644.762
	Property Tax Nonlevy Revenue				
FY	40-Mill Nonlevy Revenue (Millions)	$4.650	$4.592	$4.979	$4.936
FY	40-Mill Adjustments (Millions)	($9.888)	($8.475)	($7.063)	($5.650)
FY	55-Mill Nonlevy Revenue (Millions)	$16.144	$16.056	$16.734	$16.572
FY	55-Mill Adjustments (Millions)	$0.000	($0.430)	($0.430)	($0.430)
FY	1.5-Mill Nonlevy Revenue (Millions)	$0.020	$0.000	0.000	$0.000
FY	1.5-Mill Adjustments (Millions)	$0.034	$0.000	$0.000	$0.000
Vehicle Tax					
FY	Large Trucks Growth Rate (Percent Change)	0.00%	2.10%	2.10%	2.10%
FY	Motor Home Growth Rate (Percent Change)	0.00%	2.10%	2.10%	2.10%
FY	Light Vehicle Growth Rate (Percent Change)	0.00%	2.10%	2.10%	2.10%
FY	Boat and Snowmobile Growth Rate (Percent Change)	0.00%	2.10%	2.10%	2.10%
FY	New Light Vehicle Registration Growth Rate (Percent Change)	0.00%	2.10%	2.10%	2.10%
Corporation License Tax					
FY	U.S. Profits (Billions)	$666.200	$761.500	$794.000	$819.600
FY	Penalty and Interest (Millions)	$1.659	$0.000	$0.000	$0.000
FY	Corporate Income Tax Audits (Millions)	$4.257	$4.500	$4.000	$3.500
FY	Depreciation (Millions)	$0.000	($5.000)	($3.500)	$0.680
FY	Adjustments (Millions)	$0.000	($9.000)	$0.000	$0.000
Insurance Premiums Tax and License Fees					
FY	General Fund Fee Revenue (Millions)	$0.291	$0.291	$0.291	$0.291
FY	Genetics Fee (Millions)	$0.570	$0.575	$0.575	$0.575
FY	Premiums Tax (Millions)	$47.678	$52.823	$56.790	$59.193
FY	Offsets (Millions)	$0.736	$1.843	$1.218	$1.218
FY	Refunds (Millions)	$0.513	$0.400	$0.400	$0.400
Video Gambling Tax					
FY	Video Machine Net Income (Millions)	$290.307	$296.114	$302.036	$308.076
Motor Vehicle Fee—General Fund Allocations					
FY	Motor Vehicle Registration Fee (Millions)	$21.180	$21.491	$22.007	$22.535
FY	Recording of Liens Fee (Millions)	$0.728	$0.745	$0.763	0.782
FY	Title Fee (Millions)	$2.353	$2.409	$2.467	$2.526
FY	Personal License Plate Fee (Millions)	$1.270	$1.300	$1.331	$1.363
FY	New License Plate Fee (Millions)	$0.525	$0.537	$0.550	$0.563

FY	Computer Fee (Millions)	($0.001)	$0.000	$0.000	$0.000
FY	Highway Patrol Fee (Millions)	$0.024	$0.000	$0.000	$0.000
FY	Senior Citizen Transit Fee (Millions)	$0.109	$0.111	$0.114	$0.117
FY	Other Fees (Millions)	$1.084	$1.110	$1.137	$1.164
U.S. Mineral Royalty					
CY	Oil Production (Millions of Barrels)	2.920	2.955	2.987	3.101
CY	Coal Production (Millions of Tons)	24.299	22.001	23.315	20.827
CY	Natural Gas Production (MMCF)	23.708	25.719	27.569	29.271
CY	Oil Price (Per Barrel)	$22.519	$21.711	$21.224	$20.737
CY	Coal Price (Per Ton)	$8.465	$8.300	$8.195	$7.730
CY	Natural Gas Price (Per MCF)	$2.574	$3.842	$3.727	$3.624
CY	Oil Royalty Rate (Percent)	10.97%	10.94%	10.96%	10.93%
CY	Coal Royalty Rate (Percent)	12.34%	12.32%	12.32%	12.33%
CY	Natural Gas Royalty Rate (Percent)	12.28%	12.29%	12.29%	12.30%
CY	Other Royalties (Millions)	$0.108	$0.108	$0.107	$0.108
CY	Rent and Bonus (Millions)	$4.432	$4.450	$4.426	$4.226
CY	Administration Fee (Millions)	$0.000	$0.000	$0.000	$0.000
FY	One-Time Settlement (Millions)	$0.000	$0.000	$0.000	$0.000
Telecommunications Excise Tax					
FY	Taxable Gross Receipts (Millions)	$525.235	$535.991	$560.013	$585.963
FY	Credits (Millions)	$0.135	$0.000	$0.300	$0.300
Tobacco Settlement					
FY	Volume Change (Percent Change)	(4.58%)	(1.50%)	(1.00%)	(1.00%)
FY	Cumulative Volume Change (Percent Change)	(19.22%)	(20.43%)	(21.23%)	(22.02%)
FY	CPI Change (Percent Change)	3.00%	3.00%	3.00%	3.00%
FY	Cumulative CPI Change (Percent Change)	9.68%	12.97%	16.36%	19.85%
FY	Operating Income Adjustment (Millions)	$0.000	$0.000	$0.000	$0.000
FY	Subsequent Manufacturer's Payment (Millions)	$144.418	$163.154	$189.850	$227.543
Public Institution Reimbursements					
FY	Private Payments (Millions)	$1.483	$2.165	$2.181	$2.200
FY	Insurance Payments (Millions)	$0.317	$0.545	$0.556	$0.555
FY	Medicaid Payments (Millions)	$10.995	$14.811	$14.740	$14.832
FY	Medicare Payments (Millions)	$1.488	$2.578	$2.629	$2.624
FY	Debt Service MT Developmental Center (Millions)	($1.075)	($1.075)	($1.079)	($1.076)
FY	Debt Service MT State Hospital (Millions)	($1.911)	($1.911)	($1.909)	($1.909)
FY	Adjustments (Millions)	$0.000	($1.573)	($3.180)	($3.180)
Estate Tax					
FY	Annual Change in Tax (Percent Change)	(31.89%)	(26.51%)	(25.98%)	(38.47%)
Oil Production Tax					
CY	Oil Production (Million Barrels)	16.191	16.383	16.560	16.812
CY	Montana Oil Price (Weighted Price/Barrel)	$23.13	$22.30	$21.80	$21.30
CY	Exempt Value of Production (Millions)	$13.632	$13.308	$13.158	$13.035

CY	Effective Tax Rate (Percent)	10.26%	10.17%	10.09%	9.98%
Natural Gas Production Tax					
CY	Natural Gas Production (MMCF)	84.504	91.671	98.266	104.332
CY	Montana Natural Gas Price (Weighted Price/MCF)	$2.01	$3.00	$2.91	$2.83
CY	Exempt Value of Production (Millions)	$7.637	$12.119	$12.399	$12.633
CY	Effective Tax Rate (Percent)	10.44%	10.29%	10.17%	10.06%
Treasury Cash Account Interest					
FY	TCA Average Balance w/TRANS (Millions)	$273.343	$302.847	$302.176	$302.345
FY	TCA Average Yield (Percent)	4.83%	3.70%	4.65%	5.73%
FY	TRANS Issue Size (Millions)	$0.000	$92.800	$65.500	$65.500
Liquor Excise and License Tax					
FY	Tribal Distributions (Millions)	($0.133)	($0.138)	($0.144)	($0.149)
Coal Severance Tax					
CY	Severance Tax Coal Production (Million Tons)	33.392	32.806	33.065	29.950
CY	Montana Contract Sales Price (Weighted CSP/Ton)	$6.293	$6.219	$6.219	$5.957
Cigarette Tax					
FY	Cigarette Packs (Millions)	67.334	67.195	66.288	65.459
FY	Effective Tax Rate Per Pack (Cents)	16.41	16.41	16.41	16.41
FY	Tribal Distribution (Millions)	($0.254)	($0.254)	($0.250)	($0.247)
Lottery Profits					
FY	Total Lottery Sales (Millions)	$33.632	$30.597	$30.765	$30.933
FY	Lottery Interest Earnings (Millions)	$0.146	$0.089	$0.132	$0.192
FY	Other Revenue (Millions)	$0.039	$0.039	$0.039	$0.039
FY	Lottery Operating Budget (Millions)	$6.855	$6.855	$6.924	$6.993
FY	Lottery Prizes and Commissions (Millions)	$19.086	$17.660	$17.757	$17.854
Nursing Facilities Fee					
FY	Bed Days (Millions)	2.073	2.044	2.025	2.009
Liquor Profits					
FY	Gross Liquor Sales (Millions)	$62.515	$64.730	$67.260	$69.791
FY	Cost of Goods Sold (Millions)	$35.767	$37.117	$38.682	$40.256
FY	Liquor Discounts and Commissions (Millions)	$6.797	$7.038	$7.313	$7.589
FY	Liquor Operating Costs (Millions)	$1.416	$1.530	$1.519	$1.523
FY	Other Income (Millions)	$0.001	$0.000	$0.000	$0.000
Investment License Fee					
FY	License Registration (Percent Change)	(15.23%)	(8.50%)	1.00%	1.00%
FY	Portfolio Growth (Percent Change)	(3.41%)	1.00%	1.00%	1.00%
FY	Expense Growth (Percent Change)	49.16%	3.00%	0.00%	0.00%
Electrical Energy Tax					
FY	Kilowatt Hours Produced (Millions)	21,642.219	21,645.402	22,040.741	22,417.203
Highway Patrol Fines					
FY	Highway Patrol Fines (Percent Change)	2.04%	1.98%	1.98%	1.98%
Metalliferous Mines Tax					
CY	Copper Production (Million lb)	0.343	0.391	0.391	0.391

CY	Silver Production (Million oz)	0.748	0.751	0.738	0.738
CY	Gold Production (Million oz)	0.184	0.219	0.076	0.076
CY	Lead Production (Million lb)	10.768	10.768	10.768	10.768
CY	Zinc Production (Million lb)	23.819	23.819	23.819	23.819
CY	Molybdenum Production (Million lb)	0.000	0.000	0.000	0.000
CY	Palladium Production (Million oz)	0.493	0.563	0.563	0.563
CY	Platinum Production (Million oz)	0.147	0.167	0.167	0.167
CY	Nickel Production (Million lb)	0.769	0.878	0.878	0.878
CY	Rhodium Production (Million oz)	0.004	0.005	0.005	0.005
CY	Sapphire Production (Million oz)	0.000	0.000	0.000	0.000
CY	Iron Oxide Production (Million lb)	0.000	0.000	0.000	0.000
CY	Copper Sulfide Production (Million lb)	0.000	0.000	0.000	0.000
CY	Copper Price (Per lb)	$0.635	$0.630	$0.633	$0.631
CY	Silver Price (Per oz)	$4.630	$4.440	$4.680	$4.900
CY	Gold Price (Per oz)	$306.000	$322.000	$332.000	$324.000
CY	Lead Price (Per lb)	$0.219	$0.215	$0.213	$0.216
CY	Zinc Price (Per lb)	$0.378	$0.378	$0.378	$0.378
CY	Molybdenum Price (Per lb)	$0.000	$0.000	$0.000	$0.000
CY	Palladium Price (Per oz)	$321.000	$321.000	$321.000	$321.000
CY	Platinum Price (Per oz)	$500.000	$500.000	$500.000	$500.000
CY	Nickel Price (Per lb)	$2.025	$2.025	$2.025	$2.025
CY	Rhodium Price (Per oz)	$1,404.395	$1,404.395	$1,404.395	$1,404.395
CY	Sapphire Price (Per oz)	$0.000	$0.000	$0.000	$0.000
CY	Iron Oxide Price (Per lb)	$0.000	$0.000	$0.000	$0.000
CY	Copper Sulfide Price (Per lb)	$0.000	$0.000	$0.000	$0.000
FY	Effective Tax Rate (Percent)	1.61%	1.61%	1.61%	1.61%
Public Contractor's Tax					
FY	Tax Before Credits (Millions)	$5.055	$5.282	$5.995	$6.037
FY	Credits and Refunds (Millions)	$1.788	$2.603	$2.640	$2.681
Wholesale Energy Tax					
CY	Kilowatt Hours (Millions)	22,987.512	23,398.127	23,794.854	24,218.358
FY	Kilowatt Hours (Millions)	22,775.158	22,489.410	22,880.160	23,278.167
FY	Credits for Taxes Paid (Million)	$0.000	$0.000	$0.000	$0.000
Beer Tax					
FY	Beer Barrels (Million)	0.881	0.924	0.968	1.014
FY	Tribal Distribution (Million)	($0.035)	($0.037)	($0.039)	($0.041)
FY	Effective Tax Rate (Percent)	4.17%	4.17%	4.17%	4.17%
Driver's License Fees					
FY	Driver's License Fees (Millions)	$1.979	$1.633	$1.649	$1.665
FY	Duplicate License Fees (Millions)	$0.095	$0.079	$0.079	$0.080
FY	Motorcycle Endorsement Fees (Millions)	$0.015	$0.130	$0.131	$0.132
FY	Interstate Commercial Vehicle Endorsement (Millions)	$0.420	$0.420	$0.420	$0.420
FY	Intrastate Commercial Vehicle Endorsement (Millions)	$0.093	$0.093	$0.093	$0.093
Tobacco Tax					
FY	Value of Tobacco Products (Millions)	$17.828	$18.473	$19.218	$19.963
FY	Tribal Distribution (Millions)	($0.046)	($0.047)	($0.049)	($0.051)

Railroad Car Tax					
CY	Total MT Market Value of Fleets (Millions)	$89.657	$93.550	$95.585	$97.160
CY	Taxable Value Rate (Percent)	4.21%	4.02%	4.00%	3.92%
CY	95% of Industrial and Commercial Mill Levy	400.980	419.250	441.320	441.320
Wine Tax					
FY	Wine Liters (Million)	6.725	6.905	7.007	7.109
FY	Tribal Distribution (Million)	($0.021)	($0.022)	($0.022)	($0.022)

SELECTED NONGENERAL FUND REVENUE

The projections for selected nongeneral fund revenue during the 2005 biennium are based on the assumption of a continuation of Montana law as it existed on January 1, 2003. The revenue estimates contained in the following table are based on the assumptions listed in the tables that follow the nongeneral fund estimates and the assumptions for each nongeneral fund revenue source contained in the "Revenue Estimates as Adopted by the Revenue and Transportation Interim Committee" report prepared by the Legislative Fiscal Division.

Current Law
Selected Nongeneral Fund Revenue Estimates
(In Millions of Dollars)

Source of Revenue	Actual FY 2002	Estimated FY 2003	Estimated FY 2004	Estimated FY 2005
Gasoline Tax	$128.001	$128.696	$129.415	$130.128
Diesel Tax	56.094	56.951	57.821	58.703
Common School Interest and Income	1.938	51.175	49.745	49.631
GVW and Other Fees	27.266	27.037	26.729	26.377
Federal Forest Receipts	13.475	13.583	13.775	13.976
Lodging Facility Use Tax	11.901	12.441	13.005	13.595
6-Mill Property Tax	11.806	11.627	12.120	12.685
PPL-Montana 6-Mill Protested Property Tax Payments	0	(0.131)	(0.133)	(0.136)
Resource Indemnity Trust Interest	7.321	7.376	7.377	7.379
Treasure State Endowment Trust Interest	6.805	7.201	7.871	8.472
Gasoline Storage Tank Tax	3.729	3.750	3.770	3.790
Resource Indemnity Trust Tax	2.201	1.080	1.055	1.062
Diesel Storage Tank Tax	2.166	2.229	2.220	2.200
Parks Trust Interest Earnings	1.106	1.114	1.127	1.153
Capital Land Grant Interest and Income	1.101	0.827	0.822	0.613
Tobacco Trust Interest Earnings	0.968	1.741	2.464	3.253
Regional Water Trust Interest Earnings	0.643	1.151	1.404	1.670
Pine Hills Interest and Income	0.355	0.348	0.358	0.363
Arts Trust Interest Earnings	0.305	0.314	0.322	0.337
9-Mill Property Tax	0.286	0.000	0.000	0.000
Deaf and Blind Trust Interest and Income	0.284	0.292	0.295	0.298
Total Nongeneral Fund	277.752	328.802	331.562	335.549

SELECTED ASSUMPTIONS FOR
NONGENERAL FUND REVENUE ESTIMATES
Revenue and Transportation Interim Committee

Year	Assumption	2002	2003	2004	2005
Gasoline Tax					
FY	Taxable Gallons of Gasoline (Millions)	504.614	507.328	510.057	512.800
FY	Taxable Gallons of Gasoline—Storage Tank Cleanup (Millions)	497.261	499.936	502.624	505.328
FY	Refunds (Millions)	($3.153)	($3.170)	($3.187)	($3.204)
FY	Tribal Distribution (Millions)	($3.729)	($3.743)	($3.736)	($3.740)
FY	Alcohol Incentive (Millions)	$0.000	$0.000	$0.000	$0.000
Diesel Tax					
FY	Taxable Gallons of Diesel (Millions)	218.597	221.936	225.325	228.766
FY	Taxable Gallons of Diesel—Storage Tank Cleanup (Millions)	288.854	297.210	296.035	293.265
FY	Refunds (Millions)	($3.960)	($4.020)	($4.082)	($4.144)
GVW Fees					
FY	GVW Fees (Millions)	$8.814	$8.868	$8.922	$8.977
FY	Form 3 GVW Fees (Millions)	$0.860	$0.843	$0.847	$0.844
FY	Trip Permit Fees (Millions)	$0.441	$0.441	$0.441	$0.441
FY	County GVW Fees (Millions)	$8.933	$8.135	$8.185	$8.235
FY	New Car Sales Tax (Millions)	($0.640)	$0.000	$0.000	$0.000
FY	Overweight Trip Permit Fees (Millions)	$1.845	$1.954	$2.067	$2.172
FY	Special Permit Fees (Millions)	$0.903	$0.910	$0.923	$0.932
FY	Temporary Fuel Permits (Millions)	$0.108	$0.111	$0.111	$0.111
FY	Other Fees (Millions)	$0.401	$0.401	$0.401	$0.401
Other 6-Mill Levy Indicators (See General Fund Property Tax Assumptions for Other Detail)					
FY	Taxable Value (Millions)	$1,698.239	$1,718.019	$1,791.346	$1,889.363
FY	Nonlevy Revenue (Millions)	$1.579	$1.319	$1.393	$1.370
FY	6-Mill Adjustments (Millions)	$0.000	$0.000	$0.000	$0.000

Adopted April 23, 2003

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM COMMITTEE STUDY TO EXAMINE CHILD ABUSE AND NEGLECT PROCEEDINGS IN ORDER TO DETERMINE HOW TO PROVIDE REPRESENTATION FOR INDIGENT FAMILIES AND TO DETERMINE THE APPROPRIATE EARLIEST OPPORTUNITY.

WHEREAS, the Montana Family Policy Act states in section 41-7-102, MCA, that it is the policy of the State of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children; and

WHEREAS, in child protective services, it is also the policy of the State of Montana set out in section 41-3-101, MCA, to ensure that all youth are afforded an adequate physical and emotional environment to promote normal

development, to compel in proper cases the parent or guardian to perform the parent's or guardian's moral and legal obligations, to achieve these purposes in a family environment and to preserve the unity and welfare of the family whenever possible, to ensure that there is no forced removal of a child from a family based on unsubstantiated allegations, to provide for protection of children, and to require the interview of parents and an opportunity for parents to appear before a judge and have statements presented before a decision is rendered; and

WHEREAS, there is no statutory obligation to appoint legal counsel for indigent parents prior to a permanent custody proceeding, including termination of parental rights, but the Montana Supreme Court has also stated that "there are also no guidelines precluding or making inappropriate the appointment of counsel for indigent parents in child protective proceedings prior to termination proceedings" (In re A.F.-C., 2001 MT 283, 307 Mont. 358, 37 P.3d 724 (2001)); and

WHEREAS, there are significant due process, philosophical, and resource issues involved in the determination of at what point parents require counsel in proceedings involving child protection and potential termination of parental rights; and

WHEREAS, the Legislative Audit Division recently conducted a performance audit of child protective services and, although it did not make a specific recommendation in this area, found that there is statewide variation in whether indigent parents receive legal representation in child abuse and neglect proceedings prior to termination of parental rights (October 2002 report, page 53); and

WHEREAS, the Children, Families, Health, and Human Services Interim Committee recognizes these issues as worthy of study to determine whether legal counsel or other forms of advocacy or representation, such as family advocates or ombudsmen, should be appointed earlier in child protective services proceedings in order to provide guidance through a difficult process and to protect parents' rights.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine child abuse and neglect proceedings in order to determine how to best provide representation to families at an appropriate time in the child protective services proceedings to further the goals of balancing the best interests of the child, the rights of parents, and the possibility of reunification of the family and to provide prevention and early intervention strategies as early in the process as possible.

BE IT FURTHER RESOLVED, that the Legislature recognizes that the issue of representation of families in child abuse and neglect proceedings may also be relevant to other court proceedings that involve the intervention of one or more public agencies or require public services for children and families, such as Youth Court and civil mental health commitment proceedings.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted March 12, 2003

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE OPTIONS FOR IMPROVING THE SUPPLY AND DISTRIBUTION OF WATER IN MONTANA AND TO EVALUATE THE WATER STORAGE POLICY ESTABLISHED IN SECTION 85-1-703, MCA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE AND THE MONTANA CONGRESSIONAL DELEGATION.

WHEREAS, section 85-1-101, MCA, establishes the state's policies for water resources; and

WHEREAS, section 85-1-101(2), MCA, provides "The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens"; and

WHEREAS, section 85-1-101(6), MCA, states "The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state"; and

WHEREAS, Montana has experienced severe drought and significant floods; and

WHEREAS, the state has an opportunity and a responsibility to take proactive measures to mitigate the impacts of drought and floods by storing surplus water and promoting efficiency; and

WHEREAS, section 85-2-105, MCA, requires the Environmental Quality Council to advise the Legislature on the adequacy of the state's water policy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate the efficiency of water distribution systems;

(2) evaluate measures that promote the efficient use of water;

(3) evaluate return flow impacts;

(4) study water banking as a means to alleviate water shortages;

(5) investigate options for improving the supply and distribution of water in Montana, including the development of offstream storage facilities;

(6) evaluate the water storage policy established in section 85-1-703, MCA; and

(7) evaluate the effects of excessive fuel levels on federal and state timbered lands to determine the impacts of the use of available water by timber versus the amount of water release by a watershed into Montana watercourses.

BE IT FURTHER RESOLVED, that the study be conducted with the participation and involvement of investors and developers and persons interested in or affected by water management, including landowners, conservation districts, the Department of Natural Resources and Conservation, the Department of Fish, Wildlife, and Parks, industries, utilities, recreational water users, agricultural water users, and others.

BE IT FURTHER RESOLVED, that the study consider ways to encourage participation by the private sector, tribal governments, and the federal government in improving the supply and distribution of water in Montana.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature and the Montana Congressional Delegation.

Adopted April 11, 2003

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING LEWIS AND CLARK COUNTY TO WORK COOPERATIVELY WITH THE BOARD OF REGENTS TO SECURE FINANCING FOR A NEW BUILDING AT THE HELENA COLLEGE OF TECHNOLOGY OF THE UNIVERSITY OF MONTANA BY ISSUING BONDS TO FINANCE THE CONSTRUCTION OF THE PROJECT AND TO ENTER INTO AN AGREEMENT TO LEASE THE FACILITY, UPON COMPLETION, TO THE BOARD OF REGENTS UNTIL THE BONDS ARE RETIRED.

WHEREAS, pursuant to Article X, section 9(2), of the Montana Constitution, the Board of Regents has full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System and the authority to supervise and coordinate other public educational institutions as assigned by law; and

WHEREAS, in 1995 the Board of Regents restructured the University System by incorporating the vocational-technical centers and the 1995 Legislature enacted Chapter 308, Laws of 1995 (Senate Bill No. 156), to statutorily assign the vocational-technical centers to the Board to supervise and coordinate; and

WHEREAS, the Board of Regents has sufficient authority to use private money to construct buildings and to enter into contractual arrangements with

self-governing local governments to work together on mutually beneficial projects; and

WHEREAS, since the Helena College of Technology of the University of Montana is located in Helena and supports the economy of the local region, Lewis and Clark County has a vested interest in working with the Board of Regents to secure a new building for the college.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Lewis and Clark County be strongly urged to work cooperatively with the Board of Regents to secure financing for a new building at the Helena College of Technology of the University of Montana by issuing bonds to finance the construction of the project and to enter into an agreement to lease the facility, upon completion, to the Board of Regents until the bonds are retired.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Board of County Commissioners of Lewis and Clark County, to the Board of Regents, and to the Dean of the Helena College of Technology of the University of Montana.

Adopted March 22, 2003

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND PRESIDENT GEORGE W. BUSH TO INCREASE FUNDING FOR SPECIAL EDUCATION TO MEET THE FEDERAL COMMITMENT UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

WHEREAS, special education programs serving students with disabilities provide essential services to children and their families; and

WHEREAS, state and local educational agencies are mandated by federal law to provide a free appropriate public education for children with disabilities; and

WHEREAS, costs associated with serving children with disabilities continue to rise, and meeting those substantial costs requires a strong partnership between local, state, and federal governments; and

WHEREAS, underfunding of special education programs affects the quality of services provided to children with disabilities and results in local school districts redirecting resources that could otherwise be used for all children; and

WHEREAS, the federal commitment to states and localities under the federal Individuals With Disabilities Education Act to contribute 40% of the excess costs of providing a free appropriate public education has never been fulfilled; and

WHEREAS, despite recent large increases in federal special education funding, the federal share, currently at approximately 17%, is still less than one-half of the original commitment made by Congress to the states and localities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana urge the United States Congress and President George W. Bush to increase funding for special education so that the federal promise of providing states with 40% of the national average per-pupil expenditure required to serve children and youth with disabilities can be achieved.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President George W. Bush, the members of the Montana Congressional Delegation, the Board of Public Education, and the Superintendent of Public Instruction.

Adopted Feb ru ary 19, 2003

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO GATHER INFORMATION RELATING TO THE DROPOUT RATES, GRADUATION RATES, AND AT-RISK FACTORS AMONG AMERICAN INDIAN STUDENTS IN MONTANA'S PUBLIC SCHOOLS AND TO DEVELOP A STRATEGIC STATE PLAN TO REDUCE THE DROPOUT RATE AMONG ALL STUDENTS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY AND RECOMMENDATIONS TO THE 59TH LEGISLATURE.

WHEREAS, according to a 2001 report entitled "Equal Educational Opportunity for Native American Students in Montana Public Schools" by the Montana Advisory Committee to the United States Commission on Civil Rights, Montana's American Indians drop out of public schools at an average rate of 10.4%, which is more than twice the dropout rate of 4.2% for all Montana students; and

WHEREAS, the school completion rate for American Indian students is only 56.1%, far below the 81.8% for all Montana students; and

WHEREAS, Montana's American Indian students drop out of high school at a rate more than 3 times that of non-Indian students and drop out of grades 7 and 8 at a rate 12 times that of non-Indian students; and

WHEREAS, according to data published by the Office of Public Instruction, the high school graduation rate for American Indian students dropped 12% between 1995 and 1999; and

WHEREAS, when compared to the 9th grade enrollment figures for American Indian students, the 55% high school graduation rate of American Indian students in Montana is alarmingly low; and

WHEREAS, according to the Digest of Education Statistics, three of the four Montana counties with the highest unemployment rates, which are double and triple the national average, are located on Indian reservations; and

WHEREAS, the consequences of dropping out of school are lifelong and life-altering for the individual, result in significant reductions in state per-ANB funding to local school districts, and threaten the vitality of the state's economy and the stability of society; and

WHEREAS, although the State of Montana has made numerous pronouncements and attempts to institute educational reforms concerning

Indian education since acknowledgment and recognition in Article X, section 1, of the Montana Constitution of the contribution of Montana's American Indians and the commitment of the state to preserve their cultural heritage through education, the United States Commission on Civil Rights found that the disparities in education, including dropout rates that are double those of non-Indian students, low achievement levels and test scores, and few high school graduates with little advancement to higher education, provided evidence that Indian children in Montana public schools are in a crisis situation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to work in collaboration with the Board of Public Education, the Board of Regents, the Office of Public Instruction, local school districts, tribal education departments, and educational organizations throughout the state to:

(1) gather information relating to the dropout rates, graduation rates, and at-risk factors, including but not limited to age, the number of individuals with disabilities, opportunities for other educational choices, credit deficiencies, drug and alcohol use, teen pregnancy, attendance, and suspension and expulsion, among American Indian students in Montana's public schools;

(2) hold public hearings throughout the state in school districts located on reservations and in urban areas to seek recommendations to address the dropout rate and at-risk factors;

(3) develop a fiscal impact statement for those schools from which students drop out;

(4) collaborate with the Office of Public Instruction American Indian Education Office and the Montana Advisory Council on Indian Education that are currently working through a United States Department of Education Dropout Prevention program with six Montana public school districts located on Indian reservations and that will be coordinating a plan for dropout prevention;

(5) collaborate on this study with Montana's Interagency Coordinating Council, which has dropout prevention as one of its major goals; and

(6) produce a comprehensive, research-based, strategic state plan to break the cycle of at-risk factors and significantly reduce the dropout rate, while increasing the graduation rate among Montana's American Indian students.

BE IT FURTHER RESOLVED, that the appropriate committee report its findings, conclusions, and recommendations to the 59th Legislature.

BE IT FURTHER RESOLVED, that a copy of the resolution and any committee report be sent to each tribal government located on the seven Montana reservations and to the Little Shell Band of Chippewa.

Adopted April 11, 2003

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT CONGRESS INVESTIGATE WAYS OF DEALING WITH THE COST OF MEDICATIONS IN ORDER TO MAKE THEM AFFORDABLE.

WHEREAS, the price of prescription medicine has risen dramatically in recent years; and

WHEREAS, many senior citizens cannot afford to pay for drugs and still afford the necessities of life, such as food and shelter; and

WHEREAS, the Montana Legacy Legislature has made this resolution its number one priority.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Congress investigate the cost of medications in order to find ways to make the cost affordable.

(2) That copies of this resolution be sent by the Secretary of State to the Montana Congressional Delegation.

Adopted March 18, 2003

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF PUBLIC EDUCATION TO INTEGRATE THE PRINCIPLES OF BASIC PERSONAL FINANCE INTO THE CONTENT AND PERFORMANCE STANDARDS ESTABLISHED FOR MONTANA'S PUBLIC SCHOOLS AND URGING THE BOARDS OF TRUSTEES OF MONTANA'S SCHOOL DISTRICTS TO IMPLEMENT THE STANDARDS INTO THE CURRICULA.

WHEREAS, basic personal financial management, including the principles of saving, spending, credit, investment, taxes, and insurance, is an essential life skill necessary to the well-being of all Montanans; and

WHEREAS, an October 2002 white paper by the United States Department of the Treasury's Office of Financial Education states that the average American was able to answer only 42% of the questions on a personal financial quiz correctly, that 4 out of 10 Americans admitted that they are living beyond their means because of their misuse and misunderstanding of credit, and that personal bankruptcy filings more than doubled between 1990 and 2000; and

WHEREAS, the 2002 third biennial survey of financial literacy by the Jump$tart Coalition for Personal Financial Literacy found 68.1% of high school seniors with failing scores, representing an increase from the 59.1% failing in 2000 and the 44.2% failing in 1998; and

WHEREAS, according to the Department of Treasury's white paper, it is estimated that America's youth spend approximately $150 billion annually, while the survey of financial literacy found that almost one-third of high school seniors already use a credit card and an even higher percentage carry automatic teller machine (ATM) cards; and

WHEREAS, like other complex and dangerous social phenomenon confronting today's youth, personal finance presents more difficult choices and pitfalls than experienced by previous generations, yet public education in this critical life skill has not increased to meet the challenge; and

WHEREAS, a high school financial education course, including an instructor's manual, student workbook, and supplemental materials, has been developed by the National Endowment for Financial Education, the Cooperative

Extension System, and the Credit Union National Association and is available at no cost to schools; and

WHEREAS, experience has shown that students will respond to well-executed life skills programs that have direct practical application to their daily lives; and

WHEREAS, the personal financial responsibility and well-being of the emerging generation will be essential to the overall health and well-being of Montana's future economic and social condition; and

WHEREAS, the Legislature recognizes that Article X, section 9, subsection (3), of the Montana Constitution provides the Board of Public Education with general supervision over the public school system, which includes the authority to adopt the accreditation standards for public schools; and

WHEREAS, the Legislature recognizes that under Article X, section 8, of the Montana Constitution the local boards of trustees play a critical role in implementing the accreditation standards adopted by the Board of Public Education.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Public Education be strongly urged to integrate the principles of basic personal finance into the content and performance standards established for Montana's public schools.

BE IT FURTHER RESOLVED, that the boards of trustees of Montana's school districts, in recognition of the importance of preparing the state's youth with critical life skills education, be strongly urged to fully implement the content and performance standards adopted by the Board of Public Education.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Board of Public Education, the Office of Public Instruction, the Montana School Boards Association, the Montana Rural Education Association, the School Administrators of Montana, and the MEA-MFT.

Adopted March 24, 2003

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING GOVERNOR JUDY MARTZ TO WRITE A LETTER TO THE MONTANA CONGRESSIONAL DELEGATION URGING SUPPORT FOR A FEDERAL INCREASE IN IMPACT AID FUNDING.

WHEREAS, many school districts across the United States include within their boundaries land owned by the federal government or land removed from the local tax base by the federal government; and

WHEREAS, these school districts must provide a quality education to their students with less local revenue than is available to other school districts because federal property is exempt from local property taxes; and

WHEREAS, since 1950, Congress, through the federal Impact Aid Program, has provided financial assistance to these local school districts that have lost property tax revenue because of the presence of tax-exempt federal property; and

WHEREAS, 75 Montana school districts receive over $38 million annually from the United States Department of Education under the federal Impact Aid Program; and

WHEREAS, Congress is currently considering an increase in funding for impact aid schools of no more than 5%; and

WHEREAS, the National Association of Federally Impacted Schools is asking for a 7.5% increase; and

WHEREAS, impact aid schools in Montana will benefit greatly from the 7.5% increase in funding.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature request Governor Judy Martz to write a letter to the members of the Montana Congressional Delegation urging their support for a 7.5% increase in impact aid funding.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each tribal government located on the seven Montana reservations and to the Little Shell Band of Chippewa.

Adopted March 24, 2003

HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING A RECOGNITION BY THE PEOPLE OF MONTANA THAT INDIVIDUAL CITIZENS OF THE UNITED STATES, ACTING TOGETHER WITH LAW ENFORCEMENT AGENCIES AND EMERGENCY PERSONNEL AND IN SUPPORT OF OUR MILITARY FORCES, ARE THE SOLE EFFECTIVE MEANS OF THWARTING TERRORISM IN THESE UNITED STATES; ASSERTING THAT FREEDOM OF INDIVIDUALS WILL NOT BE PRESERVED BY THE TRANSFER OF POWER FROM INDIVIDUALS TO GOVERNMENT IN THE NAME OF FIGHTING TERRORISM; AND ENCOURAGING CONGRESS TO PASS AN ACT THAT SUPPORTS AND AUTHORIZES INDIVIDUALS TO INTERDICT TERRORISM WHEREVER IT MAY OCCUR ON THE SOIL OF THE UNITED STATES, RECOGNIZES THE IMPORTANCE OF INDIVIDUALS HAVING TOOLS TO FIGHT TERRORISM, REMOVES CIVIL AND CRIMINAL LIABILITY FOR ACTIONS TAKEN TO INTERDICT TERRORISM, AND CREATES A REWARD FOR INDIVIDUALS WHO PLAY AN EFFECTIVE PART IN PREVENTING TERRORISM AGAINST THE PEOPLE OF THE UNITED STATES.

WHEREAS, the people of these United States have a long and rich history and tradition of nongovernmental and individual action in preventing offenses against the people, business interests, and political structures of our country; and

WHEREAS, our dedicated military personnel, law enforcement agencies, firefighters, and emergency medical personnel require the full support of individual citizens in order to be fully effective; and

WHEREAS, President George W. Bush has stated that effective prevention of terrorist acts depends on the alertness and individual action of all citizens of these United States; and

WHEREAS, of all the tragedies planned by terrorists for the event now known as 9-11, the only one of those terrorists acts effectively opposed and prevented was opposed and prevented by brave individual citizens acting intelligently, spontaneously, and without government sanction or direction; and

WHEREAS, it is the history of our tradition and system of self-government that government trusts individual citizens to act appropriately and make wise individual decisions absent the constraining hand of government; and

WHEREAS, no amount of police and security forces will ever suffice to interdict all terrorist acts without the active support of a watchful, vigilant, and free citizenry; and

WHEREAS, the only people who have a high likelihood of being present at the time and the location of an intended terrorist act are the citizens of these United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress be urged to pass a law named "The Terrorist-Free America Act" in recognition of the nation's rich and proper history of self-reliance and the importance of applying that philosophy of self-reliance to help defend these United States against terrorist acts. The act by Congress is recommended to contain the following features:

(1) The people of these United States are exhorted to participate individually in the war on terrorism.

(2) The participation of individual people in interdicting acts of terrorism should be both passive, such as being observant, and active, such as individual acts of contention and interdiction against any terrorists attempting to commit a terrorist act.

(3) Individual people participating in the prevention of acts of terrorism must not be prevented from having at hand the tools necessary for such prevention, especially firearms, by the federal government, any state or local government, or any subdivision of these governments.

(4) Individual people assisting in prevention of terrorist acts must be exempted from criminal and civil liability arising out of such preventative acts, according to established and standard doctrine for allowable uses of lethal force.

(5) Medals and citations of award should be created to honor and reward individuals who materially serve their country by preventing any act of terrorism on United States soil.

Adopted April 4, 2003

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES CONDUCT A STUDY REGARDING THE HEALTH PROGRAMS ADMINISTERED BY THE DEPARTMENT AND PROVIDE A REPORT TO THE 59TH LEGISLATURE, OUTLINING OPTIONS THAT MAY BE UNDERTAKEN TO REDESIGN THE HEALTH PROGRAMS ADMINI - STERED BY THE DEPARTMENT.

WHEREAS, rising health care costs, expanded use of services, and increased enrollment in the Montana Medicaid program, the Mental Health Services Plan, the state Children's Health Insurance Program, and other health programs administered by the Department of Public Health and Human Services have resulted in escalating costs to the State of Montana; and

WHEREAS, expenditures in the Montana Medicaid program for the 2002-03 biennium are projected to be $1,071,000,000, which includes $267 million in general fund money and $804 million in federal funds; and

WHEREAS, expenditures in the Mental Health Services Plan for the 2002-03 biennium are projected to be $20,507,133 in state general fund money; and

WHEREAS, expenditures in the state Children's Health Insurance Program for the 2002-03 biennium are projected to be $28,967,574, which includes $5,472,768 in state general fund money, $882 in state special revenue funds, and $23,493,934 in federal special revenue funds; and

WHEREAS, expenditures in the Montana Medicaid program, the Mental Health Services Plan, and the state Children's Health Insurance Program constitute a significant portion of the state general fund; and

WHEREAS, federal regulations limit the discretion that states have in the administration of the Medicaid program; and

WHEREAS, federal regulations mandate that certain health care services be provided and that certain groups be automatically eligible for Medicaid; and

WHEREAS, federal regulations do permit the Secretary of the U.S. Department of Health and Human Services to grant waivers of certain federal requirements; and

WHEREAS, federal regulations and the Centers for Medicare and Medicaid Services require three formal consultations with tribal governments regarding any major changes within the existing Medicaid program and related programs; and

WHEREAS, the State of Montana recognizes the seven federally recognized Indian tribes in Montana, and the Legislature directs the Department of Public Health and Human Services to recognize and include the seven federally recognized tribal governments in Montana within all aspects of a Department study; and

WHEREAS, upon participation of the seven federally recognized Indian tribes in Montana, the Legislature directs the Department of Public Health and Human Services to include the seven tribal governments in any aspect of the study and include the recommendations and participation in the report to the Legislature; and

WHEREAS, it is essential that the Legislature as a whole be informed about the alternative approaches that may be undertaken and that the Legislature set the policy regarding the design of the Montana Medicaid program, the Mental Health Services Plan, the state Children's Health Insurance Program, and other health programs administered by the Department of Public Health and Human Services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services direct sufficient staff services to undertake a study that will examine the various options available for redesigning the Montana Medicaid program, the Mental Health Services Plan, the state Children's Health Insurance Program, and other health programs administered by the Department.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services report on a regular basis to the Children, Families, Health, and Human Services Interim Committee and to the Legislative Finance Committee regarding the progress of the study.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services prepare a report to the 59th Legislature, as provided in section 5-11-210, MCA, detailing various options available for the redesign of the Montana Medicaid program, the Mental Health Services Plan, the state Children's Health Insurance Program, and other health programs administered by the Department. This report should include the costs, both economic and social, associated with various options for redesign of these programs and a cost analysis for urban Indian health clinics and tribal-based health clinics.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each tribal government located on the seven Montana reservations and to the Little Shell Band of Chippewa.

Adopted March 13, 2003

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. SECRETARY OF AGRICULTURE AND THE U.S. SECRETARY OF THE INTERIOR TO DIRECT THE APPROPRIATE FEDERAL AGENCIES TO EXPEDITE THE ELIMINATION OF BRUCELLOSIS IN THE YELLOWSTONE NATIONAL PARK BISON AND ELK HERDS.

WHEREAS, an essential element of proper wildlife management is the maintenance of healthy animal populations; and

WHEREAS, the disease brucellosis (Brucella abortus) has been known to be present in the Yellowstone National Park bison herd for 86 years; and

WHEREAS, the bison population of Yellowstone National Park is now in excess of 4,000 bison; and

WHEREAS, in the 1999-2000 final environmental impact statement of the interagency bison management plan for the State of Montana and Yellowstone National Park, one of the objectives was to commit to the eventual elimination of brucellosis in bison and other wildlife; and

WHEREAS, the State of Montana, the U.S. Department of Agriculture, and the U.S. Department of the Interior agreed in a 1995 memorandum of understanding that an objective was to plan for the elimination of brucellosis from the greater Yellowstone area by the year 2010; and

WHEREAS, a cattle herd in Idaho has been infected with brucellosis by elk from Yellowstone National Park; and

WHEREAS, Yellowstone National Park bison that have been infected with or exposed to brucellosis and elk that may have been infected with or exposed to

brucellosis frequently make nomadic or migratory movements into Montana, threatening the health of Montana citizens as well as the state's livestock industry and brucellosis class-free status; and

WHEREAS, for years, Montana has been forced to react to the nomadic movements of bison from Yellowstone National Park into Montana with drastic and costly measures, including hazing, capturing, and lethally removing bison, to protect the health and welfare of Montana citizens and the livestock industry; and

WHEREAS, elimination of brucellosis in the Yellowstone National Park bison and elk herds would mitigate a public health and livestock concern and reduce ongoing state expenses related to the nomadic movement of bison from Yellowstone National Park; and

WHEREAS, although an effective brucellosis vaccine exists for domestic cattle, a similar vaccine or vaccines should be developed, tested, and implemented in the Yellowstone National Park wild bison and elk herds as soon as possible; and

WHEREAS, alternative brucellosis elimination strategies, in addition to or preceding brucellosis vaccination, such as but not limited to habitat improvement and population management within Yellowstone National Park, should also be expeditiously implemented if shown to facilitate or to be effective for eliminating brucellosis in bison or elk.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the U.S. Secretary of Agriculture and the U.S. Secretary of the Interior be urged to direct the U.S. Department of Agriculture's Animal and Plant Health Inspection Service Veterinary Services Office, the National Park Service, and any other affected federal agencies to undertake the expeditious elimination of brucellosis in the Yellowstone National Park bison and elk herds by developing and implementing a brucellosis elimination program.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the members of the Montana Congressional Delegation, the President of the United States, the U.S. Secretary of Agriculture, the U.S. Secretary of the Interior, and the Director of the National Park Service.

Adopted March 17, 2003

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING PRESIDENT GEORGE W. BUSH AND THE UNITED STATES CONGRESS TO EXTEND THE EXISTING FEDERAL TAX WIND POWER CREDIT.

WHEREAS, electricity generated from the innate power of wind produces no negative impacts on air quality or water quality; and

WHEREAS, Montana ranks fifth in the nation among states known to have the best natural wind power potential, yet Montana does not have any commercially generated wind power; and

WHEREAS, the Legislature believes that in-state wind-generated electricity would benefit Montana consumers, the economy, and economic development; and

WHEREAS, the Legislature has adopted policies calling for electricity generation alternatives, including wind-generated electricity, to be part of the mix of power sources available to meet Montana's future electricity needs; and

WHEREAS, tax credits and other federal incentives have played a vital role in encouraging the development of both traditional energy resources, such as oil and gas, and newer energy sources, such as ethanol and wind; and

WHEREAS, the existing federal tax credit has been successfully encouraging the steady improvement of wind generation technologies and has made it possible to produce wind-generated electricity at a favorable price; and

WHEREAS, the existing federal tax credit will expire at the end of 2003 and it now may be too late for a wind generation facility to be constructed in Montana and be operating in time to qualify for the existing federal tax credit; and

WHEREAS, the effectiveness and timeliness of Montana's efforts to begin developing its wind generation potential, both for its economic development value and to help meet the state's future energy needs, will benefit greatly from having continuity in incentives and policies affecting the economics and practicality of wind power; and

WHEREAS, the United States Congress should expeditiously extend the existing federal tax credit so that prospective planning and development of future wind generation projects will continue without the interruption and delay that the pending expiration of the tax credit would allow.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urges the President and the United States Congress to extend the existing federal tax credit that promotes research and development of America's wind power potential and to do so as soon as possible.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President George W. Bush and the members of the Montana Congressional Delegation.

Adopted March 11, 2003

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING CONCERN OVER THE IMPACT OF PROPOSED TRADE AGREEMENTS ON MONTANA'S AGRICULTURAL INDUSTRY AND STRONGLY URGING UNITED STATES OFFICIALS TO CONSIDER THE IMPACTS ON THAT INDUSTRY IN NEGOTIATING THESE TRADE AGREEMENTS.

WHEREAS, agriculture has long been the cornerstone of Montana's economy and maintaining the viability of that industry is vital to our economic growth; and

WHEREAS, the vast majority of the world's population lives outside the United States and the ability to export Montana agricultural products is critical to continued viability and growth of Montana's agricultural industry; and

WHEREAS, the President has signed into law legislation that provides the President with trade promotion authority; and

WHEREAS, United States trade representative Robert Zoellick has notified Congress of the administration's intention to commence free trade agreement negotiations with Australia; and

WHEREAS, past trade agreements, such as the North American Free Trade Agreement (NAFTA), have not always resulted in fair and free trade opportunities for agriculture; and

WHEREAS, a multilateral agreement is much more likely to result in improved trade conditions for United States agricultural producers than would a bilateral agreement that would fracture and weaken agriculture's support for trade.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That United States trade representatives be strongly urged to seek additional opportunities for multilateral agreements that will expand agricultural export opportunities.

(2) That if United States trade representatives choose to proceed with a bilateral agreement with Australia or any other country the following provisions be adopted as part of any bilateral agreement:

(a) United States farm programs may not be unilaterally reduced or phased out;

(b) United States agricultural tariffs may not be further reduced unless the other country reduces its tariffs to United States levels;

(c) market access must be reciprocal;

(d) nontariff barriers must be eliminated;

(e) export subsidies must be eliminated or harmonized; and

(f) health requirements for imports must be strictly adhered to and utmost caution must be used to protect the U.S. cattle industry from bovine spongiform encephalopathy (BSE), foot-and-mouth disease, bovine tuberculosis, and other highly transmissible diseases.

(3) That improvements be made in international trade disciplinary and dispute resolution procedures and the United States be committed to using available tools to protect agricultural interests.

(4) That copies of this resolution be sent by the Secretary of State to President George W. Bush and the Montana Congressional Delegation.

Adopted April 11, 2003

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING FEDERAL EMERGENCY DISASTER ASSISTANCE FOR CROP AND LIVESTOCK PRODUCERS WHO HAVE SUFFERED LOSSES DURING THE 2001 AND 2002 AGRICULTURAL PRODUCTION YEARS BECAUSE OF DROUGHT AND URGING AN EARLY DECISION ON THE RELEASE OF

CONSERVATION RESERVE PROGRAM ACREAGES FOR HAYING AND GRAZING PURPOSES.

WHEREAS, agriculture is Montana's number one industry and is vital to the state's economy; and

WHEREAS, Montana is in its fifth, and in some places sixth, year of drought; and

WHEREAS, excluding 2001 production, the 2002 crop year was the smallest on record since 1940; and

WHEREAS, Montana ranchers have decreased their herds of cattle by 100,000 head in 2002 due to drought; and

WHEREAS, prolonged drought yields poor pasture and range conditions for livestock and wildlife; and

WHEREAS, weather forecasters are predicting continued dry "El Nino" weather conditions for 2003; and

WHEREAS, other disasters, such as hurricanes, floods, and tornadoes, are typically designated as worthy of emergency spending.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress is urged to pass emergency disaster assistance for Montana's farmers, ranchers, and rural communities.

(2) That disaster assistance should be all-inclusive and cover production losses for field crops, specialty crops, and livestock.

(3) That disaster assistance should be comprehensive and cover losses for both the 2001 and 2002 agricultural production years.

(4) That funding should be an emergency designation and thereby protect the 2002 Farm Bill and all its varied programs and priorities.

(5) That the United States Secretary of Agriculture is urged to make an early decision with regard to the use of conservation reserve program acreages for haying and grazing purposes.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, the Secretary of the United States Department of Agriculture, and the Montana Congressional Delegation.

Adopted March 8, 2003

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REVIEW HEALTH COVERAGE AND PUBLIC ASSISTANCE PROGRAMS' ELIGIBILITY REQUIREMENTS TO STREAMLINE THE ENROLLMENT PROCESS.

WHEREAS, eligibility for health coverage for Montana children involves varied and complex financial and nonfinancial requirements for various programs, such as Medicaid, the state Children's Health Insurance Program, and the Mental Health Access Plan; and

WHEREAS, face-to-face interviews are not required for eligibility determination for all health coverage programs, including Medicaid and the state Children's Health Insurance Program, but are required for some public assistance programs; and

WHEREAS, there are technical system capabilities that exist that are able to store demographic data, that could prevent the need to repeatedly request information on applications, and that could allow for on-line applications, the coordination of eligibility for multiple programs, and multiple-site services; and

WHEREAS, innovative technical systems that have the above-stated capabilities are already developed by other states, using federal funds, and are available at low cost to other states; and

WHEREAS, federal regulations and the Centers for Medicare and Medicaid Services require three formal consultations with tribal governments regarding any major changes within the existing Medicaid and related programs; and

WHEREAS, the State of Montana recognizes the seven federally recognized Indian tribes in Montana, and the Legislature directs the Department of Public Health and Human Services to recognize and include the seven federally recognized tribal governments in Montana within all aspects of a Department study; and

WHEREAS, upon participation of the seven federally recognized tribes in Montana, the Legislature directs the Department of Public Health and Human Services to include the seven tribal governments in any aspect of the study and include the recommendations and participation in the report to the Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services be requested to:

(1) identify and examine all existing eligibility determination and information systems involving health coverage and public assistance;

(2) identify the costs of acquiring and modifying existing systems to meet Montana's needs; and

(3) explore and identify possible federal and other alternative funding sources.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services report on a regular basis to the Children, Families, Health, and Human Services Interim Committee and to the Legislative Finance Committee regarding the progress of the study.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services prepare a report to the 59th Legislature, as provided in section 5-11-210, MCA.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each tribal government located on the seven Montana reservations and to the Little Shell Band of Chippewa.

Adopted March 17, 2003

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE AUDIT COMMITTEE COMPLETE A SERIES OF LIMITED-SCOPE PERFORMANCE AUDITS OF THE OPERATIONS OF PROFESSIONAL LICENSING BOARDS ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT OF LABOR AND INDUSTRY.

WHEREAS, it is the duty of each professional licensing board to set and enforce standards and rules governing the licensing, certification, registration, and conduct of its members; and

WHEREAS, it is the duty of the Department of Labor and Industry to provide administrative, legal, and clerical services needed by the boards, including issuance, denial, and renewal of licenses, the registering and disciplining of licensees, and the recording and filing of minutes of board meetings and hearings; and

WHEREAS, each professional licensing board allocated to the Department of Labor and Industry is required to follow state law and set fees commensurate with the costs of administering the board's program; and

WHEREAS, all licensing boards may take disciplinary action against licensees, including the investigation of complaints and the suspension, revocation, or denial of a professional license; and

WHEREAS, section 37-1-135, MCA, requires that all licensing boards provide the Legislative Auditor, upon request, with any records or information compiled during the course of a background review, complaint investigation, or peer review; and

WHEREAS, more than 20 years have passed since the Legislative Auditor completed 46 sunset audits reviewing the operations of licensing boards; and

WHEREAS, it is in the interest of the licensees and the State of Montana to ensure that licensing laws are administered fairly, efficiently, and effectively.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Audit Committee prioritize a series of limited-scope performance audits of the operations of professional licensing boards and related administrative services of the Department of Labor and Industry, including but not limited to:

(a) the practices used to ensure that fees adopted by each professional board are commensurate with the costs of regulation and that fund balances are sufficient for operation of each board;

(b) the policies, procedures, and practices of each professional board regarding disciplinary activity to ensure that board actions protect the public and are rational, impartial, and in compliance with state law and regulations adopted by the Department of Labor and Industry and the board;

(c) the efficiency and effectiveness of the Department of Labor and Industry's procedures for administering the activities of professional boards;

(d) the composition of each professional board to ensure that the public, the profession, and the occupation regulated by the board are adequately represented; and

(e) each board's professional examination and experience requirements to ensure that both are designed to protect the public rather than limit access to the profession and occupation.

(2) That the Legislative Audit Committee present its findings, recommendations, and any proposed legislation to the 59th Legislature.

Adopted March 24, 2003

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR TO SET ASIDE A TIME ON MEMORIAL DAY AS A MOMENT OF REMEMBRANCE TO HONOR THE ACTS AND EFFORTS OF MONTANANS WHO DIED IN SERVICE TO THE UNITED STATES AND TO HONOR THOSE MONTANANS WHO CONTINUE TO SERVE ON BEHALF OF THIS COUNTRY.

WHEREAS, Memorial Day has been celebrated officially in this country since May 1868 as a way of honoring and remembering the sacrifices of America's brave members of the armed forces who gave their lives in defense of this country's freedoms; and

WHEREAS, the hectic pace of modern lives leaves little time to reflect on the sacrifices of those who fought and died for this country; and

WHEREAS, the true meaning of Memorial Day is in danger of being associated with barbeques, picnics, and the start of summer more than as a time to honor those who served this country; and

WHEREAS, a statewide moment of remembrance would provide a time to encourage all citizens to pause and reflect on the heroic sacrifices that Memorial Day is intended to commemorate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor be urged to proclaim 1 p.m. mountain daylight time on Memorial Day as a moment of remembrance at which time Montanans will be asked to simultaneously pause and unite in remembrance, whether in prayer or silent contemplation, of those Americans who gave their lives to secure or maintain liberty in the United States and of those Americans who continue to serve in this nation's armed forces.

BE IT FURTHER RESOLVED, that all citizens of Montana, wherever they happen to be and whether alone or with others, be encouraged to participate in a moment of remembrance.

BE IT FURTHER RESOLVED, that each public and recreational facility open on Memorial Day in Montana be urged to make a public announcement at 1 p.m. mountain daylight time, requesting participation in a moment of remembrance.

BE IT FURTHER RESOLVED, that the Secretary of State provide a copy of this joint resolution to the Governor and send a copy to the President of the United States to reflect Montana's solidarity with other states that have followed the recommendations of the White House Commission on

Remembrance to honor both those who died in service to this country and those who continue to serve.

Adopted March 14, 2003

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE U.S. BOARD ON GEOGRAPHIC NAMES TO RENAME HALFBREED RAPIDS ON THE MISSOURI RIVER AS "PINE ISLAND RAPIDS", THE NAME GIVEN THE RAPIDS BY MEMBERS OF THE LEWIS AND CLARK EXPEDITION.

WHEREAS, Meriwether Lewis described a series of rapids in the Missouri River south of what is now the town of Cascade, Montana, in his July 17, 1805, journal near an island that he termed "pine island", and these rapids later were called "Pine Island Rapids" in observations by coleader of the Lewis and Clark Expedition, William Clark, who identified the "Pine Island Rapids" as a geographic indicator in his journals while on the Pacific Coast and again on August 12, 1806, and these rapids were referred to as "pine islands and rapids" by Lewis and Clark Expedition member Sgt. John Ordway in his July 17, 1806, journal; and

WHEREAS, the name of the rapids through time and without a confirmed source for the name became "Halfbreed Rapids"; and

WHEREAS, the word "halfbreed" is "[g]enerally regarded as an offensive term because often used contemptuously", according to Webster's New World College Dictionary, Fourth Edition (2001); and

WHEREAS, the Lewis and Clark Bicentennial provides an opportunity to recognize and rename a geographic feature named in journals by members of the Lewis and Clark Expedition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana urge the U.S. Board on Geographic Names to change the name of "Halfbreed Rapids" to "Pine Island Rapids" in recognition of the name given to the Missouri River rapids by members of the Lewis and Clark Expedition.

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the U.S. Board on Geographic Names and to Montana's Congressional Delegation.

Adopted March 8, 2003

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO SUPPORT THE GRASSROOTS EFFORTS OF THE NORTHCENTRAL MONTANA COMMUNITY VENTURES PROJECT TO DETERMINE STRATEGIES TO REDUCE POVERTY IN NORTHCENTRAL MONTANA AND TO SUPPORT THE NORTHCENTRAL MONTANA COMMUNITY VENTURES PROJECT

IN ITS EFFORTS TO OBTAIN FUNDING FROM THE NORTHWEST AREA FOUNDATION.

WHEREAS, an 11-county area of northcentral Montana is one of four finalists competing in eight states for funding from the Northwest Area Foundation for a multiyear, intensive project to reduce poverty; and

WHEREAS, individuals, organizations, and units of local governments in Glacier, Toole, Pondera, Teton, Cascade, Liberty, Hill, Blaine, Phillips, Chouteau, and Judith Basin Counties, along with tribal governments of the Blackfeet, Fort Belknap, Rocky Boy, and Little Shell Band of Chippewa, have worked together under the umbrella of the Northcentral Montana Community Ventures Project for more than a year to cooperatively identify the root causes of poverty and to define poverty as it exists in northcentral Montana; and

WHEREAS, the Indian communities of northcentral Montana have been an integral component in the project planning; and

WHEREAS, hundreds of Montana citizens throughout northcentral Montana have participated in a dynamic planning process, a process through which the Northcentral Montana Community Ventures Project sought to ensure broad and diverse participation, including dialogues with individuals and families living in poverty; and

WHEREAS, the 11-county northcentral Montana area already has received a generous contribution of $600,000 from the Northwest Area Foundation to assist in the design stage of a final plan to identify strategies for reducing poverty in northcentral Montana; and

WHEREAS, the Northwest Area Foundation has identified three communities in other states in addition to the 11-county area in northcentral Montana as potential recipients of funding in its grassroots, community-based Community Ventures Program but will provide final funding to only one or two areas; and

WHEREAS, the reduction of poverty is an important public policy goal of the State of Montana; and

WHEREAS, if this project application is successful, the 11 counties in northcentral Montana will be strengthened in their efforts to reduce poverty, thus strengthening all of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature formally support the application of the Northcentral Montana Community Ventures Project to the Northwest Area Foundation for development and implementation of a strategic, long-term plan to assist in reducing rates of poverty in an 11-county area of northcentral Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this joint resolution to the Northwest Area Foundation, to the Northcentral Montana Community Ventures Project, and to the tribal governments of the Blackfeet, Fort Belknap, and Rocky Boy Reservations and the Little Shell Band of Chippewa.

Adopted March 19, 2003

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING ALL NECESSARY STEPS TO MOVE MONTANA INTO A HYDROGEN-BASED ECONOMY.

WHEREAS, the stability of the United States' economy and security is threatened by its dependence on foreign energy imports; and

WHEREAS, technological advances have moved hydrogen energy forward as the best nonpolluting, most plentiful energy carrier available to support all future energy needs; and

WHEREAS, billions of dollars are being spent by business, industry, states, and the federal government to move the nation into a hydrogen economy; and

WHEREAS, Montana is the only state in the nation with all the natural resources needed to make it a leader in the hydrogen energy area; and

WHEREAS, Montana could use its coal, gas, oil, carbon, wind, water, solar, biomass, and platinum resources to produce trillions of cubic feet of pollution-free hydrogen and highly sought after fuel cells; and

WHEREAS, Montana is in need of a statewide economic driver to spur its economy in ways that attract businesses, create quality jobs, fund infrastructure development, preserve its environment, and train the best hydrogen-trained workforce in the nation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature support the implementation of a Montana hydrogen energy plan to:

(1) educate Montanans about the benefits of a hydrogen economy and promote a Montana hydrogen futures coalition;

(2) establish the Montana Hydrogen Futures Project as the key economic development focus of the state;

(3) institute necessary state policies and legislation to promote Montana Hydrogen Futures Project development and statewide involvement;

(4) support the establishment of a focal point of the hydrogen economy at the Montana Hydrogen Futures Park at the University of Montana-Missoula;

(5) support and encourage federal commitment and necessary matching funds to construct the Montana Hydrogen Futures Park and provide for development of the Montana energy products network to attract hydrogen-based business and industries to Montana;

(6) establish alliances with energy producers and promote resource identification by Montana communities by identifying all existing and potential federal, state, tribal, and community resources for inclusion in the Montana energy products network;

(7) develop a first-class education and training system that attracts and prepares high-quality hydrogen professionals for all levels of the hydrogen economy and replicate this system throughout the state;

(8) expand the Montana energy products network by creating the statewide micro enterprise system that establishes business opportunities, incentives, and state business development marketing; and

(9) pursue national prominence with other states and agencies in the supply of hydrogen to the national hydrogen distribution system.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Governor, the Directors of the Departments of Agriculture, Commerce, Transportation, Environmental Quality, and Natural Resources and Conservation, the Superintendent of Public Instruction, the Commissioner of Higher Education, and the Public Service Commission.

Adopted April 5, 2003

HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE DEPARTMENT OF ADMINISTRATION TO INITIATE A COLLABORATIVE STUDY CONCERNING THE PROCESS AND CRITERIA FOR STATE AGENCIES TO USE IN AWARDING PUBLIC WORKS CONSTRUCTION CONTRACTS.

WHEREAS, awarding public works construction contracts to the "lowest responsible bidder" has been standard practice for the State of Montana for decades; and

WHEREAS, various public entities have, in recent years, attempted to award contracts for construction using various alternative project delivery systems, such as "design-build", "construction manager at risk", and other derivatives of these methods, leading to conflicts among the construction industry, and the architecture and engineering professions; and

WHEREAS, governing statutes relating to the award of public works construction contracts have been interpreted in widely divergent ways by various stakeholders and by the courts; and

WHEREAS, public owners, including the Department of Administration, have proposed at various times to amend the law to allow construction contracts to be awarded on a "best value" basis, but stakeholders have not been able to reconcile differences on the approach.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Administration is encouraged to initiate a collaborative study that should result in recommendations to the 2005 Legislature concerning the applicability, procedures, and criteria for state agencies to use in awarding public works construction contracts. The recommendations should:

(1) state how a decision is reached to award a contract on the basis of "best value";

(2) establish criteria for ensuring a fair, equitable, and objective selection process;

(3) determine qualifications for members of selection panels used to award contracts; and

(4) establish a process ensuring that taxpayers receive the most cost-effective project possible.

BE IT FURTHER RESOLVED, that the collaborative study should involve representatives of the Department of Administration, the construction industry, the architecture and engineering professions, the surety industry, and any other stakeholders that the Department determines necessary.

Adopted March 24, 2003

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REAFFIRMING THE LEGISLATURE'S COMMITMENT TO ENHANCING THE STATE'S CAPACITY TO IMPROVE CARE FOR MONTANA'S CHILDREN AND FAMILIES THROUGH STRENGTHENING COMMUNITY-BASED HEALTH SERVICES, HUMAN SERVICES, AND WORK-RELATED, SOCIAL, AND RECREATIONAL SERVICES AND PROGRAMS AND THROUGH IMPROVING THE VIABILITY OF THE PRIVATE-NONPROFIT CAREGIVER AND VENDOR NETWORK NECESSARY TO PROVIDE THOSE SERVICES AND ENDORSING THE PRINCIPLE THAT COMMUNITY SERVICES FOR CITIZENS SHOULD BE PROVIDED TO ACHIEVE THE GREATEST DEGREE OF QUALITY RESULTS, NORMALIZATION, AND MEANINGFUL PARTICIPATION IN THE COMMUNITIES AS POSSIBLE.

WHEREAS, federal courts, personal conscience, and Montana custom have determined that it is a basic human right of individuals, children, and families with special needs to live in the least restrictive, most dignified, and most nurturing way possible; and

WHEREAS, when appropriate and safe, community-based social, recreational, health, and human services are provided to all individuals, including those with special needs; and

WHEREAS, consumer and family choice of services promotes cost-effective and flexible solutions for care while meeting the unique needs of individuals, children, and families with special needs; and

WHEREAS, recent studies have shown that strong not-for-profit, along with for-profit, business sectors are vital sources of local economic development; and

WHEREAS, in 1998, the not-for-profit sector was the fifth largest source of wages in Montana and 75% of not-for-profit corporation revenue came from health care, mental health care, and multipurpose human services corporations; and

WHEREAS, economic development in all business sectors is attracted to communities that have strong health networks and social, recreational, and human services; and

WHEREAS, the priorities of the Governor's Office of Economic Development include promoting Montana businesses, enabling economic development by increasing government responsiveness and efficiency, and providing an opportunity for all Montana citizens to share economic prosperity and a high quality of life in all regions of the state; and

WHEREAS, the Bush Administration's New Freedom Initiative promotes consumer and family choice in disability-related treatment, health care, and other basic community living decisions, allowing people with disabilities and their families to decide how best to plan, obtain, and sustain community-based services; and

WHEREAS, the Montana Mental Health Oversight Advisory Council has established guiding principles for creating a system of community-based care in Montana that rests on principles of recovery and resiliency, equity, access and satisfaction, cultural competency, community education and awareness, flexibility, and diversion; and

WHEREAS, the Governor's Blue Ribbon Task Force on Health Care Workforce Shortage's recommendations include those human services professions that are essential to the health care system by providing care, treatment, and support to children, families, and individuals with disabilities and special needs, including services to those with developmental disabilities, emotional disturbances, mental illness, and chemical dependency who may be served in community-based programs or in residential programs; and

WHEREAS, increasing the availability of innovative community-based social, recreational, health, and human services will improve all individuals' ability to use their strengths and resources to enhance their quality of life and their ability to manage their own lives and will be an important key to maximizing consumer health, successful functioning and normalization, and maximizing systemic fiscal efficiency and accountability; and

WHEREAS, a strong, healthy, private not-for-profit and for-profit network and open market competition is necessary to achieve both consumer choice, fiscal efficiency, and accountability; and

WHEREAS, the Legislature directly affects the availability, direction, and success of these important services and programs through the appropriation of critical funds to state agencies.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 58th Legislature encourages all branches of state government, through the Department of Public Health and Human Services and when practical, appropriate, and safe, to work towards the development and maintenance of a consistent and complete compendium of community-based services for all citizens, including individuals, children, and families with special needs, while recognizing the essential role of the individual, family, and community in planning for, providing, and purchasing the rich array of social, recreational, health care, and human services and other programs available.

BE IT FURTHER RESOLVED, that copies of this resolution be provided to the Governor, the Chief Justice of the Montana Supreme Court, and the Director of the Department of Public Health and Human Services.

Adopted April 11, 2003

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE WHITE HOUSE OFFICE OF FAITH-BASED AND COMMUNITY

INITIATIVES BE ENCOURAGED TO RECOGNIZE THAT THE SPIRITUAL PRACTICES OF TRADITIONAL INDIAN CULTURES ARE UNIQUE TO EACH TRIBE, THAT TRIBAL LEADERS AT THE LOCAL LEVEL BE CONSULTED IN THE IMPLEMENTATION OF ANY PROGRAMS, AND THAT THE AMERICAN INDIAN WELFARE REFORM ACT FOR THE OPERATION OF PUBLIC ASSISTANCE BY INDIAN TRIBES BE SUPPORTED.

WHEREAS, President George W. Bush established the White House Office of Faith-Based and Community Initiatives by executive order on January 29, 2001, in order to help the federal government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America's communities; and

WHEREAS, the goal of the office is compassionate results with the values of pluralism, nondiscrimination, evenhandedness, and neutrality in facing issues such as strengthening families and neighborhoods, curbing crime, conquering addiction, and overcoming poverty; and

WHEREAS, Indian communities face similar issues and have always been faith-based communities with cultural knowledge and spiritual beliefs unique to each community, yet there is no specific language in the executive order to recognize the unique, spiritual nature of each tribal culture and the oldest cultural practices in the United States; and

WHEREAS, many of the programs funded under the Office of Faith-Based and Community Initiatives are driven by specific denominations who wish to provide services to Indian people without having consulted the tribal representatives at the local level to determine the appropriateness of the services to the community and to determine whether there is a possible infringement on the cultural and spiritual beliefs of the community; and

WHEREAS, to the extent that state agencies and advisory councils are used to determine where federal resources, such as the Compassion Capital Fund, are expended, the state should respect the government-to-government relationship between its representative state agencies and each tribal government and work with each tribal government to develop best practices with respect to self-determination in the delivery of social services in relation to the spiritual aspects of traditional Indian cultures; and

WHEREAS, there are unique opportunities to coordinate efforts under the Office of Faith-Based and Community Initiatives with other social service efforts;

WHEREAS, the State of Montana supports passage of the American Indian Welfare Reform Act proposed by Senator Max Baucus, which has been introduced in Congress, the purpose of which is to reauthorize and improve the operation of the Temporary Assistance to Needy Families (TANF) programs that are currently operated by Indian tribes or that in the future may be operated by Indian tribes and which calls for a report on the best practices with respect to the delivery of social services in relation to all tribal TANF programs and systemic aspects of the tribal TANF programs and relations between state and tribal administrators of TANF; and

WHEREAS, the President has signed an executive order on December 12, 2002, for equal protection of the laws for faith-based and community organizations that does not allow for discrimination on the basis of religion or

religious belief and may not discriminate against current or prospective program beneficiaries based on their beliefs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Office of Faith-Based and Community Initiatives and any programs that are implemented by state governments in conjunction with that office and the Compassion Capital Fund be encouraged to recognize that spiritual practices of traditional Indian cultures are unique to each tribe.

BE IT FURTHER RESOLVED, that recipients of grants or other funds for social services or other efforts under the Office of Faith-Based and Community Initiatives programs be required by the federal and state agencies that are involved to consult with each tribal government at the local level before implementation of any programs in reservation communities in order to allow for self-determination in the implementation of these programs.

BE IT FURTHER RESOLVED, that efforts such as the federal American Indian Welfare Reform Act proposed by Senator Max Baucus be supported in order to provide the tools for self-determination and culturally relevant efforts to address self-sufficiency among tribal TANF recipients and tribal communities, and that efforts of self-determination of all tribal nations be culturally relevant and be determined at the most local level by the tribal leaders.

Adopted March 26, 2003

HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP INNOVATIVE PROGRAMS WITHIN THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM THAT DIVERT FAMILIES FROM RECEIVING CASH ASSISTANCE AND THAT PROVIDE A PATHWAY OUT OF POVERTY.

WHEREAS, the goal of the Temporary Assistance for Needy Families (TANF) program is to assist families in achieving economic self-sufficiency, but the evaluation of the Montana program shows that families who leave the program do not attain self-sufficiency and remain in low-income jobs with limited, if any, benefits; and

WHEREAS, the TANF caseload has recently increased and the limited funding only allows for cash assistance payments and minimal work experience programs to ensure that the state meets its work participation rate; and

WHEREAS, Montana's Human and Community Services Division is committed to assisting families to move out of poverty, not locking them into minimum wage employment that keeps them in poverty; and

WHEREAS, Montana has successful initial experience with asset-building programs, assisting over 175 low-income families in Missoula, Billings, and Helena to build individual development accounts and to use them to go to school, start businesses, and become homeowners; and

WHEREAS, low-income families need a stable income package so that they can achieve personal savings and commercial credit to build assets.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services be encouraged to develop an innovative program within the Temporary Assistance to Needy Families program that diverts families, including Native American families, from the assistance program and provides a pathway out of poverty. The program should:

(1) assist families to build assets, such as personal savings and commercial credit, and use individual development accounts;

(2) provide a stable income base on which to build;

(3) assist participation in post-secondary education and high-wage training;

(4) coordinate access to any other support programs for which a family may qualify including Medicaid and child care; and

(5) not count against the time limits for assistance, but it is not the intent of the Legislature to extend the 5-year limit on TANF assistance.

Adopted April 5, 2003

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE GOVERNOR, THE MONTANA CONGRESSIONAL DELEGATION, AND THE U.S. SECRETARY OF THE INTERIOR SEEK THE IMMEDIATE DELISTING OF THE GRAY WOLF AND THE RETURN OF CONTROL OF THE WOLF TO THE STATE; URGING MONTANA OFFICIALS TO ACTIVELY PURSUE THE DELISTING EFFORT ON TERMS FAVORABLE TO MONTANA AND RECOMMENDING CERTAIN SPECIFIC TERMS FOR DELISTING; AND URGING THE STATE ATTORNEY GENERAL TO JOIN THE STATE IN ANY LEGAL ACTION BROUGHT TO BLOCK THE WOLF DELISTING PROCESS.

WHEREAS, the gray wolf has been protected by the U.S. Fish and Wildlife Service under the federal Endangered Species Act, notwithstanding plentiful numbers of wolves in Alaska and Canada; and

WHEREAS, because of the protection afforded by the Endangered Species Act, gray wolves have been reintroduced into and have become reestablished in Montana; and

WHEREAS, estimates of current Montana wolf population numbers vary from 250 to 300 wolves; and

WHEREAS, professional biological wolf studies in Alaska, Minnesota, and Canada have found that as long as wolves have prey animals to feed upon, wolf populations may expand at a rate of up to 34% a year; and

WHEREAS, this studied rate of wolf population growth is consistent with wolf population expansion observed in Montana, Idaho, and Wyoming; and

WHEREAS, wolves in Montana currently feed primarily on elk and disproportionately on young replacement elk born in the spring of each year; and

WHEREAS, elk may compose up to 80% of a wolf's diet; and

WHEREAS, the Montana Department of Fish, Wildlife, and Parks estimates that there are about 94,000 elk in Montana; and

WHEREAS, given the documented rate of uncontrolled wolf population expansion, the expected consumption rate of elk by wolves, and the limited supply of elk in Montana, it is reasonable to project devastation of Montana elk herds by wolves if the expansion of wolf populations is not aggressively controlled very soon; and

WHEREAS, unchecked predation by wolves will reduce hunting opportunities for the people of Montana; and

WHEREAS, in addition to impacting Montana's long heritage and culture of hunting, these negative impacts will also have a profound economic consequence for Montana people and communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor, the Montana Congressional Delegation, and the U.S. Secretary of the Interior be strongly urged to aggressively seek the immediate delisting of the gray wolf and the complete return of control over and management of wolves in Montana to Montana.

BE IT FURTHER RESOLVED, that Montana resist federal pressure to accept wolf delisting on terms unfavorable to Montana and that the Governor and the Montana Department of Fish, Wildlife, and Parks be urged not to accept wolf delisting unless the terms of delisting are favorable to Montana and include:

(1) funding for wolf management from federal sources;

(2) a definition of "breeding pair" that includes only one breeding male and one breeding female of any wolf pack and their single litter of pups under 6 months of age; and

(3) complete abandonment of federal enforcement authority over wolves.

BE IT FURTHER RESOLVED, that if any wolf delisting opponent files a lawsuit to block or restrict any planned or actual delisting of wolves by the U.S. Fish and Wildlife Service, the Montana Attorney General be urged to immediately join the state in that lawsuit to vigorously protect the interests of Montana in gaining wolf delisting.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Governor, the Montana Congressional Delegation, the Montana Attorney General, the Director of the Montana Department of Fish, Wildlife, and Parks, the U.S. Secretary of the Interior, and the Director of the U.S. Fish and Wildlife Service.

Adopted April 11, 2003

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ENACT AND THE PRESIDENT OF THE UNITED STATES TO APPROVE LEGISLATION TO ALLOW TAXPAYERS TO DEDUCT SALES TAXES ON THEIR FEDERAL INCOME TAX RETURN.

WHEREAS, national economic studies show that states that rely on sales taxes for governmental revenue generally experience stronger economic growth than those states that rely on income taxes for governmental revenue; and

WHEREAS, until 1986, federal law allowed taxpayers to deduct sales taxes on their federal income tax return; and

WHEREAS, the Tax Reform Act of 1986 removed the ability of taxpayers to deduct sales taxes on their federal income tax return; and

WHEREAS, not allowing the deduction of sales taxes on the federal income tax return discriminates against those states that do not impose income taxes and is counterproductive to economic growth; and

WHEREAS, a major impediment preventing Montana from switching from the income tax to a sales tax is the higher federal tax burden that Montana taxpayers would face because they would not be allowed to deduct sales taxes on their federal income tax return; and

WHEREAS, the United States Congress has recently considered legislation to restore the deduction of sales taxes on the federal income tax return; and

WHEREAS, federal policy should encourage states to develop tax policies, including the use of sales taxes to fund government services, that encourage economic growth.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urge Congress to enact and the President of the United States to approve legislation to allow taxpayers to deduct sales taxes paid on their federal income tax return.

BE IT FURTHER RESOLVED, that the Legislature encourage the Montana Congressional Delegation to work in its respective houses of Congress for the enactment of federal legislation that would allow taxpayers to deduct sales taxes paid from their federal income tax return.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Montana.

Adopted March 24, 2003

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY REGARDING MONTANA'S SHARE OF WATER FROM THE INTERSTATE TRIBUTARIES PURSUANT TO THE YELLOWSTONE RIVER COMPACT.

WHEREAS, the Yellowstone River Compact defines the "interstate tributaries" to include the following rivers that contribute to the flow of the Yellowstone River in the State of Montana, along with tributaries of these rivers: the Clarks Fork of the Yellowstone River, the Big Horn River (except the Little Big Horn River), the Tongue River, and the Powder River; and

WHEREAS, the agricultural communities along the interstate tributaries of the Yellowstone River depend on a sufficient supply of high-quality water for their livelihood and survival; and

WHEREAS, these agricultural communities have not been receiving a sufficient supply of water to meet their needs; and

WHEREAS, the headwaters of the interstate tributaries are in Wyoming; and

WHEREAS, because of concern that the waters of the interstate tributaries would soon become fully appropriated by Wyoming, in 1932 the State of Montana began urging the state of Wyoming to negotiate a compact to divide the waters of the interstate tributaries between Montana and Wyoming; and

WHEREAS, after 18 years of negotiations, in 1951, Montana, Wyoming, and North Dakota agreed to the terms of the Yellowstone River Compact, which is codified in Title 85, chapter 20, part 1, MCA; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, provides that all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River existing in each signatory state as of January 1, 1950, are recognized and must continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, provides that all appropriative rights to the beneficial uses of the waters of the interstate tributaries of the Yellowstone River acquired after January 1, 1950, are subject to distribution in the states of Montana and Wyoming in accordance to the percentages in the different basins as provided in Article V of the Compact; and

WHEREAS, the purpose of the Yellowstone River Compact stated in section 85-20-102, MCA, is to enable the State of Montana and the Yellowstone River Compact Commission to comply with and to administer the percentage allocations as provided in Article V of the Compact; and

WHEREAS, Montana has not documented the receipt of its lawful share of water under the Yellowstone River Compact since ratification of the Compact; and

WHEREAS, inflows from the Tongue River to the Tongue River Reservoir were measured at all-time lows in the summer of 2001; and

WHEREAS, the Tongue River Reservoir did not receive sufficient water to provide the agricultural producers in the Tongue River drainage with enough water for irrigation in 2000, 2001, and 2002; and

WHEREAS, the shortage of water in these years resulted in diminished crop yields; and

WHEREAS, the reasons for recent low water flows in the interstate tributaries must be documented before Montana can develop a sound strategy for receiving, storing, and distributing Montana's water; and

WHEREAS, Montana's acceptance of the Yellowstone River Compact was based in part on assurances that large federal water storage projects would be built on the interstate tributaries; and

WHEREAS, except for the Yellowtail Dam, the federal water projects have not been built; and

WHEREAS, the distribution of water between Montana and Wyoming, as provided in Article V of the Yellowstone River Compact, has not been implemented; and

WHEREAS, the distribution of water under the Compact cannot be implemented without federal water storage projects to store the water for distribution in Montana; and

WHEREAS, the State of Montana has entered into compacts with the Northern Cheyenne Tribe and the Crow Tribe that affect the allocation of water from the interstate tributaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) investigate whether Montana is receiving its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact; and

(2) if the investigation determines that Montana is not receiving its lawful share of water, make recommendations regarding how to ensure that Montana receives its lawful share of water from the interstate tributaries pursuant to the Yellowstone River Compact.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 26, 2003

HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM REVIEW OF THE MONTANA SUBDIVISION AND PLATTING ACT AND RECOMMENDATIONS FOR LEGISLATION TO REVISE THE ACT SO THAT IT IS CLEAR, CONCISE, LOGICALLY ORGANIZED, AND IN CONFORMANCE WITH THE BILL DRAFTING MANUAL; AND REQUESTING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE.

WHEREAS, clear, concise, and logically organized laws benefit all Montanans by increasing efficiency, reducing confusion, minimizing litigation, and providing for consistent application of the laws; and

WHEREAS, in recent legislative sessions, sections of Title 76, chapter 3, MCA, the Montana Subdivision and Platting Act, have been amended several times; and

WHEREAS, this piecemeal approach to amendment of the Montana Subdivision and Platting Act has resulted in laws that are not always clear, concise, logically organized, or consistently applied; and

WHEREAS, for example, the procedures for review of minor subdivisions are codified in two different parts of Title 76, chapter 3, MCA; and

WHEREAS, for example, section 76-3-103, MCA, defines terms that are not used in the Montana Subdivision and Platting Act; and

WHEREAS, for example, the term "minor subdivision" is used and not defined in the Montana Subdivision and Platting Act.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review Title 76, chapter 3, MCA, and make recommendations for legislation to facilitate the consistent application of the laws by revising that chapter in a way that is clear, concise, logically organized, and in conformance with the Bill Drafting Manual published by the Legislative Services Division.

BE IT FURTHER RESOLVED, that, if the review is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the review, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the review, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 25, 2003

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN INTERIM COMMITTEE TO STUDY ISSUES ASSOCIATED WITH WATER RIGHTS FOR PRIVATE PONDS FOR FISH, WILDLIFE, RECREATIONAL, WETLAND, AESTHETIC, AND GRAVEL MINING USES; AND REQUESTING A REPORT OF THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE STUDY TO THE 59TH LEGISLATURE AND THE GOVERNOR.

WHEREAS, Montana's scarce water resources are of vital importance to the state, its environment, and its citizens for existing and future prosperity; and

WHEREAS, as a result of Montana's arid climate, water has been appropriated from Montana's rivers and streams under the prior appropriation doctrine for more than 100 years; and

WHEREAS, many of Montana's river basins are now closed to new appropriations; and

WHEREAS, Montanans will increasingly find more basins closed by either the Legislature or the Department of Natural Resources and Conservation because of overappropriation of water; and

WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can adversely impact historic water users; and

WHEREAS, continuing diversions from Montana's overappropriated rivers and streams can adversely impact existing wetlands, native fisheries, and other aquatic values; and

WHEREAS, the number of applications for new water rights for ponds in Montana has been increasing, even in closed river basins; and

WHEREAS, it is difficult to quantify the minimum or maximum amount of water needed for ponds for fish, wildlife, recreational, wetland, or aesthetic uses; and

WHEREAS, the impacts to a stream system resulting from a diversion of water from that stream for a pond can be much greater than the impacts resulting from an instream use of water that is nonconsumptive; and

WHEREAS, under Article IX, section 3, of the Montana Constitution, all waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law; and

WHEREAS, under Article IX, section 3, of the Montana Constitution, the Legislature shall provide for the administration, control, and regulation of water rights.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee to:

(1) evaluate whether or not water use for private ponds for fish, wildlife, recreational, wetland, or aesthetic uses should be considered a beneficial use of water under Montana law;

(2) if private ponds for fish, wildlife, recreational, wetland, or aesthetic uses are to be considered beneficial uses, evaluate whether or not criteria or limits should be established to determine the size of a pond or the amount of water used for a pond that can be considered a beneficial use;

(3) evaluate what measures, if any, are needed to address:

(a) the proliferation of private ponds in Montana that are being constructed without first seeking or obtaining water rights; and

(b) the proliferation of ponds associated with gravel mining operations;

(4) examine the definition of "nonconsumptive use" and:

(a) evaluate whether or not additional criteria should be established to determine whether or not a water use is a nonconsumptive use; and

(b) identify what presumptions, if any, should be applied to the term "nonconsumptive"; and

(5) evaluate any other issues related to the use of water for private ponds for fish, wildlife, recreational, wetland, aesthetic, or gravel mining uses.

BE IT FURTHER RESOLVED, that the interim committee seek information and ideas from the following parties in the process of evaluation and before reaching conclusions and making recommendations for future legislative action:

(1) the Department of Natural Resources and Conservation;

(2) the Department of Fish, Wildlife, and Parks;

(3) Montana water right holders and water users;

(4) organizations representing water right holders and water users, including but not limited to organizations representing agricultural water users, wildlife and wetland conservation interests, anglers, water-based recreational users, and water right consultants;

(5) organizations representing the land development industry and the real estate industry; and

(6) other interested persons or organizations.

BE IT FURTHER RESOLVED, that the interim committee may request assistance from any agency of state government, the Montana University System, organizations, and knowledgeable citizens, in addition to receiving staff support from the Legislative Services Division.

BE IT FURTHER RESOLVED, that the committee prepare a report of its findings, conclusions, and recommendations by September 15, 2004, and submit the report to the 59th Legislature and the Governor.

Adopted April 26, 2003

HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE SURFACE WATER AND GROUND WATER IMPACTS OF THE ABANDONED ZORTMAN AND LANDUSKY MINE SITES ON THE MILK AND MISSOURI RIVER WATERSHEDS AND THE EFFECTIVENESS OF THE STATE RECLAMATION EFFORTS AT THE ZORTMAN AND LANDUSKY MINE SITES IN PROTECTING THE WATERSHEDS; AND REQUESTING THAT THE RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE.

WHEREAS, Pegasus Gold Corporation (Pegasus), through its subsidiary, Zortman Mining Incorporated (ZMI) and its predecessors, owned and operated the Zortman mine and the Landusky mine located in the Little Rocky Mountains of Phillips County, Montana, from 1979 until ZMI entered Chapter 7 bankruptcy in 1998 and abandoned the site; and

WHEREAS, the State of Montana's Department of Environmental Quality (DEQ) is presently directing the land reclamation and water treatment activities and operating the water treatment plants at the mine sites; and

WHEREAS, in 2002, the Bureau of Land Management and the DEQ prepared a joint supplemental environmental impact statement to evaluate alternatives for the final reclamation of the Zortman and Landusky mine sites; and

WHEREAS, the effectiveness and sufficiency of the current and proposed reclamation are not universally acceptable, and the reclamation is admittedly underfunded; and

WHEREAS, water discharges from the mine sites require treatment efforts, possibly into perpetuity; and

WHEREAS, the Little Rocky Mountains are upland water recharge areas for several watersheds and tributaries that supply the Milk River and the Missouri River; and

WHEREAS, current reclamation plans for water treatment at the mine sites contemplate the complete cessation of water treatment as soon as the year 2028.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review the reclamation efforts at the Zortman and Landusky mine sites to:

(1) identify the impacts on surface water and ground water, including the recent degradation of Swift Gulch, attributable to past or present activities at the mine sites;

(2) determine if there are identifiable downstream impacts on the Milk and Missouri River drainages attributable to past or present activities at the mine sites;

(3) determine whether the surface water and ground water resources in the watersheds affected by the mine operations are being protected by the current or proposed state reclamation; and

(4) determine the potential impacts to surface water and ground water resources if additional funding for water treatment and reclamation does not become available.

BE IT FURTHER RESOLVED, that the study be conducted by reviewing available research reports and by soliciting testimony and information from knowledgeable individuals, academic institutions, and the appropriate local, state, tribal, and federal agencies.

BE IT FURTHER RESOLVED, that, in particular, representatives of the Fort Belknap Reservation Environmental Department be included in the study and participate in developing findings and recommendations.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 26, 2003

HouseResolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

H10-10. House officers. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule. Prior to making committee assignments, the Speaker shall take into consideration the recommendations of the minority leader for minority committee assignments and the appointment of the minority vice chairmen. For the Rules Committee, the Speaker shall determine the total number of members and the party division, but each party shall appoint its own members. The Speaker may appoint an additional at-large member to the Rules Committee from either party.

(5) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(6) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(7) The Speaker is the chief officer of the House, with authority for all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

(8) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Services Division librarian, who shall arrange to have them copied in an archivable format. A copy will be provided to the Legislative Services Division and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a copy of the minutes from the appropriation committee and subcommittees. After copying, the original minutes will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-80;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, “For what purpose does the member rise?” or “For what purpose does the member seek recognition?” and may then decide if recognition is to be granted. There is no appeal from the Speaker’s or presiding officer’s decision.

H20-20. Questions of order and privilege. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, “Shall the decision of the chairman be sustained?”.

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H20-70. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-80. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

H20-90. Violation of rules. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority floor leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

H30-10. House standing committees — appointments. (1) The Speaker shall determine the total number of members and the party division and shall appoint the members to the following standing committees: Agriculture; Appropriations; Business and Labor; Education; Ethics; Federal Relations, Energy, and Telecommunications; Fish, Wildlife, and Parks; Transportation; Human Services; Judiciary; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; and Taxation.

(2) The Speaker shall appoint the chairman, vice chairman, and minority vice chairman of each standing committee while retaining the authority to remove and replace any chairman, vice chairman, or minority vice chairman at any time. The appointment or removal of a minority vice chairman requires the consent of the minority leader. The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(3) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

H30-20. Chairman's duties. The principal duties of the chairman of standing or select committees are to:

(1) preside over meetings of the committee and to put all questions;

(2) maintain order and decide all questions of order subject to appeal to the committee;

(3) supervise and direct staff of the committee;

(4) have the committee secretary keep the official record of the minutes;

(5) sign reports of the committee and submit them promptly to the Chief Clerk;

(6) appoint subcommittees to perform on a formal or an informal basis; and

(7) inform the Speaker of committee activity.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, majority leader, and minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits submitted in writing.

H30-50. Procedures. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) The committee shall act on each bill in its possession:

(a) by reporting the bill out of the committee:

(i) with the recommendation that it be referred to another committee;

(ii) favorably as to passage; or

(iii) unfavorably; or

(b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(6) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Services Division after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Services Division.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment

by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

H40-80. Rereferral. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be

processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the

Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered or unless the legislation is rereferred to a committee.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) reconsider;

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(d) through (1)(g) are nondebatable but may be amended. Once a motion under subsection (1)(b) or (1)(c) is made, a contrary motion is not in order.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) A representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority floor leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it may be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill.

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules;

(k) all incidental motions, such as motions relating to voting or of a general procedural nature; and

(l) to appeal a call to order.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. Except as provided in H40-180, a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt (two-thirds);

(5) a motion to temporarily suspend a joint rule governing the procedure for handling bills (two-thirds).

Members Present and Voting

(1) a motion to override the Governor's veto (two-thirds);

(2) a call of the House with a quorum (one-third);

(3) a motion to lift a call of the House (two-thirds);

(4) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths);

(5) a motion to withdraw a bill from a committee (three-fifths);

(6) a motion to add legislation to the second or third reading agenda (three-fifths);

(7) a motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fifths);

(8) a motion to change a vote (unanimous);

(9) a motion to call for cloture (two-thirds);

(10) a motion to take from the table in Committee of the Whole (three-fifths).

Members Voting

(1) a motion to amend or suspend rules (two-thirds);

(2) a motion to overturn an adverse committee report (three-fifths);

(3) a motion to record a vote (one representative);

(4) a motion to spread a vote on the journal (two representatives);

(5) an appeal of the ruling of the presiding officer (three representatives);

(6) a motion to speak more than once on a debatable motion (unanimous vote);

(7) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature).

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may be only one reconsideration vote on a specific issue on a legislative day.

H50-170. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

H50-200. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-210. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading.

H50-220. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-230. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-240. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6

Motions

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;

(8) to divide a question;

(9) to postpone consideration to a day certain;

(10) to suspend the rules; and

(11) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) The vote by which a motion to table is carried or fails cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, “Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass).”

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____ for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7

Rules

H70-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (2000) governs House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Adopted Jan u ary 9, 2003

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE DISTINGUISHED SERVICE OF UNITED STATES SEAGOING MARINES AND THE NAVAL CRUISE SHIP,

USS HELENA, AND DESIGNATING NOVEMBER 2003 AS UNITED STATES SEAGOING MARINES MONTH.

WHEREAS, seagoing marines have served aboard ships of the United States Navy from 1775 to 1998; and

WHEREAS, for 223 years, the seagoing marines participated in every naval campaign and battle to safeguard the freedom and liberty that all Montanans expect and enjoy today; and

WHEREAS, the USS Helena CL-50 was at Pearl Harbor on December 7, 1941, when the Japanese attacked and, because the ship was in the berth normally assigned to the Pennsylvania, became a prime target, but the ship survived the attack and later gave the Japanese occasion to regret their failure to destroy it; and

WHEREAS, in 1942, the USS Helena entered action in Guadalcanal, where the long and bloody battle for the island was then beginning, and on September 15, 1942, with guns blazing, the USS Helena rescued nearly 400 of the officers and crew of the Wasp (AV-7); and

WHEREAS, the USS Helena again saw action on October 11, 1942, in the Battle of Cape Esperance in Iron Bottom Sound, protecting vital transports into Guadalcanal during which the USS Helena was the first to engage the enemy and sank the cruiser Furutaka and the destroyer Fubuki; and

WHEREAS, the USS Helena saw action several times during the climactic Naval Battle of Guadalcanal in November 1942, which the USS Helena witnessed from its beginning while escorting a supply echelon from Espiritu Santo to Guadalcanal; and

WHEREAS, the USS Helena was assigned to several bombardments of Japanese positions on New Georgia during January 1943, and the ship's guns rocked the enemy at Munda and Vila Stanmore, leveling vital supply concentrations and gun emplacements; and

WHEREAS, USS Helena's intense and rapid-fire bombardment in support of troop landings during the invasion of New Georgia made the ship a prime target, and it was hit by three Japanese torpedoes, which sank the USS Helena; and

WHEREAS, during the USS Helena's final moments, with the bow protruding from the water, the USS Helena served as a lifeboat to many of the survivors until they were rescued before the USS Helena sank; and

WHEREAS, other armed service personnel from the USS Helena endured many dramatic and harrowing hours and days before being finally rescued, with 168 of the USS Helena's crew of 900 perishing; and

WHEREAS, the USS Helena was the first ship to receive the Navy Unit Commendation for the ship's actions in the Battle of Cape Esperance, Guadalcanal, and in Kula Gulf; and

WHEREAS, the USS Helena also earned the Asiatic-Pacific Area Campaign medal with seven stars; and

WHEREAS, it is fitting and proper that the valiant deeds of the USS Helena and the ship's crew and all seagoing marines and their vessels be recognized and celebrated by the citizens of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the State of Montana recognize the dedicated service of the seagoing marines and, in commemoration of the USS Helena's service during the Naval Battle of Guadalcanal in November of 1942, declare the month of November 2003 as United States Seagoing Marines month.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the United States Seagoing Marine Association.

Adopted Feb ru ary 13, 2003

HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REJECTING THE LEGISLATIVE PLAN THAT THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION SUBMITTED TO THE LEGISLATURE.

WHEREAS, the Montana Districting and Apportionment Commission submitted its legislative redistricting plan to the Legislature on January 6, 2003, as required by Article V, section 14, of the Montana Constitution; and

WHEREAS, the Joint Select Committee on Districting and Apportionment has received and considered testimony on the plan; and

WHEREAS, the House of Representatives contends that the 5% population deviation allowance contained in the plan was used for partisan gain, that the Constitution is clear in language that the districts "shall be as nearly equal in population as is practicable", and that a 1% population deviation, or less, is both practical and possible; and

WHEREAS, the House of Representatives contends that the majority of the Commission ignored the mandatory, constitutional criterion of "compact" districts in creating several House and Senate Districts that are over 200 miles from one end to the other; and

WHEREAS, the House of Representatives contends that the American Indians have been isolated and that other minority groups were ignored when several districts in Montana were established; and

WHEREAS, the House of Representatives contends that race was used as the predominant criterion in tentatively establishing six House Districts and three Senate Districts in blatant violation of the mandatory criterion that race may not be the predominant factor to which the traditional discretionary criteria are subordinated; and

WHEREAS, the Commission failed to adopt a criterion of consideration of existing district lines as the previous Commission had adopted; and

WHEREAS, the Commission has disregarded, in several instances, the discretionary criteria adopted by the Commission on April 18, 2001, by dividing many towns, cities, and counties, while giving little or no regard to keeping communities of interest intact; and

WHEREAS, the arbitrary assignment of holdover Senators to districts that did not elect them is at best wrong, blatantly unethical, and simply unfair to the electors; and

WHEREAS, the Legislature is required to return the plan to the Commission with its recommendations on or before February 5, 2003.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives rejects the Legislative Redistricting Plan for the reasons stated above, requests that the Commission reconvene and adopt a plan that conforms to the mandatory and discretionary criteria as set forth by the 1972 Constitutional Convention and state and federal law, and contends that the majority of the Commission has performed a constitutional injustice to the electorate and the elected legislators of Montana, that the plan has been conceived in a mean-spirited, partisan fashion that disregards the mandatory criteria as set forth by the 1972 Constitutional Convention and the discretionary criteria adopted by the Commission itself, that the Commission's exercise in political gerrymandering is unacceptable to the citizens of the state of Montana, and that the legislative redistricting plan must be redone.

BE IT FURTHER RESOLVED, that copies of the following documents be attached to this resolution:

(1) the tapes of the hearings of the Joint Select Committee on Districting and Apportionment held on January 20, 21, and 24, 2003;

(2) written testimony submitted on January 20, 21, and 24, 2003; and

(3) a minority report from the members of the Joint Select Committee on Districting and Apportionment who support the plan.

BE IT FURTHER RESOLVED, that a copy of this resolution be kept on file by the Secretary of State and that copies be sent by the Secretary of State to the presiding officer and each member of the Montana Districting and Apportionment Commission.

Adopted Feb ru ary 4, 2003

HOUSE RESOLUTION NO. 4

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING MONTANA'S ARMED FORCES PERSONNEL IN OPERATION IRAQI FREEDOM.

WHEREAS, more than 1,000 armed forces personnel from the State of Montana are presently in the Persian Gulf region; and

WHEREAS, Montanans in the Persian Gulf region are serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, and National Guard in a wide variety of duty assignments; and

WHEREAS, Montanans have a long and distinguished heritage of service to our nation in times of military conflict; and

WHEREAS, the brave personnel from our state are continuing the Montana tradition of commitment and sacrifice at their duty stations in the Persian Gulf region; and

WHEREAS, those called up to support bases and protect cities here in the United States and in foreign countries are performing essential activities and are replacing troops sent to the Middle East; and

WHEREAS, the families of the service personnel are contributing by keeping the home fires burning.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature express the deep feeling of all Montanans in this affirmation of support and gratitude to the courageous service personnel from Montana now assigned to the current operation in the Persian Gulf.

(2) That it is the hope of the people of Montana that:

(a) the mission of the forces in the Persian Gulf region be accomplished quickly and that Montanans and other service personnel serving in the current operation will soon return home safely;

(b) long-lasting peace be brought to the nation of Iraq with a minimum loss of life to members of our Armed Forces and to the innocent civilians in the region; and

(c) when making decisions of war and peace in the current operation, our Commander-in-Chief be guided by wisdom and good judgment.

(3) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation and to Montana service personnel informing them that the heartfelt thanks of all Montana are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted April 12, 2003

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING AND ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs.

10-70. Telephone calls and internet access. (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable

for use of state telephones and internet access by their staff, including aides and interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee, the violation must be reported to the employee's supervisor or, if the offender is the supervisor, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(4) If the offended party is a supervisor, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee, the employee is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house

by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. The sponsor shall sign the clerical form to acknowledge notification of the clerical correction. The signed form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

(5) For the purposes of this rule, "engrossing" means placing amendments in a bill.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) covered with a cover page of substantial material; and

(d) introduced.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all proposed amendments must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

30-10. Committee chair. Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote.

30-60. Estimation of revenue. The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

30-70. Appointment of interim committees. As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

(1) Economic Affairs Interim Committee:

(a) Senate Agriculture, Livestock, and Irrigation Committee;

(b) Senate Business and Labor Committee;

(c) Senate Energy and Telecommunications Committee;

(d) Senate Finance and Claims Committee;

(e) House Agriculture Committee;

(f) House Business and Labor Committee;

(g) House Federal Relations, Energy, and Telecommunications Committee; and

(h) House Appropriations Committee;

(2) Education and Local Government Interim Committee:

(a) Senate Education and Cultural Resources Committee;

(b) Senate Local Government Committee;

(c) Senate Finance and Claims Committee;

(d) House Education Committee;

(e) House Local Government Committee; and

(f) House Appropriations Committee;

(3) Children, Families, Health, and Human Services Interim Committee:

(a) Senate Public Health, Welfare, and Safety Committee;

(b) Senate Finance and Claims Committee;

(c) House Human Services Committee; and

(d) House Appropriations Committee;

(4) Law and Justice Interim Committee:

(a) Senate Judiciary Committee;

(b) Senate Finance and Claims Committee;

(c) House Judiciary Committee; and

(d) House Appropriations Committee;

(5) Revenue and Transportation Interim Committee:

(a) Senate Taxation Committee;

(b) Senate Highways and Transportation Committee;

(c) Senate Finance and Claims Committee;

(d) House Taxation Committee;

(e) House Transportation Committee; and

(f) House Appropriations Committee;

(6) State Administration and Veterans' Affairs Interim Committee:

(a) Senate State Administration Committee;

(b) Senate Finance and Claims Committee;

(c) House State Administration Committee; and

(d) House Appropriations Committee.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Services Division, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) The staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each

direct the staff of the Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by:

(a) the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House; or

(b) the House and the Senate.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill cover must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter was requested by an agency or statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction must occur no later than 5 p.m. on the fifth working day prior to the convening of a legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. The following schedules must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M. Legislative Day
! General Bills and Resolutions	10
! Revenue Bills	17
! Committee Bills and Resolutions	36
! Committee Revenue Bills	62
! Committee Bills implementing provisions of a general appropriation act	75
! Bills and Resolutions must be introduced within 2 legislative days after delivery.	
! Appropriation Bills	No Deadline
! Interim study resolutions	75
! Resolutions to express confirmation of appointments	No Deadline
! Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request, but not require, a legislative entity to conduct an interim study;

(c) adopt, amend, or repeal the joint rules;

(d) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(e) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(f) submit a negotiated settlement under section 39-31-305(3), MCA;

(g) declare or terminate an energy emergency under section 90-4-310, MCA;

(h) ratify or propose amendments to the United States Constitution; or

(i) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies. A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) Unless the chief sponsor directs otherwise, the Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to

substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills originating in the Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 82nd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 82nd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

(b) Amendments to the resolutions must be transmitted to the house of origin no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

Adopted Jan u ary 30, 2003

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING A HEALTHY SCHOOL ENVIRONMENT BY URGING SCHOOL DISTRICTS TO OFFER NUTRITIOUS FOOD AND BEVERAGE CHOICES AND PROVIDE OPPORTUNITIES FOR PHYSICAL ACTIVITY WHENEVER POSSIBLE.

WHEREAS, obesity in children is a national epidemic and can lead to chronic diseases, such as heart disease, stroke, diabetes, and cancer; and

WHEREAS, the majority of children's diets are not meeting national nutrition recommendations; and

WHEREAS, children make food and beverage choices in a variety of school settings, including school breakfast and lunch, the use of vending machines, the purchase of concessions, and after school programs; and

WHEREAS, Medicaid and health care costs are a growing issue of concern in Montana and are significantly impacted by obesity; and

WHEREAS, good nutrition and adequate physical activity help children grow, develop, and do well in school; and

WHEREAS, healthy bodies and minds are major contributors to readiness to learn, to improved school attendance, and to improved performance in sports and other extracurricular activities; and

WHEREAS, school-based nutrition education and physical activity support healthy eating habits and an active lifestyle; and

WHEREAS, wholesome foods produced in Montana should be available and actively promoted in a healthy school environment; and

WHEREAS, the Legislature needs to identify long-term strategies to reduce the need for public assistance programs, such as Medicaid, and to lower health care costs related to chronic diseases and poor dental health.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature support implementation of school policies that ensure a healthy environment in our schools and that encourage children to eat well and be physically active throughout the school day.

BE IT FURTHER RESOLVED, that the Montana Legislature urge local school districts to offer nutritious food and beverage choices and provide opportunities for physical activity whenever possible.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Superintendent of Public Instruction for distribution to every school district in Montana.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS TO ADOPT POLICIES GRANTING A MEMBER OF THE MILITARY WHO IS CALLED OR ORDERED TO ACTIVE MILITARY DUTY OTHER THAN ACTIVE DUTY FOR TRAINING, INCLUDING, IN THE CASE OF MEMBERS OF THE MONTANA NATIONAL GUARD, ACTIVE DUTY AS PROVIDED FOR IN ARTICLE VI, SECTION 13, OF THE MONTANA CONSTITUTION, AN EDUCATIONAL LEAVE OF ABSENCE UPON RELEASE FROM ACTIVE DUTY; URGING RESTORING A MEMBER UPON RELEASE FROM ACTIVE DUTY TO THE EDUCATIONAL STATUS ATTAINED PRIOR TO BEING CALLED OR ORDERED INTO ACTIVE

DUTY; AND URGING REFUNDING OF TUITION OR FEES PAID BY A MILITARY MEMBER WHO IS ORDERED TO ACTIVE DUTY.

WHEREAS, as commander-in-chief of the militia forces of Montana, except when forces are in the actual service of the United States, the Governor may call out any of the militia forces to aid in the execution of laws, suppress insurrection, repel invasion, or protect life and property in natural disasters or disasters caused by human activity; and

WHEREAS, from July 23, 2000, to September 7, 2001, 2,076 soldiers and aircrew members from the Montana Army and Air National Guard were called for state active duty in support of 17 wildland fire incidents in Montana; and

WHEREAS, since the terrorist attacks on September 11, 2001, the Montana Army and Air National Guard have mobilized and deployed more than 1,200 soldiers and aircrew members for active military duty, including state and federal active duty to support federal security operations and security operations for the National Emergency Managers Conference in Big Sky, Montana, to support Operation Enduring Freedom in Southeast Asia and stabilization forces in Bosnia, to support federal efforts for Operation Installation Security in Montana and support for Operation Airport Security by deploying soldiers and aircrew to protect Montana's 14 airports, to provide security for the 2002 Winter Olympics in Utah, and to support federal security efforts by providing soldiers at 10 points of embarkation along the Montana-Canadian border; and

WHEREAS, these mobilizations and deployments of Montana Army and Air National Guard members include many students whose call to active military duty requires them to suspend their education at Montana postsecondary institutions; and

WHEREAS, a student who is called or ordered to active military duty after enrolling in a postsecondary institution suffers the financial hardship caused by absences from school after enrollment, the loss of an opportunity to receive credit for courses, the loss of priority status for reenrollment in courses upon return from active military duty, and the possible loss of scholarships, grants, and fee waivers; and

WHEREAS, the granting of educational benefits in lieu of direct funding remains one of the most effective tools for recruiting and retaining a trained and ready military force.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents be strongly urged to adopt a policy:

(1) granting a military leave of absence from education to a member of the Montana National Guard or other reserve component of the United States armed forces who is called or ordered to active duty other than active duty for training, including, in the case of a member of the Montana National Guard, a member who is called or ordered to active state duty as provided for in Article VI, section 13, of the Montana Constitution;

(2) restoring a member on military leave of absence to the full educational benefits that the member had attained prior to being called or ordered to active military duty, including any academic credits earned or scholarships, grants, or fee waivers received; and

(3) refunding 100% of tuition or fees paid by the member of the Montana National Guard or other reserve component of the United States armed forces for the term in which the member was called to active duty.

Adopted March 20, 2003

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING DELISTING OF THE WOLF PURSUANT TO THE FEDERAL ENDANGERED SPECIES ACT OF 1973; REQUESTING THAT CONGRESS ESTABLISH AND FUND THE NORTHERN ROCKY MOUNTAIN GRIZZLY BEAR AND GRAY WOLF NATIONAL MANAGEMENT TRUST; REQUESTING THAT WOLF POPULATION MANAGEMENT METHODS INCLUDE NONLETHAL AND LETHAL METHODS; ENCOURAGING THE FISH, WILDLIFE, AND PARKS COMMISSION TO RECLASSIFY THE GRAY WOLF WHEN REGULATION OF THE WOLF POPULATION IS NEEDED; AND REQUESTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR THE DEPARTMENT OF LIVESTOCK TO ADDRESS LIVESTOCK DEPREDATIONS EXPEDITIOUSLY.

WHEREAS, since 1973, the gray wolf has been protected in Montana, Idaho, and Wyoming under the federal Endangered Species Act of 1973; and

WHEREAS, the gray wolf has been listed as an endangered species pursuant to Montana's Nongame and Endangered Species Conservation Act since 1975; and

WHEREAS, through natural recovery in Montana beginning about 1982 and through reintroduction of wolves by the federal government to Idaho and Wyoming in 1995 and 1996, the number of wolves has increased dramatically in Montana, Idaho, and Wyoming; and

WHEREAS, the U.S. Fish and Wildlife Service determined that the delisting process would be initiated when a total of 30 breeding pairs of wolves, with an equitable distribution throughout the states of Montana, Idaho, and Wyoming, has been documented for 3 successive years; and

WHEREAS, at least 30 breeding pairs were documented in 2000, 2001, and 2002; and

WHEREAS, some wolf packs are causing serious problems with depredations upon livestock and pets in certain areas; and

WHEREAS, wolves, mountain lions, bears, and coyotes have collectively had a major impact on big game populations in some areas; and

WHEREAS, many Montanans feel that it is time for the state to take over management of the gray wolf from the federal government; and

WHEREAS, the federal government will continue to manage gray wolves until gray wolves are delisted under the federal Endangered Species Act and the state has an approved management plan and an adequate regulatory framework; and

WHEREAS, the 2001 Montana Legislature passed a law establishing an adequate regulatory framework for management of the gray wolf upon delisting by the federal government; and

WHEREAS, Montana has had a citizen Wolf Management Advisory Council, appointed by the Governor, working to develop a management plan, and that Council held hearings throughout Montana in 2002; and

WHEREAS, all Americans should share in the costs of management of species listed under the federal Endangered Species Act.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the U.S. Fish and Wildlife Service recognize that Montana has a viable management plan and is ready to assume management responsibility for the gray wolf and that the U.S. Fish and Wildlife Service delist the gray wolf as quickly as possible.

BE IT FURTHER RESOLVED, that federal funding be provided to Montana from a permanently established federal trust set up for future management purposes, not from annual appropriations that may be eliminated in the future.

BE IT FURTHER RESOLVED, that the U.S. Congress establish and provide funding for the Northern Rocky Mountain Grizzly Bear and Gray Wolf National Management Trust, proposed by the Governors of Montana, Idaho, and Wyoming.

BE IT FURTHER RESOLVED, that wolf population management in Montana include the full range of management tools, from nonlethal to lethal.

BE IT FURTHER RESOLVED, that the Montana Fish, Wildlife, and Parks Commission be encouraged to reclassify the wolf as a big game animal or a furbearer, with regulated public harvest, when regulation of the wolf population is needed.

BE IT FURTHER RESOLVED, that upon delisting of the gray wolf pursuant to the federal Endangered Species Act, the Montana Department of Fish, Wildlife, and Parks or the Montana Department of Livestock address livestock depredations caused by wolves as expeditiously as possible, using lethal wolf control when necessary.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be apprised of the extreme gravity of the matter and be urged to take action to expedite the delisting.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the U.S. Fish and Wildlife Service, the presiding officers of each house of the Legislature of the states of Idaho and Wyoming, and the Governors of Montana, Idaho, and Wyoming.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR THE NATIONAL FOREST COUNTY PARTNERSHIP RESTORATION PROGRAM ESTABLISHED BY THE 106TH CONGRESS FOR IMPLEMENTATION IN NATIONAL FORESTS IN MONTANA AND OTHER WESTERN STATES.

WHEREAS, the Legislature recognizes the existence of a present and continuing threat to the lives and property of citizens of the western states of the United States and to the watersheds and multiple values contained in the forest lands of the country caused by the extreme risk of catastrophic wildfires and changed forest ecosystem conditions; and

WHEREAS, it is critical to recognize that forests are dynamic in nature; that they exhibit a variety of growth characteristics depending on species and ecological setting; that wildfire is a natural component of the evolutionary history of most western forests; that all the values of the forest, not only the human components, are important; that the health of the forest determines its susceptibility to fire and other destructive agents such as insects and disease; that continuing increments of forest growth over removals will add to excessive fuel loading and increase the fire risk; that removal of excess wood by using best forest management practices and prescribed fire decreases the probability of destructive wildfires; and that the value of excess woody material removed should help offset the expense of treatment; and

WHEREAS, in 2001, the United States Congress, with guidance from the Western Governors' Association, enacted the Department of the Interior and Related Agencies Appropriations Act (Public Law 106-291), which calls for progressive new local government and federal agency forest restoration partnership programs to reduce fire risk and restore watershed health, especially in western conifer forests; and

WHEREAS, the developing proposal for a National Forest County Partnership Restoration Program includes national forests in Montana and other western states and is designed to fully implement the direction from Congress and the Western Governors' Association; and

WHEREAS, county-led restoration programs on western public lands have focused generally on small demonstration projects to restore terrestrial wildlife habitats, protect and improve aquatic and riparian areas, restore watershed health, and reduce fire risk; and

WHEREAS, elevating the county efforts to the landscape level of western national forests would represent a powerful strategy to respond to existing critical restoration needs; and

WHEREAS, the National Forest County Partnership Restoration Program is the first effort to create a fully operational model of a county government and federal land manager partnership on a multiple national forest scale; and

WHEREAS, the program is specifically designed to accomplish the following:

(1) expand the operating scale of local government and federal land management restoration partnerships to a multistate, multiagency land base;

(2) utilize best science and a collaborative process to evaluate and restore high-risk areas of western forests;

(3) address land management planning problems of multiagency ownerships at landscape levels;

(4) improve local leadership and collaborative processes addressing federal land management programs;

(5) enhance coordination between local, federal, and tribal program jurisdictions and processes;

(6) reduce conflicts in treatment of biophysical and socioeconomic resources and address multiagency issues in planning and management, especially regarding the treatment of certain species;

(7) reduce the current lengthy periods needed for review, approval, and implementation activities;

(8) improve treatment of economic and social infrastructure issues related to both traditional and new industry as well as local custom and culture;

(9) consider treatment of fuel based on desired future forest conditions regardless of size or age;

(10) use a systematic, diagnostic approach to evaluate forest health problems;

(11) apply appropriate silvicultural methods that replicate natural forest processes;

(12) account for the cost of maintaining forest health using long-term risk analysis;

(13) consider forest products and materials to offset costs for forest health measures through development of private market end users for forest products and materials; and

(14) improve information technology for managing resources and informing the public; and

WHEREAS, the National Forest County Partnership Restoration Program for western forests is proposed for the period 2003 through 2014 and with appropriate federal funding, it is anticipated that the forest acreage most at risk to fire and forest health can be restored through this period.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature recognizes the critical roles that county governments play as partners to protect the health, welfare, and safety of their citizens and related public resources and, therefore, fully supports the National Forest County Partnership Restoration Program and the restoration and preservation of national forests in Montana and other western states.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Governor of Montana, the Western Governors' Association, the Undersecretary for Natural Resources and Environment of the United States Department of Agriculture, the Chief of the United States Forest Service, and the Montana Congressional Delegation.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THAT IN RECOGNITION OF THE IMPORTANCE OF RESPONDING TO THE DESIRES AND NEEDS OF A MAJORITY OF MONTANA'S FOREIGN GRAIN CUSTOMERS, GENETICALLY ENGINEERED WHEAT OR BARLEY BE GROWN IN MONTANA ONLY WHEN THERE IS ACCEPTANCE OF THESE GENETICALLY ENGINEERED CROPS BY A MAJORITY OF MONTANA'S FOREIGN MARKETS; RECOMMENDING THAT RESEARCH

OF GENETICALLY ENGINEERED CROPS SHOULD CONTINUE; AND ENCOURAGING REGULATORY AGENCIES TO RECOGNIZE THEIR RESPONSIBILITY AS GENETICALLY ENGINEERED CROPS ARE INTRODUCED.

WHEREAS, Montana's wheat and barley industry is a central and vital component of our state's economy; and

WHEREAS, Montana's export markets have recognized Montana wheat and barley to be among the finest in the world; and

WHEREAS, Montana has come to rely on these export customers to market a majority of Montana's grain to Pacific Rim countries; and

WHEREAS, a majority of these customers have not yet accepted genetically engineered grains; and

WHEREAS, the Legislature recognizes the importance of maintaining these foreign markets.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the introduction of genetically engineered wheat and barley for commercial production must be carefully timed so that it occurs only when there is acceptance of these crops by Montana's major customers.

(2) That research should continue in:

(a) development of crops and crop characteristics that appeal to the needs of the customer;

(b) development of crops and crop characteristics that are economically beneficial to the producer;

(c) development of safeguards to reduce outcrossing of genetically engineered crops with nongenetically engineered crops and weeds; and

(d) development of systems to reduce potential mixing of genetically engineered crops with nongenetically engineered crops.

(3) That regulatory agencies are strongly encouraged to recognize the magnitude of the responsibility that they have in the proper release of genetically engineered crops and do everything in their power to safeguard Montana's ability to meet the needs of their grain customers.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the United States Department of Agriculture, the United States Animal and Plant Health Inspection Service, the United States Federal Drug Administration, the United States Environmental Protection Agency, the Montana Department of Agriculture, and the Montana Congressional Delegation.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MEMBERS OF THE MONTANA CONGRESSIONAL DELEGATION TO INTRODUCE AND SUPPORT LEGISLATION IN THE U.S. CONGRESS TO ESTABLISH A MINIMUM LAKE LEVEL IN FORT PECK RESERVOIR.

WHEREAS, the sport fishery in Fort Peck Reservoir is of vital importance to the economy of northeast Montana and northwest North Dakota; and

WHEREAS, the State of Montana and the federal government have spent about $3 million to date on a warm water hatchery at Fort Peck to improve the warm water fishery in Fort Peck Reservoir and other state waters, and private donors have contributed an additional $200,000 toward the hatchery project; and

WHEREAS, pool elevations that are below 2,225 feet above mean sea level eliminate significant amounts of spawning and rearing habitat, thereby reducing fish numbers and greatly impairing recreational access to the reservoir, the combination of which is very detrimental to the local and regional economy; and

WHEREAS, the U.S. Army Corps of Engineers' policy regarding lake levels in Fort Peck Reservoir is devastating to fisheries above and below Fort Peck Dam and to the area economy; and

WHEREAS, a higher pool level and a more conservative approach to operating Fort Peck Reservoir will more equitably spread the effects of prolonged drought and allow for healthier river flows below Fort Peck Dam during drought; and

WHEREAS, seven of the eight states represented on the Missouri River Basin Association have consistently supported a higher level of water conservation during periods of drought.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the Montana Congressional Delegation be urged to introduce legislation in the U.S. Congress as promptly as possible to set a minimum lake level of 2,225 feet above mean sea level in Fort Peck Reservoir, except when necessary to protect fish and wildlife and their habitat in the river reach between Fort Peck Dam and Lake Sakakawea, and to use the Delegation's combined efforts in support of the legislation.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the members of the Montana Congressional Delegation.

Adopted April 2, 2003

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO REQUEST A STUDY OF THE PROBLEMS OF ALCOHOL AND DRUG ABUSE AND OF PREVENTION, EARLY INTERVENTION, AND TREATMENT.

WHEREAS, there are statewide multifaceted problems of alcohol and drug abuse and a lack of sufficient prevention, intervention, and treatment solutions to the problems; and

WHEREAS, methamphetamine abuse exemplifies the many issues involved, including extreme addiction, the dangers to people created by the production of drugs, such as ingredients and residues, and the broad range of public health issues, ranging from child endangerment and abandonment to shared needles, self-mutilation, and dental loss; and

WHEREAS, addictions involving alcohol, drugs, tobacco, and gambling often overlap for the same person and may interact with mental illness or other forms of dependency; and

WHEREAS, prevention and treatment programs need to take into consideration the holistic picture of the effects of codependency and co-occurring disorders, behaviors, and addictions on a person's mental health; and

WHEREAS, prevention and treatment issues must include affordability and availability of all effective treatment protocols, including in-state inpatient treatment; and

WHEREAS, once prevention and early intervention options are exhausted, options for treatment at all stages of the criminal justice system, including diversionary, preincarceration, sentencing, and probation and parole options, must be explored; and

WHEREAS, an effective review of many of these problems has been undertaken by Governor Martz's and Attorney General McGrath's Alcohol, Tobacco, and Other Drug Control Policy Task Force resulting in numerous proposals to the 58th Legislature, including a proposal for a drug czar or advisory committee; and

WHEREAS, effective solutions will have a price tag, but the consequences of not implementing prevention and early intervention efforts in the areas of crime, health and welfare of the workforce, and abuse, neglect, and dependence problems for children will be a higher cost to society in the future.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review the progress made by the Governor's and Attorney General's Alcohol, Tobacco, and Other Drug Control Policy Task Force and the proposals that are enacted by the 58th Legislature; and

(2) continue to identify the issues and to develop proposals for a coordinated, cooperative effort by federal, state, and local levels of government and the private sector to implement prevention and early intervention efforts, to develop and use alternatives to incarceration, and to provide appropriate treatment opportunities at the most effective time and in the most cost-effective and efficient manner.

BE IT FURTHER RESOLVED, that the interim committee is requested to work with representatives of local government, law enforcement, prosecution and defense counsel, the judiciary, corrections, probation and parole, the medical and treatment communities, those involved in public education and outreach, and with other interested persons in its research and development of recommendations.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 4, 2003

SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO INVESTIGATE OPTIONS FOR IMPROVING ENERGY EFFICIENCY BUILDING CODES LAWS AND OTHER ENERGY EFFICIENCY AND CONSERVATION PRACTICES; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 59TH LEGISLATURE.

WHEREAS, section 50-60-201, MCA, establishes the purpose of the state building code; and

WHEREAS, section 50-60-201(6), MCA, provides that the state building code must be designed to "encourage efficiencies of design and insulation that enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of the equipment"; and

WHEREAS, section 50-60-201(7), MCA, provides that the state building code must be designed to "encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems that promote the efficient use of energy"; and

WHEREAS, Montana's energy codes have not been updated since 1995; and

WHEREAS, recent advancements in technologies and techniques for creating energy-efficient buildings warrant a fresh look at Montana's policies and practices; and

WHEREAS, other states in the region and nation have recently adopted new energy codes to take advantage of these advancements and to conform to new industry-accepted standards; and

WHEREAS, the Environmental Quality Council has historically demonstrated the ability to facilitate constructive, collaborative solutions by bringing together diverse constituencies in order to address energy efficiency and state building codes issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) evaluate the state's current energy-efficient building policies and practices;

(2) investigate options for improving the energy-efficient building codes and practices in Montana; and

(3) investigate and evaluate other options for improving energy efficiency and conservation practices.

BE IT FURTHER RESOLVED, that the study consider:

(1) the results of recent state and regional studies on the characteristics of nonresidential and residential building practices;

(2) recent studies quantifying energy conservation potential in the state and region.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements and any educational materials, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 22, 2003

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO PURSUE FUNDING OPTIONS FROM FEDERAL SOURCES FOR THE DEVELOPMENT, CONSTRUCTION, AND MAINTENANCE IN LIBBY, MONTANA, OF A CENTER FOR THE STUDY OF ASBESTOS AND THE TREATMENT OF ILLNESSES RELATED TO TREMOLITE-SERIES ASBESTOS.

WHEREAS, illness from tremolite-series asbestos is a problem that extends beyond Montana to national and international levels but that afflicts Libby, Montana, in particular, a town that has the largest identified population of people suffering from diseases associated with exposure to tremolite-series asbestos; and

WHEREAS, studies reviewed by the U.S. Agency for Toxic Substances and Disease Registry identified asbestiform fibers from Libby, Montana, in concentrations higher than in samples from South Carolina and comparisons of certain samples from Virginia and South Africa also indicated reasons for concern about the asbestos-related samples from Montana; and

WHEREAS, further study of tremolite-series asbestos is important for an understanding of the health implications regarding proximity to vermiculite mines and waste products, including tremolite-series asbestos, from mining and milling vermiculite; and

WHEREAS, scientists from the U.S. Environmental Protection Agency and the U.S. Agency for Toxic Substances and Disease Registry have begun studying the residents of Libby in relation to their exposure to vermiculite that was mined and milled in the area between 1923 and 1990; and

WHEREAS, when the Governor in 2002 named Libby, Montana, as the state's top priority for hazardous waste cleanup, thus making it eligible for an expedited listing on a Superfund national priorities list, this was the second

time in 20 years that the community had received Superfund status, with the first time in 1983 involving a 20-plus-year study and abatement process regarding ground water contamination; and

WHEREAS, every dark cloud is said to have a silver lining and for the community of Libby the opportunity exists to participate in indepth studies related to the effects on human health of mining and milling of vermiculite and of exposure to byproducts, such as tremolite-series asbestos, as well as in studies on the possible treatments of diseases related to exposure to tremolite-series asbestos; and

WHEREAS, research is best performed in a community where people suffering from different stages of diseases related to exposure to tremolite-series asbestos may be studied in the surroundings associated with the exposure; and

WHEREAS, the existing medical community of Libby, Montana, includes a state-of-the-art hospital and medical personnel with the experience and expertise to address the diagnoses and treatment of asbestos-related diseases; and

WHEREAS, telecommunications systems allow researchers in Libby, Montana, to confer with specialists anywhere in the world; and

WHEREAS, the community of Libby is in contact with specialists nationwide, as well as specialists at the University of Montana in Missoula, at Montana State University in Bozeman, and at state agencies in Helena; and

WHEREAS, the community of Libby, Montana, has a sociopolitical structure with the experience and expertise for addressing asbestos-related issues and a skilled and available workforce for constructing a center in Libby for the study of asbestos issues and for conducting research into diseases associated with exposure to tremolite-series asbestos; and

WHEREAS, Libby, Montana, is the most logical location in the world for the construction of a center to research asbestos issues and the medical treatment of diseases related to tremolite-series asbestos; and

WHEREAS, Libby, Montana, is in the process of acquiring land to accommodate a facility for the study of asbestos issues and treatment of diseases associated with tremolite-series asbestos; and

WHEREAS, research, study, and medical care are welcomed and fully supported by the greater Libby community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urge the Montana Congressional Delegation to pursue funding options from federal sources to develop, build, and maintain in Libby, Montana, a center for the study of asbestos issues and the treatment of illnesses related to tremolite-series asbestos.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, to members of the Montana Congressional Delegation, and to all other members of the U.S. Congress.

Adopted April 3, 2003

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CREATION OF A NEW STATE PARK AT BRUSH LAKE IN REGION 6, CONTINGENT ON FUNDING; AND PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS GIVE ESTABLISHMENT OF A STATE PARK AT BRUSH LAKE PRIORITY WHEN FUNDING BECOMES AVAILABLE.

WHEREAS, the beauty of Montana's great outdoors and the diversity of Montana's recreational opportunities are known worldwide, providing a source of pride for the people of the state and making Montana a destination for visitors and recreationists; and

WHEREAS, each region of the state possesses its own unique features and beauty, worthy of appreciation and visitation; and

WHEREAS, state parks provide residents and visitors with the opportunity to experience some of the state's more renowned areas, sparking interest in the state's diverse features and bringing revenue to local economies; and

WHEREAS, state parks have been established in every administrative region of the state except region 6 in northeastern Montana; and

WHEREAS, the 2003 Legislature is making an effort to take care of Montana's state parks by providing funding sources for the establishment and ongoing maintenance of parks; and

WHEREAS, the Department of Fish, Wildlife, and Parks is presently involved in an effort to acquire property at Brush Lake in region 6 in order to establish the region's first state park; and

WHEREAS, Brush Lake offers unique natural attributes worthy of preservation for public recreational use and scientific study and interpretation; and

WHEREAS, the Legislature considers it an appropriate recognition of the region's unique beauty and a proper expenditure of state funds to establish a state park at Brush Lake in region 6, as soon as funding becomes available.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Fish, Wildlife, and Parks consider the establishment of the first state park in region 6 at Brush Lake a top priority.

BE IT FURTHER RESOLVED, that the Department make every effort, as funding becomes available, to establish and maintain a state park at Brush Lake.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT CONGRESS REVISE THE ENDANGERED SPECIES ACT TO ALLOW HAZING OF CARNIVORES LISTED AS AN ENDANGERED OR THREATENED SPECIES; AND URGING THE STATE ATTORNEY

GENERAL TO JOIN THE STATE IN ANY LEGAL ACTION BROUGHT TO ALLOW THE DEFENSE OF PROPERTY AGAINST LISTED PREDATORS.

WHEREAS, the grizzly bear and the gray wolf have been declared by the U.S. Fish and Wildlife Service to be endangered or threatened species, notwithstanding plentiful numbers of grizzly bears and wolves in Montana; and

WHEREAS, 16 U.S.C. 1532 defines the term "take" to include to harass or attempt to harass an endangered or threatened species; and

WHEREAS, 50 CFR 17.3 defines "harass" in the definition of "take" as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering"; and

WHEREAS, in Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995), the United States Supreme Court noted that several of the words in the definition of "take", including "harass", refer to actions or effects that do not require direct applications of force; and

WHEREAS, 16 U.S.C. 1535 directs the Secretary of the Interior to cooperate with the states to the maximum extent practicable in administering the Endangered Species Act; and

WHEREAS, even though 16 U.S.C. 1540(a)(3) provides that a civil penalty may not be imposed on a defendant who kills an endangered or threatened species in self-defense or in the defense of others, it is unreasonable to expect a property owner to stand idly by and allow an endangered or threatened species to threaten and kill livestock or pets or threaten family members; and

WHEREAS, in Christy v. Hodel, 857 F.2d 1324 (9th Cir. 1988), it was held that the Endangered Species Act and the grizzly bear regulations as applied to prevent owners of livestock from killing grizzly bears to protect their sheep against imminent destruction did not deny them equal protection of the laws and did not constitute a "taking" of the sheep without just compensation; and

WHEREAS, the definition of "take" in 16 U.S.C. 1532 was not written in contemplation of large carnivores being included as endangered or threatened species; and

WHEREAS, a property owner should be able to haze wolves and grizzly bears away from livestock and residential buildings without fear and if necessary to kill the marauding carnivores to protect private property; and

WHEREAS, unchecked predation by carnivores listed as endangered or threatened species will almost certainly impact wildlife resources, livestock, pets, and outdoor recreation; and

WHEREAS, these negative impacts will also have a profound economic and social consequence for Montana people and communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor, the Montana Congressional Delegation, and the U.S. Secretary of the Interior be strongly urged to seek a revision to the Endangered Species Act allowing reasonable efforts by property owners to protect property and people against carnivores listed as endangered or threatened species.

BE IT FURTHER RESOLVED, that the Montana Attorney General be urged to join the state in any lawsuit establishing or clarifying the right of

Montana citizens to protect their property and their lives against carnivores listed as endangered or threatened species.

BE IT FURTHER RESOLVED, that the Montana Department of Fish, Wildlife, and Parks continue its efforts to encourage the U.S. Fish and Wildlife Service to interpret "normal behavioral patterns" in a way that does not include behavior that threatens livestock, pets, or humans.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Governor, the Montana Congressional Delegation, the Montana Attorney General, and the U.S. Secretary of the Interior.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT SUFFICIENT STAFF RESOURCES TO STUDY METHODS OF SIMPLIFYING LAWS RELATED TO WORKERS' COMPENSATION AND OCCUPATIONAL DISEASES.

WHEREAS, Montana's workers' compensation laws were first enacted in 1915 and have been amended in virtually every legislative session since that time; and

WHEREAS, the significant impact on Montana's economy from workers' compensation premiums and benefits often overshadows the economic costs of understanding arcane provisions of a patchwork of workers' compensation laws; and

WHEREAS, the Montana Legislature has the ability to simplify and clarify regulations by directing a study committee to review, in conjunction with administrative rules, all of the provisions related to administration of the Workers' Compensation Act and the Occupational Disease Act of Montana, excluding benefits; and

WHEREAS, the Montana Legislature believes that the traditional workers' compensation system of compensating injured workers without regard to fault should continue into the future; and

WHEREAS, terms and concepts, such as which employers, employees, and independent contractors are covered by the workers' compensation laws, have become confusing in current statutes; and

WHEREAS, the list of exempted employments of current law may be discriminatory and may undermine a public policy that calls for all employment to be covered by the principles of workers' compensation coverage; and

WHEREAS, Montana employers and employees deserve to have workers' compensation laws that are clear, concise, and understandable.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine the workers' compensation laws and related administrative rules of the State of Montana and provide any suggested

changes for laws to clarify the language and intent for all who are governed by workers' compensation laws of this state.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 25, 2003

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO WORK TO INCREASE THE AVAILABILITY OF CHILD CARE AND TO REVIEW THE STATUS OF CHILD CARE IN MONTANA.

WHEREAS, 72% of Montana children under 6 years of age live with two employed parents or an employed single head of household; and

WHEREAS, there is a network of Child Care Resource and Referral Programs in Montana to assist parents in locating and paying for child care and to train child-care workers; and

WHEREAS, parents should have choice in the type of child care that their children receive, including home care; and

WHEREAS, child care for all Montana children should be accessible, affordable, and of high quality; and

WHEREAS, economic self-sufficiency is directly dependent upon access to quality, affordable child care while parents are at work or in school.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Public Health and Human Services be directed to work with the Child Care Resource and Referral Network to increase the availability of child care throughout Montana.

BE IT FURTHER RESOLVED, that the Department of Public Health and Human Services Early Childhood Services Program review the status of child care in Montana before August 1, 2004, for presentation to the Governor's Council on Families and that the review be reported to the 59th Legislature, as provided in 5-11-210.

Adopted March 14, 2003

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SHOWING

CONDITIONAL SUPPORT FOR DRILLING FOR OIL AND GAS IN THE COASTAL PLAIN OF THE ARCTIC NATIONAL WILDLIFE REFUGE; AND PRIORITIZING THE IMPORTANCE OF TURNING TO ALTERNATIVE FUELS, ALTERNATIVE ENERGY SOURCES, TECHNOLOGY IMPROVEMENTS, AND IMPROVEMENTS IN EFFICIENCY AS MEANS OF ENSURING AMERICA'S LONG-TERM ENERGY INDEPENDENCE.

WHEREAS, stable, affordable energy is vital to the economy and security of the people of the State of Montana and the United States of America; and

WHEREAS, the United States has become increasingly dependent on foreign supplies of crude oil to meet our energy needs and is now importing more than 55% of the nation's crude oil needs; and

WHEREAS, dependence on imports is rising and could exceed 65% by the year 2020 due to growth in demand and falling production; and

WHEREAS, the recent events in Venezuela and other international problems have caused uncertainty in the commodities markets about the future supply of oil; and

WHEREAS, these among other factors have resulted in an increase in the price of crude oil to over $33 per barrel and, with crude oil costs being the largest component of the retail price of petroleum products, has resulted in a significant increase in the national average price of gasoline and has similarly increased the price of other petroleum products vital to the economy of the United States and the lives of its citizens; and

WHEREAS, the U.S. Department of Energy estimates the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) contains between 5.7 and 16 billion barrels of recoverable oil; and

WHEREAS, production from the Coastal Plain of ANWR could produce up to 1.5 million barrels of oil per day for at least 25 years, which is comparable to the volumes the United States is expected to import from Iraq for the next 25 years and which represents nearly 25% of current daily U.S. production, and could save $14 billion dollars per year in oil imports; and

WHEREAS, ANWR consists of 19 million acres, of which 8 million are classified as wilderness, 9.5 million are designated as national refuge lands, and 8% or 1.5 million acres comprise the Coastal Plain for which the potential for oil and gas production was acknowledged by Congress in the Alaska National Interest Lands Conservation Act of 1980; and

WHEREAS, oil and natural gas development and wildlife are successfully coexisting and advanced technology has greatly reduced the "footprint" of Arctic oil development; and

WHEREAS, the Alaska State AFL-CIO and the Alaska Federation of Natives support responsible oil and gas development on the Coastal Plain of ANWR; and

WHEREAS, environmentally responsible exploration, development, and production of oil on the Coastal Plain of ANWR will provide incomes to federal and state governments and generate jobs and business opportunities for residents in all 50 states; and

WHEREAS, the people of Montana, while in general and qualified support of continued development of fossil fuels, recognize that further development of fossil fuels addresses the short-term needs of our nation's energy independence; and

WHEREAS, the people of Montana agree with the comments of President Bush during the 2003 State of the Union Address that the development of alternative energy sources, which would make America truly independent, is the preferred path for our country; and

WHEREAS, the people of Montana recognize that development of alternative energy sources, including solar, hydrogen, wind, fuel cell, ethanol, and biodiesel fuels, constitutes a preferred alternative to long-term energy development; and

WHEREAS, the people of Montana understand that development of certain alternative energy sources, such as ethanol and biodiesel fuel, would enhance the economic and agricultural base of our great state; and

WHEREAS, the people of Montana further acknowledge that the efficient use of our existing energy resources is a critical and strategic priority in order to ensure our energy independence; and

WHEREAS, America has demonstrated the ability to dramatically reduce the energy consumption in past times of national crisis through fuel efficiency standards for automobiles, installation of industrial efficiency measures, and a conservation ethic among consumers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Congress of the United States be urged to take action to stabilize domestic crude oil supplies through facilitating additional production, to decrease our nation's need for foreign oil from undependable sources, to increase federal and state revenue from oil and gas leasing, and, subject to prioritizing those efforts described in subsection (2), to support the economy through addition of good paying jobs by opening the Coastal Plain of the Arctic National Wildlife Refuge to oil and gas leasing and environmentally responsible exploration, development, and production of the petroleum reserves.

(2) That the Congress of the United States be urged to:

(a) increase support for development of new sources of renewable energy, such as biofuels (including biodiesel and ethanol), wind, and solar;

(b) pursue development and use of fuel efficient vehicles and development of new technologies such as fuel cells and other potential applications of emerging hydrogen technology; and

(c) develop programs and standards to encourage efficient use of existing resources in transportation, industrial and commercial processes, and consumer end uses.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Montana Congressional Delegation, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, and the U. S. Secretary of the Interior.

Adopted April 12, 2003

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ASSIGNING

HOLDOVER SENATORS FOR THE TRANSITION TO THE NEW REDISTRICTING PLAN.

WHEREAS, the assignment of holdover senators to districts that they will represent after the transition to the new redistricting plan is the responsibility of the Legislature as provided in Chapter 4, Laws of 2003, and [LC2157]; and

WHEREAS, after consideration of the current districts and the Senators who were elected and their respective residences, these assignments are the default assignments based on the Districting and Apportionment Plan submitted February 5, 2003, that is currently under litigation, in the event that it becomes law; and

WHEREAS, if the Districting and Apportionment Plan as submitted is invalid and a new plan must be drawn, the Legislature reserves its right to make new assignments based on a resubmitted plan that satisfies the legal requirements; and

WHEREAS, this resolution will serve as the vehicle for the transition to a new redistricting plan for the Senate of the 2005 Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Senators be assigned to the Senate Districts for the composition of the 2005 Legislature, by New Senate District Number, Holdover Senate District Number, and Incumbent Senator:

(1) Senate District 1, Senate District 41, Aubyn Curtiss;

(2) Senate District 4, Senate District 39, Gregory Barkus;

(3) Senate District 5, Senate District 38, Bob Keenan;

(4) Senate District 8, Senate District 43, Glenn Roush;

(5) Senate District 11, Senate District 21, Trudi Schmidt;

(6) Senate District 12, Senate District 23, Jeff Mangan;

(7) Senate District 13, Senate District 24, Joe Tropila;

(8) Senate District 14, Senate District 44, Jerry Black;

(9) Senate District 16, Senate District 46, Ken Hansen;

(10) Senate District 17, Senate District 45, Jon Tester;

(11) Senate District 20, Senate District 1, Keith Bales;

(12) Senate District 23, Senate District 4, Kelly Gebhardt;

(13) Senate District 26, Senate District 9, Brent Cromley;

(14) Senate District 27, Senate District 7, John Bohlinger;

(15) Senate District 29, Senate District 11, Dan McGee;

(16) Senate District 30, Senate District 12, Robert Story, Jr.;

(17) Senate District 31, Senate District 13, John Esp;

(18) Senate District 33, Senate District 14, Mike Wheat;

(19) Senate District 35, Senate District 16, Gary Perry;

(20) Senate District 39, Senate District 20, Duane Grimes;

(21) Senate District 40, Senate District 26, Mike Cooney;

(22) Senate District 43, Senate District 28, Sherm Anderson;

(23) Senate District 44, Senate District 30, Rick Laible;

(24) Senate District 48, Senate District 34, Carolyn Squires; and

(25) Senate District 49, Senate District 33, Jon Ellingson.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS TO AUTHORIZE A FEASIBILITY STUDY AND DEMONSTRATION PROJECT TO CONSIDER TRANSFERRING FEDERAL FUNDS ALLOCATED TO THE STATE OF MONTANA FOR DISTRIBUTION TO MONTANA'S AMERICAN INDIANS AS A MEANS OF PROVIDING BENEFITS TO SUPPORT TRIBAL PROGRAMS DIRECTLY TO MONTANA'S FEDERALLY RECOGNIZED TRIBAL GOVERNMENTS IN THE FORM OF DIRECT PAYMENTS INSTEAD OF TRANSFERRING FUNDS THROUGH A STATE AGENCY.

WHEREAS, the United States Supreme Court has recognized that the United States Constitution grants Congress exclusive authority over Indian tribes and has repeatedly acknowledged that a special trustee-beneficiary relationship exists between the federal government and the tribes; and

WHEREAS, as a trustee for all Indian tribes, the federal government has a legal and moral obligation to fulfill its treaty commitments to protect and enhance Indian lands, resources, and tribal governments and to provide those services necessary to protect the social well-being of Indian people; and

WHEREAS, the practice of transferring federal funds to state governments and requiring distribution of federal funds to tribal governments and Indian people through state agencies or state programs unfairly shifts many of the federal government's trustee responsibilities to the state, interferes with tribal sovereignty, and restricts each tribe or tribes from providing benefits and programs based on what tribal governments determine to be in the best interests of their members; and

WHEREAS, a feasibility study will enhance the ability to provide direct funding to federally recognized tribal governments in Montana and will provide for an orderly transition in federal funding practices.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be requested to authorize a feasibility study and demonstration project to consider transferring federal funds allocated to the State of Montana for distribution to Montana's American Indians as a means of providing benefits to support tribal programs directly to Montana's federally recognized tribal governments in the form of direct payments instead of transferring funds through a state agency.

BE IT FURTHER RESOLVED, that the feasibility study consider the following issues associated with changing payment methods to make direct payments to Montana's federally recognized tribal governments:

(1) the probable effects on specific programs and program beneficiaries;

(2) statutory, regulatory, or other impediments;

(3) probable costs or savings; and

(4) other issues identified in consultation with Montana's federally recognized tribal governments.

BE IT FURTHER RESOLVED, that the feasibility study focus on the development of a direct funding demonstration project for appropriate federal programs, services, functions, and activities of various federal agencies.

BE IT FURTHER RESOLVED, that the feasibility study and demonstration project be implemented jointly by the State of Montana, the federal government, and Montana's federally recognized Indian tribes through government-to-government consultation.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, to the United States Senate Committee on Indian Affairs, to each tribal government located on the seven Montana reservations, and to the Little Shell Band of Chippewa.

Adopted April 8, 2003

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THAT TAIWAN BE PERMITTED APPROPRIATE AND MEANINGFUL PARTICIPATION IN ACTIVITIES OF THE WORLD HEALTH ORGANIZATION.

WHEREAS, direct and unobstructed participation in international health cooperation forums and programs is crucial for all parts of the world, especially with today's greater potential for cross-border spread of various infectious diseases; and

WHEREAS, Taiwan's achievements in the field of health are substantial, including one of the highest life expectancy levels in Asia, maternal and infant mortality rates comparable to those of western countries, the eradication of the infectious diseases of cholera, smallpox, and the plague, and being the first Asian nation to eradicate polio and the first country in the world to provide children with free hepatitis B vaccinations; and

WHEREAS, the United States Centers for Disease Control and Prevention and its Taiwanese counterpart have enjoyed close collaboration on a wide range of public health issues; and

WHEREAS, in recent years Taiwan has expressed a willingness to financially and technically assist the international aid and health activities supported by the World Health Organization; and

WHEREAS, Taiwan's population of 23 million people is larger than that of 75% of the World Health Organization member states; and

WHEREAS, the United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations; and

WHEREAS, Taiwan's participation in the activities of the World Health Organization could bring many benefits to the state of health not only in Taiwan but also regionally and globally.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature strongly urge that Taiwan be permitted appropriate and meaningful participation in the activities of the World Health Organization.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Director General of the Taipei Economic and Cultural Office in Seattle, and the World Health Organization.

Adopted March 19, 2003

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THE UNITED STATES CONGRESS TO APPROPRIATE JUST COMPENSATION TO THE STATE OF MONTANA FOR THE IMPACT OF FEDERAL LAND OWNERSHIP ON THE STATE'S ABILITY TO FUND PUBLIC EDUCATION.

WHEREAS, for many years western states have grappled with the challenge of providing the best education for their citizens; and

WHEREAS, western states face unique challenges in achieving this goal; and

WHEREAS, from 1979 to 1998, the percentage change in expenditures per pupil in 13 western states was 28% compared to 57% in the remaining states; and

WHEREAS, in 2000 and 2001, the pupil-to-teacher ratio in 13 western states averaged 17.9 to 1 compared with 14.8 to 1 in the remaining states; and

WHEREAS, the conditions in western states are exacerbated by projections that enrollment will increase by an average of 7.1% compared to an average decrease of 2.6% in the rest of the nation; and

WHEREAS, despite the wide disparities in expenditures per pupil and pupil-to-teacher ratio, western states tax at a comparable rate and allocate as much of their budgets to public education as the rest of the nation; and

WHEREAS, the ability of western states to fund education is directly related to federal ownership of state lands; and

WHEREAS, the federal government owns an average of 51.9% of the land in 13 western states compared to 4.1% in the remaining states; and

WHEREAS, the enabling acts of most western states promise that 5% of the proceeds from the sale of federal lands will go to the states for public education; and

WHEREAS, a federal policy change in 1977 ended these sales, resulting in an estimated $14 billion in lost public education funding for western states; and

WHEREAS, the ability of western states to fund public education is further impacted by the fact that state and local property taxes, which public education heavily relies upon to fund education, cannot be assessed on federal lands; and

WHEREAS, the estimated annual impact of this property tax prohibition on western states is over $4 billion; and

WHEREAS, the federal government shares only half of its royalty revenue with the states; and

WHEREAS, royalties are further reduced because federal lands are less likely to be developed, and federal laws often place stipulations on the use of state royalty payments; and

WHEREAS, the estimated annual impact of royalty payment policies on western states is over $1.86 billion; and

WHEREAS, much of the land that the federal government transferred to states upon statehood as a trust for public education is difficult to administer and to make productive because it is surrounded by federal land; and

WHEREAS, federal land ownership greatly hinders the ability of western states to fund public education; and

WHEREAS, the federal government should compensate western states for the significant impact federal land ownership has on the ability of western states to educate their citizens; and

WHEREAS, just compensation will allow western states to be on equal footing with the rest of the nation in their efforts to provide education for their citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature strongly urge the United States Congress to appropriate just compensation to the State of Montana for the impact of federal land ownership on the State's ability to fund public education.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the Montana Congressional Delegation.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF DIRECTORS OF THE CHARLES M. BAIR FAMILY TRUST TO KEEP THE CHARLES M. BAIR FAMILY MUSEUM OPEN AND OPERATIONAL AT ITS CURRENT LOCATION IN THE BAIR FAMILY HOME IN MARTINSDALE IN MEAGHER COUNTY.

WHEREAS, the Charles M. Bair Family Museum is a historical treasure to the State of Montana; and

WHEREAS, maintaining the Bair family collection at its original location in the Charles M. Bair Family Museum in Martinsdale, Montana, is vital in order to maintain the value and integrity of the collection; and

WHEREAS, because the Charles M. Bair Family Museum is a major resource, extending culturally and economically beyond Meagher and Wheatland Counties and the State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Charles M. Bair Family Trust be urged to keep the Charles M. Bair Family Museum open and operational at its current location at the Bair family home in the city of Martinsdale in Meagher County for the historical benefit and enjoyment of all citizens of the State of Montana, the nation, and the world.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the board of directors of the Charles M. Bair Family Trust.

Adopted April 5, 2003

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY THE TAXATION OF CENTRALLY ASSESSED PROPERTIES, WITH A FOCUS ON UTILITIES AND UTILITY PROPERTIES.

WHEREAS, electric deregulation at the wholesale level has had a dramatic effect on electric markets; and

WHEREAS, some electrical generation facilities in Montana have been sold and are now dedicated to the unregulated market; and

WHEREAS, other electrical generation facilities in Montana are owned by regulated, vertically integrated utilities; and

WHEREAS, major electrical generation companies in Montana have repeatedly filed appeals on their property taxes; and

WHEREAS, the rationale for the taxing of existing electrical generation was predicated on a vertically integrated utility system.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the taxation of centrally assessed properties, with a focus on utilities and utility properties.

BE IT FURTHER RESOLVED, that the interim committee or the staff examine the department of revenue's method for valuating electrical generation property and gather enough information to determine whether methods differ among regulated utilities, exempt wholesale generators, and other centrally assessed properties.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 24, 2003

SENATE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY ELEMENTS OF MONTANA'S JUVENILE JUSTICE SYSTEM REGARDING JUVENILE PROBATION AND TO DETERMINE WHETHER ANY CHANGES IN ITS ADMINISTRATION ARE APPROPRIATE.

WHEREAS, the Department of Corrections is responsible for administering elements of the juvenile justice system that include juvenile correctional facilities, juvenile parole officers and programs, licensure of juvenile detention facilities, and juvenile placement funds; and

WHEREAS, the Supreme Court is responsible for administering elements of the juvenile justice system that include Youth Courts and juvenile probation officers and programs; and

WHEREAS, the juvenile probation system is fragmented and operates differently in each of the 22 judicial districts with a certain degree of autonomy and without uniform policies and procedures; and

WHEREAS, the juvenile probation system may be able to operate more efficiently and effectively if it were unified under a single administrative body with responsibility to develop and administer uniform policies and procedures; and

WHEREAS, other state and local agencies, such as the Departments of Justice and Public Health and Human Services, schools, and local governments, provide funding and services for juveniles and interact with juvenile probation and with other elements of the juvenile justice system in the Department of Corrections; and

WHEREAS, a study of the juvenile justice system is necessary to determine whether the appropriate administration of juvenile probation officers and programs within the juvenile justice system is in the Department of Corrections or the Supreme Court.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review the juvenile justice system regarding juvenile probation to determine whether changes may be appropriate. The study must include:

(1) an examination of the various elements of the juvenile justice system and how it operates, including the different administrative bodies within the Executive and Judicial Branches of government and their respective roles within the system;

(2) an examination of the operation of the juvenile justice system in other states;

(3) an examination specifically of juvenile probation programs and the appropriate body to administer juvenile probation programs and provide management and oversight of juvenile probation officers and a determination of the advisability of creating uniform policies and procedures within juvenile probation; and

(4) any other aspect of the administration of juvenile justice in Montana that is determined to be appropriate.

BE IT FURTHER RESOLVED, that the study committee or staff be directed to request information and staff assistance from the Legislative Fiscal Division and the Executive and Judicial Branches of government.

BE IT FURTHER RESOLVED, that the committee or staff be directed to develop a specific list of options for consideration, including an option of no action, to be considered for recommendation to the 59th Legislature.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 23, 2003

SENATE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO APPOINT AN INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY THE COSTS AND AVAILABILITY OF LIABILITY INSURANCE FOR HEALTH CARE FACILITIES AND HEALTH CARE PROVIDERS ASSOCIATED WITH HEALTH CARE FACILITIES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 59TH LEGISLATURE.

WHEREAS, many health care providers in Montana are alarmed at the rising cost of liability insurance; and

WHEREAS, the Legislature has determined that a shortage of health care providers in the state and an inability to attract health care providers to the state would pose a serious threat to the health, welfare, and safety of the people of the state; and

WHEREAS, the number of insurance carriers that provide liability insurance for hospitals, clinics, and nursing homes has declined significantly in the past few years; and

WHEREAS, dramatic hikes in the prices paid by hospitals, clinics, and nursing homes for liability insurance, in some cases by as much as 1,000% over

the past 2 years, may be a major contributor to the escalation in the cost of providing medical treatment; and

WHEREAS, increased premiums for liability insurance for health care facilities and health care providers associated with health care facilities may be forcing physicians and other providers in Montana to consider curtailing certain medical services; and

WHEREAS, the State of Montana has a compelling state interest in ensuring that affordable health care is available for its citizens, and stabilization of premiums for liability insurance for health care facilities and health care providers associated with health care facilities will contribute toward cost containment for health care for Montana citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the costs and availability of liability insurance for health care facilities and health care providers associated with health care facilities. The study must include:

(1) a review of measures adopted by other states to address the liability insurance problems related to liability insurance for health care facilities and health care providers associated with health care facilities;

(2) strategies for increasing availability of affordable liability coverage, including alternative sources of liability coverage;

(3) the factors affecting the cost of liability insurance for health care facilities and health care providers associated with health care facilities; and

(4) strategies for resolving liability claims outside of the court system.

BE IT FURTHER RESOLVED, that the study committee or staff be directed to request information and assistance from representatives of the insurance industry related to professional liability insurance for health care facilities and health care providers associated with health care facilities, medical services facilities and providers, associations of trial and defense attorneys, and other interested persons.

BE IT FURTHER RESOLVED, that the committee or staff be directed to develop a specific list of options for consideration, including an option of no action, to be considered for recommendation to the 59th Legislature.

BE IT FURTHER RESOLVED, that, if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2004.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 59th Legislature.

Adopted April 24, 2003

SenateResolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REVISING AND ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding the cards are subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ

staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by the secretary's respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-40. Senators called to order. When a Senator has been called to order, the Senator shall sit down until the presiding officer determines whether the Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to must be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. Materials may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

S20-80. Violation of rules. (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebatable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the Senate that the Senator be censured or be subject to other action. The Senate shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees. The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Business and Labor

(3) Education and Cultural Resources

(4) Energy and Telecommunications

(5) Ethics

(6) Finance and Claims

(7) Fish and Game

(8) Highways and Transportation

(9) Judiciary

(10) Legislative Administration

(11) Local Government

(12) Natural Resources

(13) Public Health, Welfare, and Safety

(14) Rules

(15) State Administration

(16) Taxation

S30-30. Members of Select Committee on Long-Range Planning. Members of the Select Committee on Long-Range Planning may participate and vote as members of the Finance and Claims Committee on issues considered by them as members of the select committee.

S30-40. Ex officio members — quorum. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for:

(a) maintaining order within the committee room and its environs;

(b) scheduling hearings and executive action;

(c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and

(d) authenticating committee reports and minutes by signing them and submitting them promptly to the Secretary of the Senate.

(2) After adjournment of the session, the chair shall turn the original and two complete copies of the minutes over to the Secretary of the Senate who shall

deliver them unbound to the Legislative Services Division librarian who will arrange to have them copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The original minutes must be delivered to the Montana Historical Society.

S30-60. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days' notice to members of committees and the general public. However, subject to S30-120, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes; and

(f) all testimony and exhibits.

(7) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but may report the bill to the committee of the whole.

S30-70. Procedures. (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by indefinitely postponing or tabling the measure in committee.

(b) At the written request of the sponsor, a committee may finally dispose of a bill without a hearing. Except as provided in S30-60(7), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the committee of the whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

S30-80. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

S30-90. Committee reports to Senate. (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report unless a minority report has been submitted. A minority report is submitted after a majority report.

(2) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. The reconsideration motion must be made within 1 legislative day of the adoption of the committee report.

(3) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

(4) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

S30-100. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for absentee or proxy voting must be reflected in the committee minutes.

S30-110. Committee hearings. (1) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(2) A bill may be rereferred at any time before its passage.

S30-120. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing; or

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-130. Majority/minority reports. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. The reports must be entered at length on the journal, unless otherwise ordered by the Senate.

S30-140. Reconsideration in committee. Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-150. Committee requested legislation. (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(b) The Finance and Claims Committee may request the introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

S30-160. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee. The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on

the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

CHAPTER 5
Floor Action

S50-10. Attendance. Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions may be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration.

(4) A motion or proposition on a subject different from that under consideration may not be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

S50-80. Previous question. (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought.

(2) A motion to reconsider may not be withdrawn after the next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration. However, a motion to reconsider made after the 54th day of the session must be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only

under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. Unless the sponsor requests an opening statement beforehand, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments must be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report;

(h) rise and report progress and ask leave to sit again; or

(i) change the order in which legislation is placed on the agenda.

S50-150. Committee of the Whole — generally. (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-170. Third reading procedure. (1) All legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting — changing a vote. (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator's vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator's vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator may not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

S50-210. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

S50-220. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

S50-230. Governor's veto. (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

CHAPTER 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate in all cases not covered by these rules.

S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the member s present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators);

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds); and

(10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund (two-thirds).

Adopted Jan u ary 14, 2003

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REJECTING THE LEGISLATIVE PLAN THAT THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION SUBMITTED TO THE LEGISLATURE.

WHEREAS, the Montana Districting and Apportionment Commission submitted its legislative redistricting plan to the Legislature on January 6, 2003, as required by Article V, section 14, of the Montana Constitution; and

WHEREAS, the Joint Select Committee on Districting and Apportionment has received and considered testimony on the plan; and

WHEREAS, the Senate contends that the approximate 10% total population deviation range contained in the plan is not in support of legitimate governmental interests, but is for partisan political gain; and

WHEREAS, the Constitution is clear in language that the districts "shall be as nearly equal in population as is practicable", and that a 1% total population deviation range, or less, is both practical and possible; and

WHEREAS, the Senate contends that the majority of the Commission ignored the mandatory, constitutional criterion of "compact" districts in creating several House and Senate Districts that are over 200 miles from one end to the other; and

WHEREAS, the Senate contends that the American Indians have been isolated and that other minority groups were ignored when several districts in Montana were established; and

WHEREAS, the Senate contends that race was used as the predominant criterion in tentatively establishing six House Districts and three Senate Districts in blatant violation of the mandatory criterion that race may not be the predominant factor to which the traditional discretionary criteria are subordinated; and

WHEREAS, the Commission failed to adopt a criterion of consideration of existing district lines as the previous Commission had adopted; and

WHEREAS, the Commission has disregarded, in several instances, the discretionary criteria adopted by the Commission on April 18, 2001, by dividing many towns, cities, and counties, while giving little or no regard to keeping communities of interest intact; and

WHEREAS, the arbitrary assignment of holdover Senators to districts that did not elect them is at best wrong, blatantly unethical, and simply unfair to the electors; and

WHEREAS, the Legislature is required to return the plan to the Commission with its recommendations on or before February 5, 2003.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate rejects the Legislative Redistricting Plan for the reasons stated above, requests that the Commission reconvene and adopt a plan that conforms to the mandatory and discretionary criteria as set forth by the 1972 Constitutional Convention and state and federal law, and contends that the majority of the Commission has performed a constitutional injustice to the electorate and the elected legislators of Montana, that the plan has been conceived in a partisan fashion that disregards the mandatory criteria as set forth by the 1972 Constitutional Convention and the discretionary criteria adopted by the Commission itself, that the Commission's exercise in political gerrymandering is unacceptable to the citizens of the state of Montana, and that the legislative redistricting plan must be redone.

BE IT FURTHER RESOLVED, that copies of the following documents be attached to this resolution:

(1) the tapes of the hearings of the Joint Select Committee on Districting and Apportionment held on January 20, 21, and 24, 2003;

(2) written testimony submitted on January 20, 21, and 24, 2003; and

(3) a minority report from the members of the Joint Select Committee on Districting and Apportionment who support the plan.

BE IT FURTHER RESOLVED, that a copy of this resolution be kept on file by the Secretary of State and that copies be sent by the Secretary of State to the presiding officer and each member of the Montana Districting and Apportionment Commission.

Adopted Feb ru ary 3, 2003

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND

SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 31, 2003, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents, in accordance with the provisions of section 2-15-1508, MCA:

John Mercer, Polson, Montana, appointed for a term ending February 1, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 58th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 10, 2003

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 31, 2003, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Regents, in accordance with the provisions of section 2-15-1508, MCA:

Christian Hur, Billings, Montana, appointed for a term ending July 1, 2004.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 58th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 10, 2003

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA SUPPORTING MONTANA'S ARMED FORCES PERSONNEL IN OPERATION IRAQI FREEDOM.

WHEREAS, more than 1,000 armed forces personnel from the State of Montana are presently in the Persian Gulf region; and

WHEREAS, Montanans in the Persian Gulf region are serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, and National Guard in a wide variety of duty assignments; and

WHEREAS, Montanans have a long and distinguished heritage of service to our nation in times of military conflict; and

WHEREAS, the brave personnel from our state are continuing the Montana tradition of commitment and sacrifice at their duty stations in the Persian Gulf region; and

WHEREAS, President George W. Bush, as Commander in Chief of the Armed Forces of the United States, is always in our prayers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That the Montana Senate express the deep feeling of all Montanans in this affirmation of support and gratitude to the courageous service personnel from Montana now assigned to the current operation in the Persian Gulf.

(2) That it is the hope of the people of Montana that:

(a) the mission of the forces in the Persian Gulf region be accomplished quickly and that Montanans and other service personnel serving in the current operation will soon return home safely;

(b) long-lasting peace be brought to the nation of Iraq with a minimum loss of life to members of our Armed Forces and to the innocent civilians in the region; and

(c) when making decisions of war and peace in the current operation, our Commander in Chief be guided by wisdom and good judgment.

(3) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation and to Montana service personnel in the Persian Gulf region informing them that the heartfelt thanks of all Montana are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted April 4, 2003

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 10, 2003, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Chiropractors, in accordance with 2-15-1737, MCA:

Dr. Pamela Blanchard, Great Falls, Montana, for a term ending January 1, 2006.

Ms. Jo Ausk, Terry, Montana, for a term ending January 1, 2006.

(2) As members of the Board of Horseracing, in accordance with 2-15-3106, MCA:

Mr. Tim Donnelly, Miles City, Montana, for a term ending January 20, 2006.

Ms. Barbara Cole, Shelby, Montana, for a term ending January 20, 2006.

(3) As members of the Commission for Human Rights, in accordance with 2-15-1706, MCA:

Mr. Jack Copps, Seeley Lake, Montana, for a term ending January 1, 2007.

Mr. Ryan Rusche, Wolf Point, Montana, for a term ending January 1, 2007.

(4) As a member of the Board of Labor Appeals, in accordance with 2-15-1704, MCA:

Mr. Jerome Loendorf, Helena, Montana, for a term ending January 1, 2007.

(5) As members of the Board of Livestock, in accordance with 2-15-3102, MCA:

Mr. George Hammond, Hardin, Montana, for a term ending March 1, 2009.

Ms. Meg Smith, Divide, Montana, for a term ending March 1, 2009.

(6) As members of the Board of Medical Examiners, in accordance with 2-15-1731, MCA:

Mr. Dwight Thompson, Harlowton, Montana, for a term ending September 1, 2005.

Dr. James Upchurch, Crow Agency, Montana, for a term ending September 1, 2003.

(7) As members of the Board of Occupational Therapy Practice, in accordance with 2-15-1749, MCA:

Ms. Delores Gilbert, Sidney, Montana, for a term ending December 31, 2006.

Ms. Elspeth Richards, Missoula, Montana, for a term ending December 31, 2006.

(8) As members of the Board of Pardons and Parole, in accordance with 2-15-2302, MCA:

Mr. Ken Peterson, Billings, Montana, for a term ending January 1, 2007.

Mr. Don Hargrove, Belgrade, Montana, for a term ending January 1, 2007.

(9) As a member of the Board of Personnel Appeals, in accordance with 2-15-1705, MCA:

Mr. Steve Johnson, Missoula, Montana, for a term ending January 1, 2007.

(10) As a member of the Board of Public Assistance, in accordance with 2-15-2203, MCA:

Ms. Carole Graham, Missoula, Montana, for a term ending January 1, 2007.

(11) As a member of the Board of Real Estate Appraisers, in accordance with 2-15-1758, MCA:

Mr. Douglas Mackay, Billings, Montana, for a term ending May 1, 2005.

(12) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with 2-15-1744, MCA:

Ms. Antoinette Rosell, Billings, Montana, for a term ending January 1, 2007.

Ms. Leta Livoti, Helena, Montana, for a term ending January 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 58th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 16, 2003

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 31, 2003, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Charles Manning, Kalispell, Montana, appointed for a term ending January 1, 2007.

Mr. Lonnie Leslie, Miles City, Montana, appointed for a term ending January 1, 2007.

Mr. Craig Denney, Billings, Montana, appointed for a term ending January 1, 2007.

Mr. John Rabenberg, Fort Peck, Montana, appointed for a term ending January 1, 2007.

(2) As members of the Air Pollution Control Advisory Council, in accordance with section 2-15-2106, MCA:

Mr. Chris Kolstad, Ledger, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Richard Southwick, Townsend, Montana, appointed to serve a term at the pleasure of the Governor.

(3) As members of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Ms. Dolly Browder, Missoula, Montana, appointed for a term ending September 1, 2005.

Ms. Kathee Dunham, Arlee, Montana, appointed for a term ending September 1, 2006.

Ms. Eloise Hargrove, Belgrade, Montana, appointed for a term ending September 1, 2006.

(4) As a member of the Board of Athletics, in accordance with section 2-15-1772, MCA:

Mr. John Kinna, Fairfield, Montana, for a term ending April 25, 2005.

(5) As members of the Board of Architects, in accordance with section 2-15-1761, MCA:

Mr. Eugene Vogl, Billings, Montana, for a term ending March 27, 2005.

Mr. John Fontaine, Glasgow, Montana, for a term ending March 27, 2004.

(6) As a member of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Dr. Daniel Prideaux, Missoula, Montana, for a term ending January 1, 2005.

(7) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Mr. John Michael Long, Glendive, Montana, for a term ending April 16, 2005.

Dr. Peter Smith, Kalispell, Montana, for a term ending April 16, 2005.

(8) As members of the Board of County Printing, in accordance with section 2-15-1026, MCA:

Ms. Marianne Roose, Eureka, Montana, for a term ending April 1, 2003.

Ms. Julie Jordan, Miles City, Montana, for a term ending April 1, 2003.

Ms. Nancy Clark, Ryegate, Montana, for a term ending April 1, 2003.

Mr. Verle Rademacher, White Sulphur Springs, Montana, for a term ending April 1, 2003.

Mr. Curtiss Starr, Malta, Montana, for a term ending April 1, 2003.

(9) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Rev. Steven Rice, Miles City, Montana, for a term ending January 1, 2007.

Mr. Bill Slaughter, Helena, Montana, for a term ending January 1, 2005.

Mr. Mike McGrath, Helena, Montana, for a term ending January 1, 2005.

Mr. Clifford Brophy, Columbus, Montana, for a term ending January 1, 2005.

Mr. Robert Brooks, Butte, Montana, for a term ending January 1, 2005.

Mr. John Flynn, Townsend, Montana, for a term ending January 1, 2005.

Ms. Elaine Allestad, Big Timber, Montana, for a term ending January 1, 2005.

Ms. Janet Stevens, Missoula, Montana, for a term ending January 1, 2005.

Mr. Robert Jones, Great Falls, Montana, for a term ending January 1, 2005.

Mr. William Mercer, Billings, Montana, for a term ending January 1, 2005.

Mr. Rick Kirn, Poplar, Montana, for a term ending January 1, 2005.

Mr. Godfrey Saunders, Bozeman, Montana, for a term ending January 1, 2005.

Mr. Marko Lucich, Butte, Montana, for a term ending January 1, 2007.

Mr. Alex Capdeville, Havre, Montana, for a term ending January 1, 2007.

(10) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Dr. Sheldon Ivers, Great Falls, Montana, for a term ending March 29, 2007.

Mr. Clifford Christenot, Libby, Montana, for a term ending March 29, 2007.

Ms. Carol Price, Clancy, Montana, for a term ending March 29, 2007.

Ms. Lesley Robinson, Malta, Montana, for a term ending March 29, 2007.

(11) As members of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Mr. Tony Martel, Bozeman, Montana, for a term ending July 1, 2006.

Ms. Linda Holden, Valier, Montana, for a term ending January 1, 2007.

(12) As members of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. David Fishbaugh, Billings, Montana, for a term ending January 1, 2005.

Mr. Ward Shanahan, Helena, Montana, for a term ending January 1, 2005.

Mr. Russell Hudson, Libby, Montana, for a term ending January 1, 2005.

Mr. Garon Smith, Missoula, Montana, for a term ending January 1, 2005.

Ms. Kim Lacey, Glasgow, Montana, for a term ending January 1, 2007.

Ms. Susan Brooke, Bozeman, Montana, for a term ending January 1, 2007.

Mr. Joseph Russell, Kalispell, Montana, for a term ending January 1, 2007.

(13) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Mr. James Smrcka, Glasgow, Montana, for a term ending February 1, 2005.

Ms. Mary Crippen, Billings, Montana, for a term ending February 1, 2007.

Mr. Neal Lewing, Polson, Montana, for a term ending February 1, 2007.

Mr. Mark Tyers, Bozeman, Montana, for a term ending February 1, 2007.

Ms. Delores Heltne, Havre, Montana, for a term ending February 1, 2007.

Mr. John Dudis, Kalispell, Montana, for a term ending February 1, 2007.

Ms. Karie Lee Knierim, Glasgow, Montana, for a term ending February 1, 2005.

(14) As members of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Michael Murphy, Wolf Creek, Montana, for a term ending January 1, 2005.

Mr. Tim Mulligan, Whitehall, Montana, for a term ending January 1, 2007.

Mr. John Brenden, Scobey, Montana, for a term ending January 1, 2007.

(15) As members of the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

Mr. Niles Nelson, Libby, Montana, for a term ending July 1, 2007.

Ms. Jean Ruppert, Butte, Montana, for a term ending July 1, 2007.

Mr. Jered Scherer, Billings, Montana, for a term ending July 1, 2007.

(16) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Ms. Lillian Ostendorf, Powderville, Montana, for a term ending April 18, 2005.

(17) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Mr. Craig Rehm, Fort Benton, Montana, for a term ending January 1, 2005.

Ms. Betty Aye, Broadus, Montana, for a term ending January 1, 2005.

Ms. Tammy Johnson, Whitehall, Montana, for a term ending January 1, 2005.

(18) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Mr. David King, Billings, Montana, for a term ending July 1, 2004.

Mr. John Delano, Helena, Montana, for a term ending July 1, 2005.

Ms. Susan Kalarchik, Butte, Montana, for a term ending July 1, 2005.

(19) As members of the Preservation Review Board, in accordance with section 2-15-1512, MCA:

Ms. Marcella Knedler, Geraldine, Montana, for a term ending October 1, 2005.

Mr. Douglas Johnson, Hamilton, Montana, for a term ending October 1, 2006.

Mr. Conrad Fisher, Lame Deer, Montana, for a term ending October 1, 2006.

(20) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Mr. Larry McRae, Missoula, Montana, for a term ending July 1, 2006.

Ms. Judy Cole, Hysham, Montana, for a term ending July 1, 2006.

Mr. Bob Morgan, Clancy, Montana, for a term ending July 1, 2006.

Ms. Shirley Groff, Butte, Montana, for a term ending July 1, 2005.

Mr. Steve Browning, Helena, Montana, for a term ending July 1, 2007.

Ms. Mary Murphy, Bozeman, Montana, for a term ending July 1, 2007.

Mr. Don Wetzel, Bozeman, Montana, for a term ending July 1, 2007.

(21) As a member of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Mr. T.J. Graveley, Townsend, Montana, for a term ending February 20, 2005.

(22) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. Bob Thomas, Stevensville, Montana, for a term ending January 1, 2008.

Ms. Susan Moyer, Kalispell, Montana, for a term ending January 1, 2007.

Ms. Judy Glendenning, Helena, Montana, for a term ending January 1, 2007.

(23) As members of the Board of Landscape Architects, in accordance with section 2-15-1762, MCA:

Ms. Janet Thomas, Hobson, Montana, for a term ending July 1, 2005.

Ms. Shelly Engler, Bozeman, Montana, for a term ending July 1, 2005.

Mr. David Hummel, Billings, Montana, for a term ending July 1, 2005.

Mr. Robert Broughton, Victor, Montana, for a term ending July 1, 2006.

(24) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Mr. Ralph Atchley, Malta, Montana, for a term ending May 22, 2004.

Ms. Gail Staffanson, Sidney, Montana, for a term ending May 22, 2005.

Mr. Alvin Randall, Troy, Montana, for a term ending May 22, 2005.

(25) As members of the Board of Medical Examiners, in accordance with section 2-15-1731, MCA:

Dr. Kay Dorr, Nashua, Montana, for a term ending September 1, 2005.

Ms. Linda Melick, Lewistown, Montana, for a term ending September 1, 2005.

Dr. Van Kirke Nelson, Kalispell, Montana, for a term ending September 1, 2005.

Ms. Susan McRae, Dillon, Montana, for a term ending September 1, 2005.

Dr. Anne Williams, Glasgow, Montana, for a term ending September 1, 2006.

Dr. Michael LaPan, Sidney, Montana, for a term ending September 1, 2006.

Dr. Arthur Fink, Glendive, Montana, for a term ending September 1, 2006.

(26) As members of the Board of Nursing, in accordance with section 2-15-1734, MCA:

Ms. Kim Powell, Missoula, Montana, for a term ending July 1, 2005.

Ms. Lorena Erickson, Corvallis, Montana, for a term ending July 1, 2006.

Rev. Steven Rice, Miles City, Montana, for a term ending July 1, 2006.

Ms. Jeanine Thomas, Ronan, Montana, for a term ending July 1, 2006.

Ms. Karen Pollington, Havre, Montana, for a term ending July 1, 2006.

Ms. Connie Schultz, Glasgow, Montana, for a term ending July 1, 2003.

(27) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1735, MCA:

Ms. Carla Neiman, Plains, Montana, for a term ending May 28, 2007.

Mr. Tom Miller, Helena, Montana, for a term ending May 28, 2006.

(28) As a member of the Board of Occupational Therapy Practice, in accordance with section 2-15-1749, MCA:

Ms. Danette Rasmussen, Antelope, Montana, for a term ending December 31, 2005.

(29) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Denzil Young, Baker, Montana, for a term ending January 1, 2007.

Ms. Elaine Mitchell, Cut Bank, Montana, for a term ending January 1, 2007.

Mr. Jack King, Billings, Montana, for a term ending January 1, 2007.

(30) As members of the Board of Outfitters, in accordance with section 2-15-1773, MCA:

Mr. Jack Billingsley, Glasgow, Montana, for a term ending October 1, 2004.

Mr. Wayne Underwood, Billings, Montana, for a term ending October 1, 2005.

Mr. Mel Montgomery, Lima, Montana, for a term ending October 1, 2005.

Mr. Leslie Dolezal, Billings, Montana, for a term ending October 1, 2005.

Ms. Jennifer Cote, Missoula, Montana, for a term ending October 1, 2005.

(31) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Ms. Roxanne Wilson, Busby, Montana, for a term ending January 1, 2006.

Ms. Sheryl Hoffarth, Billings, Montana, for a term ending January 1, 2005.

(32) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Michael O'Neill, Butte, Montana, for a term ending January 1, 2005.

Mr. James Reardon, East Helena, Montana, for a term ending January 1, 2005.

Mr. Thomas Schneider, Helena, Montana, for a term ending January 1, 2005.

(33) As members of the Board of Pharmacy, in accordance with section 2-15-1733, MCA:

Mr. William Burton, Helena, Montana, for a term ending July 1, 2006.

Ms. Ann Pasha, Highwood, Montana, for a term ending July 1, 2007.

(34) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1748:

Mr. Bruce Lamb, Havre, Montana, for a term ending July 1, 2004.

Mr. Jeff Swift, Great Falls, Montana, for a term ending July 1, 2005.

(35) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Ms. Marlene Jackson, Glasgow, Montana, for a term ending May 4, 2005.

Ms. Margie Laknar, Dillon, Montana, for a term ending May 4, 2003.

Mr. Terry Tatchell, Helena, Montana, for a term ending May 4, 2006.

Mr. Tim Regan, Miles City, Montana, for a term ending May 4, 2006.

(36) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1781, MCA:

Mr. Manx Skillicorn, Missoula, Montana, for a term ending August 1, 2004.

Mr. Don Vegge, Billings, Montana, for a term ending August 1, 2004.

Mr. Ray Murray, Missoula, Montana, for a term ending August 1, 2005.

Ms. Kathy Miller, Helena, Montana, for a term ending August 1, 2005.

(37) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1763, MCA:

Mr. Jake Neil, Great Falls, Montana, for a term ending July 1, 2005.

Mr. Daniel McCauley, Helena, Montana, for a term ending July 1, 2005.

Mr. Steve Wright, Columbia Falls, Montana, for a term ending July 1, 2006.

Ms. Janet Markle, Glasgow, Montana, for a term ending July 1, 2006.

Mr. Denis Applebury, Victor, Montana, for a term ending July 1, 2006.

(38) As members of the Board of Psychologists, in accordance with section 2-15-1741, MCA:

Dr. Jay Palmatier, Missoula, Montana, for a term ending September 1, 2006.

Dr. George Watson, Bozeman, Montana, for a term ending September 1, 2004.

Ms. Pat Colberg, Billings, Montana, for a term ending September 1, 2007.

(39) As members of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Mr. Gary Kasper, Fairfield, Montana, for a term ending July 1, 2006.

Ms. Kathleen Burch, Lakeside, Montana, for a term ending July 1, 2007.

Mr. Michael Johns, Deer Lodge, Montana, for a term ending July 1, 2005.

(40) As members of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Mr. Kirk J. Miller, Havre, Montana, for a term ending February 1, 2009.

Mr. Storrs Bishop, Ennis, Montana, for a term ending February 1, 2010.

(41) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1738, MCA:

Dr. Dennis Palmer, Helena, Montana, for a term ending July 1, 2005.

Mr. William "Bim" Lindsey, Missoula, Montana, for a term ending July 1, 2004.

Ms. Jackie Barnes, Helena, Montana, for a term ending July 1, 2005.

Ms. Carole Erickson, Missoula, Montana, for a term ending July 1, 2005.

Mr. John Rosenbaum, Havre, Montana, for a term ending July 1, 2005.

Dr. John Hanson, Billings, Montana, for a term ending July 1, 2005.

(42) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Mr. Tim Moore, Helena, Montana, for a term ending May 1, 2004.

Ms. Jennifer Seitz, Billings, Montana, for a term ending May 1, 2004.

Mr. Donald Andrews, Ronan, Montana, for a term ending May 1, 2005.

Mr. Keith O'Reilly, Bozeman, Montana, for a term ending May 1, 2004.

(43) As members of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Ms. Vicky Hammond, Missoula, Montana, for a term ending May 9, 2005.

Mr. Terry Hilgendorf, Great Falls, Montana, for a term ending May 9, 2006.

(44) As a member of the Board of Regents, in accordance with section 2-15-1508, MCA:

Ms. Lila Taylor, Busby, Montana, for a term ending February 1, 2010.

(45) As members of the Board of Sanitarians, in accordance with section 2-15-1751, MCA:

Mr. Ted Kylander, Billings, Montana, for a term ending July 1, 2004.

Mr. John Shea, Missoula, Montana, for a term ending July 1, 2005.

(46) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1739, MCA:

Ms. Julie Fiske, Kalispell, Montana, for a term ending December 31, 2004.

Dr. Darrell Micken, Bozeman, Montana, for a term ending December 31, 2004.

Ms. Marilyn Thaden, Butte, Montana, for a term ending December 31, 2005.

Ms. Jennifer Hartze, Belgrade, Montana, for a term ending December 31, 2005.

(47) As members of the State Banking Board, in accordance with section 2-15-1025, MCA:

Mr. Tim Fox, Helena, Montana, for a term ending July 1, 2004.

Ms. Jamie Doggett, White Sulphur Springs, Montana, for a term ending July 1, 2004.

Mr. Wayne Edwards, Denton, Montana, for a term ending July 1, 2005.

Mr. Max Agather, Kalispell, Montana, for a term ending July 1, 2005.

(48) As members of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Mr. Derek Grewatz, Missoula, Montana, for a term ending April 28, 2005.

Ms. Susan Knedler, Lewistown, Montana, for a term ending April 28, 2005.

Mr. Herb Leuprecht, Butte, Montana, for a term ending April 28, 2005.

Mr. Mark Cole, Shelby, Montana, for a term ending April 28, 2005.

(49) As members of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Mr. Michael Mulroney, Helena, Montana, for a term ending January 1, 2007.

Mr. Gregory Thornquist, Helena, Montana, for a term ending January 1, 2009.

(50) As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Mr. S. Kevin Howlett, Arlee, Montana, for a term ending January 1, 2007.

Ms. Nancy Espy, Broadus, Montana, for a term ending January 1, 2007.

(51) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. Donald Bogut, Kalispell, Montana, for a term ending August 1, 2006.

Mr. Ray Tindall, Billings, Montana, for a term ending August 1, 2007.

Mr. Donald Kettner, Glendive, Montana, for a term ending August 1, 2004.

(52) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Dr. Jack Newman, Great Falls, Montana, for a term ending July 31, 2006.

Dr. Jean Allbright, Billings, Montana, for a term ending July 31, 2007.

(53) As a member of the Board of Water Well Contractors, in accordance with section 2-15-3307, MCA:

Mr. Pat Byrne, Great Falls, Montana, for a term ending July 1, 2004.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 58th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 16, 2003

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 31, 2003, AND APRIL 7, 2003, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Barbers, in accordance with section 2-15-1746, MCA:

Mr. Edward Dutton, Kalispell, Montana, for a term ending July 1, 2005.

Ms. Sharon Richie, Hamilton, Montana, for a term ending July 1, 2004.

Ms. Delores Lund, Reserve, Montana, for a term ending July 1, 2005.

(2) As members of the Board of Cosmetologists, in accordance with section 2-15-1747, MCA:

Ms. Stephanie Stanek-Fischer, Billings, Montana, for a term ending July 1, 2005.

Ms. Kordelia French, Plentywood, Montana, for a term ending July 1, 2005.

Ms. Pam Lemieux, Helena, Montana, for a term ending July 1, 2005.

Ms. Darlene Battaiola, Butte, Montana, for a term ending July 1, 2005.

Ms. Verna Dupuis, Bozeman, Montana, for a term ending July 1, 2005.

(3) As a member of the Board of Architects, in accordance with section 2-15-1761, MCA:

Mr. Tobias Stapleton, Billings, Montana, for a term ending March 27, 2006.

(4) As members of the Coal Board, in accordance with 2-15-1821, MCA:

Ms. Janice Riebhoff, Belgrade, Montana, for a term ending January 1, 2007.

Mr. Kurt Hilyard, Conrad, Montana, for a term ending January 1, 2007.

(5) As a member of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

Dr. George Olsen, Missoula, Montana, for a term ending March 29, 2008.

(6) As members of the Montana Arts Council, in accordance with sections 2-15-1513 and 22-2-101 through 22-2-103, MCA:

Ms. Ann Cogswell, Great Falls, Montana, for a term ending February 1, 2008.

Mr. Richard Halmes, Billings, Montana, for a term ending February 1, 2008.

Ms. Jackie Parsons, Browning, Montana, for a term ending February 1, 2008.

Ms. Betti Hill, Helena, Montana, for a term ending February 1, 2008.

Mr. Stan Lynde, Helena, Montana, for a term ending February 1, 2008.

(7) As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

Mr. Joe Quilici, Butte, Montana, for a term ending January 1, 2007.

Mr. John Dudis, Kalispell, Montana, for a term ending January 1, 2007.

Mr. John Bartos, Corvallis, Montana, for a term ending January 1, 2007.

(8) As members of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Mr. Jack Morgenstern, Lewistown, Montana, for a term ending April 28, 2005.

Mr. Ed Henrich, Fairmont, Montana, for a term ending April 28, 2007.

Ms. Mardi Madsen, Billings, Montana, for a term ending April 28, 2007.

Mr. Derek Scoble, Clancy, Montana, for a term ending April 28, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 58th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 16, 2003

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF CERTAIN APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 10, 2003, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Steve Johnson, Missoula, Montana, for a term ending January 1, 2007.

Mr. Patrick Dudley, Butte, Montana, for a term ending January 1, 2007.

Mr. Joe Dwyer, Billings, Montana, for a term ending January 1, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 58th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 22, 2003

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF THE HONORABLE JOHN ARNAN WARNER AS JUSTICE OF THE MONTANA SUPREME COURT.

WHEREAS, the Governor of the State of Montana made the appointment, below designated, on April 24, 2003; and

WHEREAS, the appointment has been submitted to the Senate, to wit:

John Arnan Warner as Justice of the Montana Supreme Court, to serve the remainder of the term vacated by the Honorable Terry N. Trieweiler, resigned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 58th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 2003

2002 BALLOT ISSUES

CONSTITUTIONAL AMENDMENT NO. 37

The legislature submitted this proposal for a vote. This proposal would amend the Montana Constitution by changing the signature gathering requirements for placing a constitutional amendment on the ballot. People proposing constitutional amendments will be required to gather signatures from at least 10% of the qualified electors in at least one-half of Montana's counties, rather than in two-fifths of the legislative house districts. Qualified electors would be the number of registered voters last voting for governor in a county. If approved, this measure would take effect July 1, 2003.

The title and text of the Amendment follows:

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE III, SECTION 7, AND ARTICLE XIV, SECTION 9, OF THE MONTANA CONSTITUTION TO CHANGE THE DISTRIBUTION OF ELECTORS WHO MUST PETITION TO HAVE A CONSTITUTIONAL AMENDMENT PLACED ON THE BALLOT FROM AT LEAST 10 PERCENT IN TWO-FIFTHS OF THE LEGISLATIVE DISTRICTS TO AT LEAST 10 PERCENT IN ONE-HALF OF THE COUNTIES AND TO CHANGE THE BASIS FOR DETERMINING THE NUMBER OF QUALIFIED ELECTORS FROM THOSE ELECTORS IN A LEGISLATIVE REPRESENTATIVE DISTRICT LAST VOTING FOR GOVERNOR TO THOSE ELECTORS IN A COUNTY LAST VOTING FOR GOVERNOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article III, section 7, of The Constitution of the State of Montana is amended to read:

"**Section 7. Number of electors.** *(1)* The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(2) For the purposes of a constitutional amendment, the number of qualified electors in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election."

Section 2. Article XIV, section 9, of The Constitution of the State of Montana is amended to read:

"**Section 9. Amendment by initiative.** (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of ~~two-fifths~~ *at least one-half* of the ~~legislative districts~~ *counties*.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise."

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2002 by printing on the ballot the full title of this act and the following:

- ☐ FOR requiring that signatures be gathered in at least one-half of the counties rather than two-fifths of the legislative districts for constitutional initiatives.
- ☐ AGAINST requiring that signatures be gathered in at least one-half of the counties rather than two-fifths of the legislative districts for constitutional initiatives.

Constitutional Amendment No. 37 was approved by the following vote at the General Election held November 5, 2002:

For:	179,616
Against:	134,538

CONSTITUTIONAL AMENDMENT NO. 38

The legislature submitted this proposal for a vote. This proposal would amend the Montana Constitution by changing the signature gathering requirements for placing a statutory initiative on the ballot. People proposing statutory initiatives will be required to gather signatures from at least 5% of the qualified electors in at least one-half of Montana's counties, rather than in one-third of the legislative house districts. Qualified electors would be the number of registered voters last voting for governor in a county. If approved, this measure would take effect July 1, 2003.

The title and text of the Amendment follows:

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE III, SECTIONS 4 AND 7, OF THE MONTANA CONSTITUTION TO CHANGE THE DISTRIBUTION OF ELECTORS WHO MUST PETITION TO PLACE A STATUTORY INITIATIVE ON THE BALLOT FROM 5 PERCENT IN AT LEAST ONE-THIRD OF THE LEGISLATIVE REPRESENTATIVE DISTRICTS TO 5 PERCENT IN AT LEAST ONE-HALF OF THE COUNTIES AND TO CHANGE THE METHOD OF DETERMINING THE NUMBER OF QUALIFIED ELECTORS FROM THOSE IN A LEGISLATIVE REPRESENTATIVE DISTRICT LAST VOTING FOR GOVERNOR TO THOSE IN A COUNTY LAST VOTING FOR GOVERNOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article III, section 4, of The Constitution of the State of Montana is amended to read:

"**Section 4. Initiative.** (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least ~~one-third~~ *one-half* of the ~~legislative representative districts~~ *counties* and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held."

Section 2. Article III, section 7, of The Constitution of the State of Montana is amended to read:

"**Section 7. Number of electors.** *(1)* The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(2) For the purposes of a statutory initiative, the number of qualified electors required in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election."

Section 3. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2002 by printing on the ballot the full title of this act and the following:

☐ FOR requiring that signatures be gathered in at least one-half of the counties rather than one-third of the legislative districts for statutory initiatives.

☐ AGAINST requiring that signatures be gathered in at least one-half of the counties rather than one-third of the legislative districts for statutory initiatives.

Constitutional Amendment No. 38 was approved by the following vote at the General Election held November 5, 2002:

For:	178,946
Against:	131,849

INITIATIVE REFERENDUM NO. 117

This proposal seeks a public vote on House Bill 474 (Ch. 577, L. 2001), passed by the 2001 Legislature. HB 474, among other things, changes provisions regarding the deregulation of the electricity industry. It extends the transition to full consumer choice of electricity providers to 2007. It directs the Public Service Commission to set consumer rates to ensure full recovery of all prudently incurred costs by power suppliers. It creates a public Power Authority to construct, finance, and operate electrical facilities funded by state bonds. The bill creates, but does not fund, a consumer support program to ensure the availability of affordable power.

It is not possible to determine the financial impact of this proposal due to the uncertainties in the electricity and bond markets.

House Bill 474 was rejected by the following vote at the General Election held November 5, 2002:

Approve:	116,370
Reject:	177,966

INITIATIVE NO. 146

In 1998, Montana reached a settlement agreement with tobacco companies under which Montana will receive annual payments from the companies as long as cigarettes are sold in Montana. This initiative dedicates 49 percent of the settlement funds received each year for a state-wide tobacco disease prevention program designed to discourage children from starting to smoke and assist adults in quitting smoking. Funds would also be used for programs which provide health insurance benefits to those Montanans who cannot otherwise afford or acquire health insurance. The initiative also creates a tobacco prevention advisory board.

The initiative will annually require $14 million of tobacco settlement funds currently deposited in the state general fund to be deposited: $9.1 million into a fund for tobacco disease prevention and $4.9 million into a fund for providing health insurance benefits to those who cannot afford or acquire them.

The text of the Initiative follows:

Be it enacted by the People of the State of Montana:

Section 1. Section 17-6-602, MCA, is amended to read:

"**17-6-602. Definitions.** As used in this part, the following definitions apply:

(1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons by the state through any program of benefits, services, or coverage, including income tax incentives.

(2) "Health care" has the meaning provided in 50-16-504.

(3) *(a)* "Programs for tobacco disease prevention" means programs of services administered by the state for the purposes of informing individuals of the health risks of tobacco use and exposure *to secondhand tobacco smoke*, assisting persons in the avoidance of tobacco products use, and assisting individuals in cessation of tobacco use.

(b) Programs for tobacco disease prevention include:

(i) community-based education programs;

(ii) American Indian community tobacco education programs;

(iii) general public awareness and education programs;

(iv) tobacco cessation services;

(v) a tobacco use resource center;

(vi) special education and cessation programs to reach youth and women of childbearing age;

(vii) smokeless tobacco user programs; and

(viii) advertising issue programs.

(4) "Tobacco products" means a substance intended for human use that contains tobacco and includes but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

(5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4, of the Montana constitution and implemented through this part."

NEW SECTION. **Section 2. Tobacco settlement accounts — purpose — uses.** (1) The purpose of this section is to dedicate a portion of the tobacco settlement proceeds to fund a statewide comprehensive tobacco disease prevention program designed to:

(a) discourage children from starting use of tobacco;

(b) assist adults in quitting use of tobacco;

(c) provide funds for the Children's Health Insurance Program; and

(d) provide funds for the comprehensive health association programs.

(2) An amount equal to 32% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for funding a statewide tobacco prevention program designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use. The department of public health and human services shall manage the tobacco prevention program and shall adopt rules to implement the program. In adopting rules, the department shall consider the standards contained in Best Practices for Comprehensive Tobacco Control Programs - - August 1999, or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

(3) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for:

(a) matching funds to secure the maximum amount of federal funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10; and

(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part15, with funding use subject to 33-22-1513.

(4) Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that are not appropriated within two years after the date of deposit must be transferred to the trust fund.

(5) The legislature shall appropriate money from the state special revenue accounts provided for in this section for tobacco disease prevention, for the programs referred to in the subsection establishing the account, and for funding the tobacco prevention advisory board.

(6) Programs funded under this section that are private in nature may be funded through contracted services.

NEW SECTION. **Section 3. Tobacco prevention advisory board.** (1) There is a tobacco prevention advisory board. The board consists of 15 members appointed by the director of the department of public health and human services. Except for the initial appointments, each board member shall serve a 3-year term and is subject to reappointment for one succeeding term. The director shall appoint members to staggered terms, with 5 members serving an initial term of 1, 2 or 3 years. The initial members appointed shall draw lots to determine their term of office. The board shall terminate when tobacco settlement funds are no longer received by the state. The board shall meet at least one time each year, with date and frequency of meetings to be determined by its presiding officer. Health care professionals and individuals are eligible to

serve on the board. A board member may not have been paid by the tobacco products industry during the 10-year period preceding appointment.

(2) Members of the board are not entitled to compensation for their services, but are entitled to mileage allowance, as provided in 2-18-503, and expenses as provided in 2-18-501 and 2-18-502.

(3) The board shall furnish advice, gather information, and perform other activities regarding the state special revenue accounts established pursuant to [section 2]. The board may make recommendations for the use of appropriations from the state special revenue accounts.

(4) The board is attached to the department of public health and human services for administrative purposes, and the department shall provide staff support to the board.

Section 4. Section 53-4-1011, MCA, is amended to read:

"**53-4-1011. (Temporary) Tobacco settlement funds to general fund.** ~~Funds~~ *Unless deposited into the trust fund, provided for in 17-6-603, or a state special revenue account, provided for in [section 2], funds* received from the tobacco settlement must be deposited in the general fund. Any funds appropriated *from the general fund* for the children's health insurance program that remain unexpended at the end of the biennium must be transferred to the general fund. (Terminates on occurrence of contingency – sec. 15, Ch. 571, L. 1999.)"

NEW SECTION. **Section 5. Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 17, chapter 6, part 6, and the provisions of Title 17, chapter 6, part 6, apply to sections 2 and 3.

NEW SECTION. **Section 6. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Effective date.** This act is effective upon approval by the electorate.

Initiative No. 146 was approved by the following vote at the General Election held November 5, 2002:

For:	209,638
Against:	113,065

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This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(b).

Title-Chapter-Section	Action	Chapter	Bill Number
1-1-519	enacted	Ch. 70	HB 353
1-1-525	enacted	Ch. 2	HB 21
1-2-201	amended	Ch. 104	SB 17
1-5-405	amended	Ch. 12	HB 69
1-5-416	amended	Ch. 12	HB 69
1-5-610	amended	Ch. 12	HB 69
1-11-102	amended	Ch. 114	SB 10
2-2-106	amended	Ch. 114	SB 10
2-2-111	amended	Ch. 327	HB 435
2-2-121	amended	Ch. 58	SB 136
2-3-103	amended	Ch. 425	HB 94
2-4-102	amended	Ch. 181	SB 117
2-4-702	amended	Ch. 361	HB 437
2-4-704	amended	Ch. 361	HB 437
2-6-109	amended	Ch. 441	HB 540
2-6-202	amended	Ch. 30	HB 167
2-6-206	amended	Ch. 30	HB 167
2-6-211	amended	Ch. 30	HB 167
2-6-213	amended	Ch. 30	HB 167
2-6-401	amended	Ch. 30	HB 167
	amended	Ch. 116	SB. . 49
2-7-501	amended	Ch. 114	SB 10
2-9-212	amended	Ch. 529	SB 478
2-15-114	amended	Ch. 114	SB 10
2-15-141	enacted	Ch. 568	HB 608
2-15-142	enacted	Ch. 568	HB 608
2-15-143	enacted	Ch. 568	HB 608
2-15-150	amended	Ch. 190	HB 182
2-15-213	amended and renumbered 2-15-3330	Ch. 537	SB 446
2-15-214	renumbered 2-15-3331	Ch. 537	SB 446
2-15-215	renumbered 2-15-3332	Ch. 537	SB 446
2-15-1027	enacted	Ch. 503	HB 741
2-15-1205	amended	Ch. 491	SB 401
2-15-1508	amended	Ch. 254	SB 149
2-15-1708	repealed	Ch. 170	HB 656
2-15-1733	amended	Ch. 224	SB 109
2-15-1746	repealed	Ch. 243	HB 196
2-15-1747	amended	Ch. 243	HB 196
2-15-1820	enacted	Ch. 351	HB 76
2-15-1821	amended	Ch. 254	SB 149
2-15-1822	amended	Ch. 254	SB 149
2-15-1869	formerly 2-15-2204	Ch. 478	HB 734
2-15-1870	enacted	Ch. 478	HB 734
2-15-2017	enacted	Ch. 81	HB 116
2-15-2107	amended	Ch. 488	SB 321
2-15-2204	amended and renumbered 2-15-1869	Ch. 478	HB 734
2-15-2217	enacted	Ch. 449	HB 698
2-15-2218	enacted	Ch. 449	HB 698
2-15-2221	enacted	Ch. 185	SB 160
2-15-2222	enacted	Ch. 185	SB 160
2-15-2223	enacted	Ch. 185	SB 160

2-15-2224 . . . . . enacted . . . . . Ch. 185 . . . . . SB 160
2-15-2225 . . . . . enacted . . . . . Ch. 185 . . . . . SB 160
2-15-2226 . . . . . enacted . . . . . Ch. 185 . . . . . SB 160
2-15-2302 . . . . . amended . . . . . Ch. 559 . . . . . HB 211
2-15-3330 . . . . . for merly 2-15-213 . . . . . Ch. 537 . . . . . SB 446
2-15-3331 . . . . . for merly 2-15-214 . . . . . Ch. 537 . . . . . SB 446
2-15-3332 . . . . . for merly 2-15-215 . . . . . Ch. 537 . . . . . SB 446
2-15-3405 . . . . . amended . . . . . Ch. 381 . . . . . HB 157
2-16-214 . . . . . enacted . . . . . Ch. 144 . . . . . HB 305
2-17-112 . . . . . amended . . . . . Ch. 387 . . . . . HB 269
2-17-512 . . . . . amended . . . . . Ch. 92 . . . . . HB 471
amended . . . . . Ch. 114 . . . . . SB. . 10
2-17-803 . . . . . amended . . . . . Ch. 56 . . . . . HB 114
2-17-804 . . . . . amended . . . . . Ch. 56 . . . . . HB 114
2-17-805 . . . . . amended . . . . . Ch. 56 . . . . . HB 114
2-17-807 . . . . . amended . . . . . Ch. 56 . . . . . HB 114
2-17-808 . . . . . enacted . . . . . Ch. 56 . . . . . HB 114
amended . . . . . Ch. 62 . . . . . SB. 195
2-17-809 . . . . . enacted . . . . . Ch. 62 . . . . . SB 195
2-17-812 . . . . . amended . . . . . Ch. 56 . . . . . HB 114
2-17-813 . . . . . enacted . . . . . Ch. 56 . . . . . HB 114
2-18-301 . . . . . amended . . . . . Ch. 552 . . . . . HB 13
2-18-303 . . . . . amended . . . . . Ch. 552 . . . . . HB 13
2-18-312 . . . . . amended . . . . . Ch. 552 . . . . . HB 13
2-18-313 . . . . . amended . . . . . Ch. 552 . . . . . HB 13
2-18-315 . . . . . amended . . . . . Ch. 552 . . . . . HB 13
2-18-703 . . . . . amended . . . . . Ch. 529 . . . . . SB 478
amended . . . . . Ch. 552 . . . . . HB . 13
2-18-1203 . . . . . amended . . . . . Ch. 502 . . . . . HB 735
3-1-130 . . . . . amended . . . . . Ch. 583 . . . . . SB 490
3-1-317 . . . . . amended . . . . . Ch. 498 . . . . . HB 18
3-1-318 . . . . . enacted . . . . . Ch. 298 . . . . . HB 124
3-1-1610 . . . . . enacted . . . . . Ch. 583 . . . . . SB 490
3-2-605 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
3-5-114 . . . . . amended . . . . . Ch. 389 . . . . . HB 358
3-5-123 . . . . . repealed . . . . . Ch. 356 . . . . . HB 224
3-5-510 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
3-5-511 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
3-5-601 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
3-5-604 . . . . . amended . . . . . Ch. 583 . . . . . SB 490
3-5-901 . . . . . amended . . . . . Ch. 583 . . . . . SB 490
amended . . . . . Ch. 585 . . . . . HB 489
3-5-902 . . . . . amended . . . . . Ch. 583 . . . . . SB 490
3-6-102 . . . . . amended . . . . . Ch. 389 . . . . . HB 358
3-6-202 . . . . . amended . . . . . Ch. 389 . . . . . HB 358
3-6-204 . . . . . amended . . . . . Ch. 389 . . . . . HB 358
3-7-302 . . . . . repealed . . . . . Ch. 356 . . . . . HB 224
3-10-101 . . . . . amended . . . . . Ch. 389 . . . . . HB 358
3-10-115 . . . . . enacted . . . . . Ch. 389 . . . . . HB 358
3-10-116 . . . . . enacted . . . . . Ch. 389 . . . . . HB 358
3-10-117 . . . . . enacted . . . . . Ch. 389 . . . . . HB 358
3-10-203 . . . . . amended . . . . . Ch. 389 . . . . . HB 358
3-10-207 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
amended . . . . . Ch. 389 . . . . . HB 358
3-10-301 . . . . . amended . . . . . Ch. 470 . . . . . HB 677
3-10-601 . . . . . amended . . . . . Ch. 470 . . . . . HB 677
amended . . . . . Ch. 510 . . . . . SB. 275
3-15-204 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
3-15-301 . . . . . amended . . . . . Ch. 441 . . . . . HB 540
3-15-402 . . . . . amended . . . . . Ch. 441 . . . . . HB 540
3-15-403 . . . . . amended . . . . . Ch. 441 . . . . . HB 540
3-15-404 . . . . . amended . . . . . Ch. 441 . . . . . HB 540
3-20-103 . . . . . amended . . . . . Ch. 114 . . . . . SB 10

5-1-102 . . . . . amended . . . . . Ch. 254 . . . . . SB 149
5-1-115. . . . . enacted . . . . . Ch. 3 . . . . . HB 309
repealed and enacted . . . . . Ch. 546 . . . . . SB. 429
5-1-116. . . . . enacted . . . . . Ch. 4 . . . . . SB 258
5-2-205. . . . . enacted . . . . . Ch. 331 . . . . . SB 80
5-2-402 . . . . . amended . . . . . Ch. 336 . . . . . SB 262
5-2-403 . . . . . amended . . . . . Ch. 336 . . . . . SB 262
5-2-404 . . . . . amended . . . . . Ch. 336 . . . . . SB 262
5-2-406 . . . . . amended . . . . . Ch. 336 . . . . . SB 262
5-2-407 . . . . . amended . . . . . Ch. 336 . . . . . SB 262
5-5-202 . . . . . amended . . . . . Ch. 565 . . . . . HB 509
5-5-223 . . . . . amended . . . . . Ch. 565 . . . . . HB 509
5-5-227 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
5-5-230. . . . . enacted . . . . . Ch. 565 . . . . . HB 509
5-7-102 . . . . . amended . . . . . Ch. 52 . . . . . SB 7
amended . . . . . Ch. 572 . . . . . HB 689
5-7-103 . . . . . amended . . . . . Ch. 572 . . . . . HB 689
5-7-105 . . . . . amended . . . . . Ch. 572 . . . . . HB 689
5-7-108 . . . . . amended . . . . . Ch. 31 . . . . . HB 38
5-7-112. . . . . enacted . . . . . Ch. 572 . . . . . HB 689
5-7-208 . . . . . amended . . . . . Ch. 572 . . . . . HB 689
5-7-209 . . . . . amended . . . . . Ch. 31 . . . . . HB 38
5-7-305 . . . . . amended . . . . . Ch. 31 . . . . . HB 38
5-7-306. . . . . enacted . . . . . Ch. 31 . . . . . HB 38
5-11-105 . . . . . amended . . . . . Ch. 265 . . . . . SB 85
5-11-301 . . . . . repealed . . . . . Ch. 232 . . . . . HB 41
5-11-303. . . . . enacted . . . . . Ch. 232 . . . . . HB 41
5-11-304. . . . . enacted . . . . . Ch. 232 . . . . . HB 41
5-11-305. . . . . enacted . . . . . Ch. 232 . . . . . HB 41
5-11-707 . . . . . amended . . . . . Ch. 232 . . . . . HB 41
5-18-107 . . . . . repealed . . . . . Ch. 114 . . . . . SB 10
7-1-111 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
amended . . . . . Ch. 466 . . . . . HB 249
amended . . . . . Ch. 561 . . . . . HB 247
7-1-120. . . . . enacted . . . . . Ch. 471 . . . . . HB 758
7-1-202 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
7-1-2111 . . . . . amended . . . . . Ch. 522 . . . . . HB 748
7-1-4112 . . . . . amended . . . . . Ch. 15 . . . . . HB 132
7-1-4116 . . . . . amended . . . . . Ch. 15 . . . . . HB 132
7-2-4211. . . . . enacted . . . . . Ch. 334 . . . . . SB 168
7-3-1105 . . . . . amended . . . . . Ch. 466 . . . . . HB 249
7-3-1222 . . . . . amended . . . . . Ch. 466 . . . . . HB 249
7-4-2110 . . . . . amended . . . . . Ch. 112 . . . . . HB 264
7-4-2502 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
7-4-2503 . . . . . amended . . . . . Ch. 487 . . . . . SB 288
7-4-2614 . . . . . amended . . . . . Ch. 116 . . . . . SB 49
7-4-2631 . . . . . amended . . . . . Ch. 571 . . . . . HB 680
7-4-2636. . . . . enacted . . . . . Ch. 571 . . . . . HB 680
7-4-2637. . . . . enacted . . . . . Ch. 571 . . . . . HB 680
7-5-201 . . . . . amended . . . . . Ch. 466 . . . . . HB 249
7-5-2133. . . . . enacted . . . . . Ch. 264 . . . . . SB 24
7-5-2301 . . . . . amended . . . . . Ch. 523 . . . . . SB 46
7-5-4125. . . . . enacted . . . . . Ch. 264 . . . . . SB 24
7-5-4301 . . . . . amended . . . . . Ch. 526 . . . . . SB 384
7-6-204 . . . . . amended . . . . . Ch. 214 . . . . . HB 333
7-6-611 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
7-6-612 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
7-6-616 . . . . . amended . . . . . Ch. 35 . . . . . HB 232
7-6-617. . . . . enacted . . . . . Ch. 268 . . . . . SB 163
7-6-2401 . . . . . amended . . . . . Ch. 145 . . . . . HB 339
7-6-2402 . . . . . repealed . . . . . Ch. 145 . . . . . HB 339
7-6-2407 . . . . . amended . . . . . Ch. 371 . . . . . SB 284
7-6-4410 . . . . . amended . . . . . Ch. 34 . . . . . HB 207

7-7-2101	amended	Ch. 35	HB 232
7-7-2304	amended	Ch. 277	SB 150
7-7-2316	amended	Ch. 277	SB 150
7-7-4304	amended	Ch. 277	SB 150
7-7-4316	amended	Ch. 277	SB 150
7-7-4502	amended	Ch. 277	SB 150
7-8-2202	amended	Ch. 430	HB 292
7-12-2109	amended	Ch. 198	HB 416
	amended	Ch. 277	SB. 150
7-12-2110	repealed	Ch. 277	SB 150
7-12-2120	amended	Ch. 277	SB 150
7-12-2141	enacted	Ch. 277	SB 150
7-12-2161	amended	Ch. 277	SB 150
7-12-2168	amended	Ch. 277	SB 150
7-12-2171	amended	Ch. 277	SB 150
7-12-4110	amended	Ch. 277	SB 150
7-12-4111	repealed	Ch. 277	SB 150
7-12-4137	enacted	Ch. 277	SB 150
7-12-4174	amended	Ch. 277	SB 150
7-12-4203	amended	Ch. 277	SB 150
7-13-114	amended	Ch. 277	SB 150
7-13-2275	amended	Ch. 395	HB 610
7-13-3043	amended	Ch. 277	SB 150
7-14-112	amended	Ch. 114	SB 10
7-14-1001	enacted	Ch. 219	HB 583
7-14-1002	enacted	Ch. 219	HB 583
7-14-1003	enacted	Ch. 219	HB 583
7-14-1004	enacted	Ch. 219	HB 583
7-14-1005	enacted	Ch. 219	HB 583
7-14-1006	enacted	Ch. 219	HB 583
7-14-1007	enacted	Ch. 219	HB 583
7-14-2506	amended	Ch. 35	HB 232
7-14-4712	amended	Ch. 277	SB 150
7-14-4732	amended	Ch. 277	SB 150
7-15-4283	amended	Ch. 114	SB 10
7-15-4288	amended	Ch. 114	SB 10
7-15-4293	amended	Ch. 525	SB 320
7-21-3322	amended	Ch. 561	HB 247
7-21-3406	amended	Ch. 35	HB 232
7-21-3413	amended	Ch. 35	HB 232
7-21-3414	repealed	Ch. 35	HB 232
7-21-3701	enacted	Ch. 582	SB 484
7-21-3702	enacted	Ch. 582	SB 484
7-21-3703	enacted	Ch. 582	SB 484
7-21-3704	enacted	Ch. 582	SB 484
7-21-3710	enacted	Ch. 582	SB 484
7-21-3715	enacted	Ch. 582	SB 484
7-22-2101	amended	Ch. 98	HB 378
7-31-4110	enacted	Ch. 466	HB 249
7-32-2128	amended	Ch. 114	SB 10
7-32-2222	amended	Ch. 579	SB 370
7-32-2224	enacted	Ch. 579	SB 370
7-32-2245	amended	Ch. 579	SB 370
7-32-4304	amended	Ch. 561	HB 247
7-33-2111	amended	Ch. 35	HB 232
7-33-2205	amended	Ch. 273	HB 287
7-33-2313	amended	Ch. 429	HB 213
7-33-2401	amended	Ch. 508	SB 246
7-33-2404	amended	Ch. 508	SB 246
10-1-104	amended	Ch. 17	HB 39
10-1-901	enacted	Ch. 222	SB 75
10-1-902	enacted	Ch. 222	SB 75
10-1-903	enacted	Ch. 222	SB 75

10-1-904 . . . . . enacted . . . . . Ch. 222 . . . . . SB 75
10-2-102 . . . . . amended . . . . . Ch. 491 . . . . . SB 401
10-2-106 . . . . . amended . . . . . Ch. 491 . . . . . SB 401
10-2-112 . . . . . enacted . . . . . Ch. 491 . . . . . SB 401
10-2-113 . . . . . enacted . . . . . Ch. 491 . . . . . SB 401
10-2-114 . . . . . enacted . . . . . Ch. 491 . . . . . SB 401
10-2-115 . . . . . enacted . . . . . Ch. 491 . . . . . SB 401
10-2-601 . . . . . amended . . . . . Ch. 451 . . . . . HB 761
amended . . . . . Ch. 491 . . . . . SB. 401
10-2-602 . . . . . amended . . . . . Ch. 491 . . . . . SB 401
10-2-603 . . . . . amended . . . . . Ch. 491 . . . . . SB 401
10-2-604 . . . . . en acted and amended . . . . . Ch. 451 . . . . . HB 761
10-3-103 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
10-3-203 . . . . . amended . . . . . Ch. 426 . . . . . HB 152
10-3-312 . . . . . amended . . . . . Ch. 426 . . . . . HB 152
10-3-801 . . . . . enacted . . . . . Ch. 534 . . . . . SB 112
10-3-1204 . . . . . amended . . . . . Ch. 37 . . . . . HB 115
10-3-1217 . . . . . amended . . . . . Ch. 517 . . . . . SB 434
10-3-1301 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1302 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1303 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1304 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1305 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1306 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1307 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1308 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1309 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-3-1310 . . . . . enacted . . . . . Ch. 560 . . . . . HB 218
10-4-114 . . . . . enacted . . . . . Ch. 184 . . . . . SB 132
13-1-101 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
amended . . . . . Ch. 475 . . . . . HB 190
13-1-103 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-1-104 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-1-112 . . . . . amended . . . . . Ch. 271 . . . . . HB 285
13-1-202 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-1-203 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-1-209 . . . . . enacted . . . . . Ch. 218 . . . . . HB 548
13-1-301 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-107 . . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-2-108 . . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-2-109 . . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-2-110 . . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-2-114 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-2-115 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-116 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-122 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-123 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-124 . . . . . enacted . . . . . Ch. 557 . . . . . HB 201
13-2-202 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-2-203 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-2-205 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-211 . . . . . repealed . . . . . Ch. 557 . . . . . HB 201
13-2-212 . . . . . amended and re num bered 13-21-201 . . . . . Ch. 557 . . . . . HB 201
13-2-214 . . . . . amended and re num bered 13-21-202 . . . . . Ch. 557 . . . . . HB 201
13-2-215 . . . . . amended and re num bered 13-21-203 . . . . . Ch. 557 . . . . . HB 201
13-2-219 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-2-220 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-402 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-403 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-2-404 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-2-513 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-514 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-2-515 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190

13-2-601 . . . . . amended. . . . . Ch. 475 . . . . . HB 190
13-2-603 . . . . . repealed 1/1/2004. . . . . Ch. 475 . . . . . HB 190
13-3-105 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-4-101 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-4-102 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-4-106 . . . . . amended. . . . . Ch. 47 . . . . . HB 151
13-4-203 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-10-201 . . . . . amended. . . . . Ch. 7 . . . . . HB 25
amended. . . . . Ch. 475 . . . . . HB 190
13-10-204 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-10-208 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-10-209 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-10-211 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
amended. . . . . Ch. 475 . . . . . HB 190
13-10-301 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-10-302 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-10-303 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-10-311 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-12-201 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-12-202 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-12-203 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-12-204 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-12-205 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-12-208 . . . . . repealed. . . . . Ch. 414 . . . . . HB 155
13-12-209 . . . . . repealed. . . . . Ch. 414 . . . . . HB 155
13-12-212 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-111 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-112 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
amended. . . . . Ch. 475 . . . . . HB 190
13-13-114 . . . . . amended. . . . . Ch. 475 . . . . . HB 190
13-13-115 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-116 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-117 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-201 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
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13-13-203 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-204 . . . . . amended. . . . . Ch. 475 . . . . . HB 190
13-13-205 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
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13-13-211 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-212 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
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13-13-213 . . . . . amended. . . . . Ch. 367 . . . . . HB 563
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13-13-214 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
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13-13-221 . . . . . repealed. . . . . Ch. 414 . . . . . HB 155
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13-13-229 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
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13-13-232 . . . . . amended. . . . . Ch. 475 . . . . . HB 190
13-13-233 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-234 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-241 . . . . . amended. . . . . Ch. 475 . . . . . HB 190
13-13-244 . . . . . amended. . . . . Ch. 414 . . . . . HB 155
13-13-270 . . . . . enacted. . . . . Ch. 557 . . . . . HB 201
13-13-271 . . . . amended and re num bered 13-21-204. . . . . Ch. 557 . . . . . HB 201
13-13-272 . . . . amended and re num bered 13-21-205. . . . . Ch. 557 . . . . . HB 201
13-13-273 . . . . amended and re num bered 13-21-206. . . . . Ch. 557 . . . . . HB 201
13-13-276 . . . . . repealed. . . . . Ch. 557 . . . . . HB 201
13-13-277 . . . . amended and re num bered 13-21-207. . . . . Ch. 557 . . . . . HB 201
13-13-278 . . . . amended and re num bered 13-21-104. . . . . Ch. 557 . . . . . HB 201
13-13-301 . . . . . amended. . . . . Ch. 475 . . . . . HB 190

13-13-304 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-13-305 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-13-306 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-13-307 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-13-309 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-13-310 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-13-311 . . . . . repealed 1/1/2004 . . . . . Ch. 475 . . . . . HB 190
13-13-601. . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-13-602. . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-13-603. . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-14-112 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-14-113 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-14-115 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-14-116 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-14-117 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-14-118 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-14-212 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-15-101 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-15-103 . . . . amended and renumbered 13-15-207 . . . . . Ch. 414 . . . . . HB 155
13-15-104 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-15-105 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-15-107. . . . . enacted . . . . . Ch. 475 . . . . . HB 190
13-15-111 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-15-112. . . . . enacted . . . . . Ch. 414 . . . . . HB 155
13-15-201 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-15-202 . . . . . repealed . . . . . Ch. 414 . . . . . HB 155
13-15-206. . . . . enacted . . . . . Ch. 414 . . . . . HB 155
13-15-207 . . . . . formerly 13-15-103
13-15-208 . . . . . formerly 13-16-202
13-15-401 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-15-402 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-16-201 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-16-202 . . . . . renumbered 13-15-208
13-16-303 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-16-411 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
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13-16-417 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-16-420 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-101 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-102 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-103 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-104 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-105 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-106 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-107 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-108. . . . . enacted . . . . . Ch. 320 . . . . . HB 87
13-17-201 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-203 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-204 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-206 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-17-211. . . . . enacted . . . . . Ch. 414 . . . . . HB 155
13-17-212. . . . . enacted . . . . . Ch. 414 . . . . . HB 155
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13-17-306 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-19-106 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
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13-19-309 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-19-312 . . . . . amended . . . . . Ch. 414 . . . . . HB 155
13-19-313 . . . . . amended . . . . . Ch. 475 . . . . . HB 190
13-19-314 . . . . . amended . . . . . Ch. 414 . . . . . HB 155

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13-21-102	enacted	Ch. 557	HB 201
13-21-103	enacted	Ch. 557	HB 201
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13-21-203	for merly 13-2-215	Ch. 557	HB 201
13-21-204	for merly 13-13-271	Ch. 557	HB 201
13-21-205	for merly 13-13-272	Ch. 557	HB 201
13-21-206	for merly 13-13-273	Ch. 557	HB 201
13-21-207	for merly 13-13-277	Ch. 557	HB 201
13-21-210	enacted	Ch. 557	HB 201
13-21-211	enacted	Ch. 557	HB 201
13-21-212	enacted	Ch. 557	HB 201
13-21-213	enacted	Ch. 557	HB 201
13-22-107	amended	Ch. 475	HB 190
13-25-101	amended	Ch. 414	HB 155
13-27-111	amended	Ch. 323	HB 203
13-27-201	amended	Ch. 323	HB 203
13-27-202	amended	Ch. 323	HB 203
13-27-204	amended	Ch. 323	HB 203
13-27-205	amended	Ch. 323	HB 203
13-27-206	amended	Ch. 323	HB 203
13-27-207	amended	Ch. 323	HB 203
13-27-301	amended	Ch. 323	HB 203
13-27-302	amended	Ch. 323	HB 203
13-27-303	amended	Ch. 323	HB 203
13-27-304	amended	Ch. 323	HB 203
13-27-307	amended	Ch. 323	HB 203
13-27-312	amended	Ch. 132	HB 198
13-27-410	amended	Ch. 475	HB 190
13-27-501	amended	Ch. 414	HB 155
13-27-502	amended	Ch. 414	HB 155
13-35-202	amended	Ch. 414	HB 155
13-35-205	amended	Ch. 414	HB 155
13-35-206	amended	Ch. 414	HB 155
13-35-225	amended	Ch. 415	HB 253
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13-35-226	amended	Ch. 114	SB 10
13-35-227	amended	Ch. 59	HB 108
13-37-117	amended	Ch. 109	SB 38
13-37-126	amended	Ch. 414	HB 155
13-37-206	amended	Ch. 191	HB 252
13-37-216	amended	Ch. 462	SB 423
13-37-218	amended	Ch. 462	SB 423
13-37-229	amended	Ch. 462	SB 423
13-37-250	amended	Ch. 414	HB 155
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13-38-201	amended	Ch. 367	HB 563
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15-1-116	amended	Ch. 477	HB 538
15-1-117	amended	Ch. 477	HB 538
15-1-121	amended	Ch. 236	HB 272
	amended	Ch. 252	SB. 114
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15-1-122	amended	Ch. 48	HB 217
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15-1-122 (Continued) . . . . . amended . . . . . Ch. 592 . . . . . HB 559
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15-1-140 . . . . . enacted . . . . . Ch. 597 . . . . . SB 271
15-1-141 . . . . . enacted . . . . . Ch. 597 . . . . . SB 271
15-1-232 . . . . . enacted . . . . . Ch. 51 . . . . . HB 406
15-1-402 . . . . . amended . . . . . Ch. 511 . . . . . SB 294
15-1-501 . . . . . amended . . . . . Ch. 521 . . . . . HB 721
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amended . . . . . Ch. 597 . . . . . SB. 271
15-6-134 . . . . . amended . . . . . Ch. 606 . . . . . SB 461
15-6-138 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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15-6-193 . . . . . enacted . . . . . Ch. 606 . . . . . SB 461
15-6-201 . . . . . amended . . . . . Ch. 577 . . . . . SB 126
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15-6-207 . . . . . amended . . . . . Ch. 577 . . . . . SB 126
15-6-211 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
15-6-217 . . . . . amended . . . . . Ch. 224 . . . . . SB 109
15-6-225 . . . . . amended . . . . . Ch. 405 . . . . . SB 146
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15-6-227 . . . . . enacted . . . . . Ch. 370 . . . . . SB 159
15-7-102 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
15-7-111 . . . . . amended . . . . . Ch. 606 . . . . . SB 461
15-7-138 . . . . . amended . . . . . Ch. 315 . . . . . SB 302
15-7-139 . . . . . enacted . . . . . Ch. 5 . . . . . HB 188
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15-7-140 . . . . . enacted . . . . . Ch. 5 . . . . . HB 188
15-7-307 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
15-8-201 . . . . . amended . . . . . Ch. 34 . . . . . HB 207
15-8-204 . . . . . amended . . . . . Ch. 34 . . . . . HB 207
15-10-202 . . . . . amended . . . . . Ch. 34 . . . . . HB 207
15-10-420 . . . . . amended . . . . . Ch. 115 . . . . . SB 31
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15-16-102 . . . . . amended . . . . . Ch. 315 . . . . . SB 302
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15-16-202 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
15-17-121 . . . . . amended . . . . . Ch. 241 . . . . . HB 627
15-17-131 . . . . . enacted . . . . . Ch. 315 . . . . . SB 302
15-23-703 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
15-23-801 . . . . . amended . . . . . Ch. 342 . . . . . SB 460
15-24-601 . . . . . repealed . . . . . Ch. 577 . . . . . SB 126
15-24-602 . . . . . repealed . . . . . Ch. 577 . . . . . SB 126
15-24-1401 . . . . . amended . . . . . Ch. 405 . . . . . SB 146
15-30-101 . . . . . amended . . . . . Ch. 225 . . . . . SB 121
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15-30-103 . . . . . amended . . . . . Ch. 544 . . . . . SB 407
15-30-106 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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15-30-111 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
amended . . . . . Ch. 519 . . . . . SB. 480
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15-30-112 . . . . . amended . . . . . Ch. 544 . . . . . SB 407
15-30-115 . . . . . amended . . . . . Ch. 123 . . . . . HB 490
15-30-121 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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15-30-122 . . . . . amended . . . . . Ch. 544 . . . . . SB 407
15-30-124 . . . . . amended . . . . . Ch. 544 . . . . . SB 407
15-30-136 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
15-30-142 . . . . . amended . . . . . Ch. 10 . . . . . HB 58
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15-30-154 . . . . . enacted . . . . . Ch. 491 . . . . . SB 401
15-30-161 . . . . . repealed . . . . . Ch. 159 . . . . . HB 391

15-30-162	repealed	Ch. 159	HB 391
15-30-165	amended	Ch. 482	SB 143
15-30-174	amended	Ch. 66	HB 59
15-30-182	enacted	Ch. 582	SB 484
15-30-183	enacted	Ch. 544	SB 407
15-30-187	enacted	Ch. 590	HB 452
15-30-201	amended	Ch. 114	SB 10
15-30-209	amended	Ch. 95	HB 117
15-30-256	amended	Ch. 243	HB 196
15-30-301	amended	Ch. 114	SB 10
15-30-604	amended	Ch. 566	HB 539
15-30-1102	amended	Ch. 225	SB 121
15-30-1112	amended	Ch. 225	SB 121
15-30-1113	amended	Ch. 225	SB 121
15-31-102	amended	Ch. 114	SB 10
15-31-114	amended	Ch. 114	SB 10
	amended	Ch. 482	SB. 143
15-31-121	amended	Ch. 521	HB 721
15-31-123	repealed	Ch. 159	HB 391
15-31-124	amended	Ch. 405	SB 146
15-31-134	enacted	Ch. 582	SB 484
15-31-141	amended	Ch. 124	HB 552
15-31-150	amended	Ch. 114	SB 10
15-31-322	amended	Ch. 521	HB 721
15-31-323	amended	Ch. 521	HB 721
15-31-324	amended	Ch. 521	HB 721
15-31-326	amended	Ch. 521	HB 721
15-31-404	amended	Ch. 114	SB 10
15-31-405	amended	Ch. 114	SB 10
15-32-102	amended	Ch. 155	SB 71
15-32-104	amended	Ch. 524	SB 138
15-32-106	amended	Ch. 338	SB 316
15-32-109	amended	Ch. 524	SB 138
15-32-115	amended	Ch. 39	HB 233
15-32-203	amended	Ch. 155	SB 71
15-32-402	amended	Ch. 524	SB 138
15-32-403	repealed 7/1/2005	Ch. 609	SB 487
15-32-404	amended	Ch. 609	SB 487
15-32-405	amended	Ch. 114	SB 10
	amended	Ch. 159	HB 391
15-32-503	amended	Ch. 338	SB 316
15-32-507	amended	Ch. 338	SB 316
15-35-108	amended	Ch. 32	HB 136
	amended	Ch. 351	HB . 76
	amended	Ch. 481	SB. 115
15-36-304	amended	Ch. 522	HB 748
15-36-314	amended	Ch. 522	HB 748
15-36-315	amended	Ch. 522	HB 748
15-36-320	repealed	Ch. 522	HB 748
15-36-324	amended	Ch. 114	SB 10
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15-36-331	en acted and amended	Ch. 522	HB 748
15-36-332	enacted	Ch. 522	HB 748
15-37-103	amended	Ch. 342	SB 460
15-38-106	amended	Ch. 496	HB 10
15-38-113	amended	Ch. 522	HB 748
15-38-202	amended	Ch. 522	HB 748
15-50-205	amended	Ch. 114	SB 10
15-50-206	amended	Ch. 114	SB 10
15-53-129	amended	Ch. 515	SB 387
15-53-130	amended	Ch. 515	SB 387
15-53-131	enacted	Ch. 515	SB 387
15-53-132	enacted	Ch. 515	SB 387

15-53-201 . . . . . repealed . . . . . Ch. 36 . . . . . HB 96
15-53-202 . . . . . repealed . . . . . Ch. 36 . . . . . HB 96
15-53-203 . . . . . repealed . . . . . Ch. 36 . . . . . HB 96
15-60-101 . . . . . amended . . . . . Ch. 532 . . . . . HB 743
15-60-102 . . . . . amended . . . . . Ch. 541 . . . . . HB 705
15-60-210 . . . . . amended . . . . . Ch. 532 . . . . . HB 743
15-60-211 . . . . . enacted . . . . . Ch. 541 . . . . . HB 705
15-62-103 . . . . . amended . . . . . Ch. 566 . . . . . HB 539
15-62-201 . . . . . amended . . . . . Ch. 566 . . . . . HB 539
15-62-203 . . . . . amended . . . . . Ch. 566 . . . . . HB 539
15-62-206 . . . . . amended . . . . . Ch. 566 . . . . . HB 539
15-62-207 . . . . . amended . . . . . Ch. 566 . . . . . HB 539
15-66-101 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-102 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-103 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-104 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-201 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-202 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-203 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-204 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-205 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-206 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-207 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-208 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-66-209 . . . . . enacted . . . . . Ch. 390 . . . . . HB 481
15-67-101 . . . . . en acted and amended . . . . . Ch. 531 . . . . . HB 722
15-67-102 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-103 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-104 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-201 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-202 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-203 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-204 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-205 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-206 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-207 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-208 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-67-209 . . . . . enacted . . . . . Ch. 531 . . . . . HB 722
15-68-101 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-102 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-103 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-106 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-107 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-110 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-201 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-202 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-206 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-207 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-208 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-209 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-210 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-211 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-212 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-401 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-402 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-405 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-410 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-411 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-501 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-502 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-505 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-506 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407
15-68-510 . . . . . enacted . . . . . Ch. 544 . . . . . SB 407

15-68-512	enacted	Ch. 544	SB 407
15-68-513	enacted	Ch. 544	SB 407
15-68-514	enacted	Ch. 544	SB 407
15-68-516	enacted	Ch. 544	SB 407
15-68-517	enacted	Ch. 544	SB 407
15-68-520	enacted	Ch. 544	SB 407
15-68-525	enacted	Ch. 544	SB 407
15-68-801	enacted	Ch. 544	SB 407
15-68-805	enacted	Ch. 544	SB 407
15-68-808	enacted	Ch. 544	SB 407
15-68-811	enacted	Ch. 544	SB 407
15-68-815	enacted	Ch. 544	SB 407
15-68-820	enacted	Ch. 544	SB 407
15-70-101	amended	Ch. 594	SB 47
15-70-201	amended	Ch. 114	SB 10
15-70-522	amended	Ch. 535	SB 414
15-72-102	amended	Ch. 114	SB 10
16-1-106	amended	Ch. 110	SB 40
	amended	Ch. 369	SB. 152
16-1-302	amended	Ch. 110	SB 40
16-1-304	amended	Ch. 110	SB 40
16-3-107	amended	Ch. 372	SB 334
16-4-109	amended	Ch. 605	SB 415
16-4-111	amended	Ch. 369	SB 152
16-4-204	amended	Ch. 369	SB 152
16-4-207	amended	Ch. 110	SB 40
16-4-301	amended	Ch. 369	SB 152
16-4-402	amended	Ch. 110	SB 40
16-4-403	repealed	Ch. 110	SB 40
16-4-406	amended	Ch. 110	SB 40
16-4-414	enacted	Ch. 110	SB 40
16-4-420	amended	Ch. 110	SB 40
16-4-501	amended	Ch. 369	SB 152
16-4-801	amended	Ch. 422	HB 631
16-11-101	amended	Ch. 114	SB 10
16-11-111	amended	Ch. 544	SB 407
16-11-114	amended	Ch. 544	SB 407
16-11-119	amended	Ch. 544	SB 407
16-11-201	amended	Ch. 544	SB 407
16-11-202	amended	Ch. 544	SB 407
16-11-206	amended	Ch. 544	SB 407
16-11-403	amended	Ch. 397	HB 663
16-11-404	enacted	Ch. 397	HB 663
16-11-501	enacted	Ch. 397	HB 663
16-11-502	enacted	Ch. 397	HB 663
16-11-503	enacted	Ch. 397	HB 663
16-11-504	enacted	Ch. 397	HB 663
16-11-505	enacted	Ch. 397	HB 663
16-11-506	enacted	Ch. 397	HB 663
16-11-507	enacted	Ch. 397	HB 663
16-11-508	enacted	Ch. 397	HB 663
16-11-509	enacted	Ch. 397	HB 663
16-11-510	enacted	Ch. 397	HB 663
16-11-511	enacted	Ch. 397	HB 663
16-11-512	enacted	Ch. 397	HB 663
17-1-111	amended	Ch. 607	SB 483
17-1-501	amended	Ch. 41	HB 88
17-1-502	amended	Ch. 41	HB 88
17-1-505	amended	Ch. 41	HB 88
17-1-601	repealed	Ch. 41	HB 88
17-1-602	repealed	Ch. 41	HB 88
17-1-603	repealed	Ch. 41	HB 88

17-2-108 . . . . . amended . . . . . Ch. 332 . . . . . SB 86
amended . . . . . Ch. 576 . . . . . HB 744
17-2-121 . . . . . repealed . . . . . Ch. 380 . . . . . HB 145
17-2-304 . . . . . amended . . . . . Ch. 332 . . . . . SB 86
17-3-222 . . . . . amended . . . . . Ch. 41 . . . . . HB 88
17-3-1003 . . . . . amended . . . . . Ch. 355 . . . . . HB 223
17-4-105 . . . . . amended . . . . . Ch. 236 . . . . . HB 272
17-4-106 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
17-5-205 . . . . . amended . . . . . Ch. 139 . . . . . HB 172
17-5-703 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
17-5-807 . . . . . enacted . . . . . Ch. 92 . . . . . HB 471
17-5-820 . . . . . enacted (1999) . . . . . Ch. 269 (1999) . . . HB 555
amended . . . . . Ch. 295 . . . . . SB. 249
17-5-1102 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
17-5-1103 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
17-5-1111 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
17-5-1506 . . . . . amended . . . . . Ch. 609 . . . . . SB 487
17-5-1527 . . . . . amended . . . . . Ch. 609 . . . . . SB 487
17-5-1608 . . . . . amended . . . . . Ch. 562 . . . . . HB 261
amended . . . . . Ch. 597 . . . . . SB. 271
17-5-2001 . . . . . amended . . . . . Ch. 562 . . . . . HB 261
amended . . . . . Ch. 597 . . . . . SB. 271
17-5-2102 . . . . . amended . . . . . Ch. 277 . . . . . SB 150
17-6-302 . . . . . amended . . . . . Ch. 183 . . . . . SB 131
17-6-345 . . . . . enacted . . . . . Ch. 183 . . . . . SB 131
17-6-346 . . . . . enacted . . . . . Ch. 183 . . . . . SB 131
17-6-347 . . . . . enacted . . . . . Ch. 183 . . . . . SB 131
17-6-403 . . . . . amended . . . . . Ch. 351 . . . . . HB 76
amended . . . . . Ch. 405 . . . . . SB. 146
17-6-411 . . . . . repealed . . . . . Ch. 351 . . . . . HB 76
17-6-606 . . . . . amended . . . . . Ch. 608 . . . . . SB 485
17-7-102 . . . . . amended . . . . . Ch. 607 . . . . . SB 483
17-7-111 . . . . . amended . . . . . Ch. 332 . . . . . SB 86
17-7-131 . . . . . amended . . . . . Ch. 607 . . . . . SB 483
17-7-138 . . . . . amended . . . . . Ch. 547 . . . . . SB 492
17-7-140 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
amended . . . . . Ch. 169 . . . . . HB . 60
amended . . . . . Ch. 607 . . . . . SB. 483
17-7-142 . . . . . amended . . . . . Ch. 23 . . . . . HB 23
17-7-402 . . . . . amended . . . . . Ch. 182 . . . . . SB 128
amended . . . . . Ch. 332 . . . . . SB. . 86
17-7-502 . . . . . amended . . . . . Ch. 43 . . . . . HB 168
amended . . . . . Ch. 140 . . . . . HB 180
amended . . . . . Ch. 353 . . . . . HB 134
amended . . . . . Ch. 355 . . . . . HB 223
amended . . . . . Ch. 397 . . . . . HB 663
amended . . . . . Ch. 481 . . . . . SB. 115
amended . . . . . Ch. 522 . . . . . HB 748
amended . . . . . Ch. 533 . . . . . HB 767
18-1-203 . . . . . amended . . . . . Ch. 203 . . . . . SB 229
18-2-107 . . . . . amended . . . . . Ch. 355 . . . . . HB 223
18-2-201 . . . . . amended . . . . . Ch. 203 . . . . . SB 229
18-2-302 . . . . . amended . . . . . Ch. 203 . . . . . SB 229
18-2-401 . . . . . amended . . . . . Ch. 293 . . . . . SB 188
18-2-403 . . . . . amended . . . . . Ch. 467 . . . . . HB 315
18-2-407 . . . . . amended . . . . . Ch. 467 . . . . . HB 315
18-2-409 . . . . . amended . . . . . Ch. 564 . . . . . HB 403
18-4-132 . . . . . amended . . . . . Ch. 153 . . . . . SB 20
18-4-312 . . . . . amended . . . . . Ch. 203 . . . . . SB 229
18-8-204 . . . . . amended . . . . . Ch. 192 . . . . . SB 83
18-8-205 . . . . . amended . . . . . Ch. 192 . . . . . SB 83
18-8-212 . . . . . amended . . . . . Ch. 162 . . . . . SB 45
19-1-102 . . . . . amended . . . . . Ch. 114 . . . . . SB 10

19-2-303	amended	Ch. 114	SB 10
	amended	Ch. 429	HB 213
19-2-403	amended	Ch. 429	HB 213
19-2-405	amended	Ch. 114	SB 10
19-2-408	amended	Ch. 114	SB 10
19-2-506	amended	Ch. 429	HB 213
19-2-511	amended	Ch. 38	HB 143
19-2-603	amended	Ch. 429	HB 213
19-2-702	amended	Ch. 429	HB 213
19-2-704	amended	Ch. 429	HB 213
19-2-706	amended	Ch. 429	HB 213
19-2-708	amended	Ch. 429	HB 213
19-2-709	amended	Ch. 429	HB 213
19-2-715	enacted	Ch. 429	HB 213
19-2-801	amended	Ch. 429	HB 213
19-2-802	amended	Ch. 429	HB 213
19-2-907	amended	Ch. 429	HB 213
19-2-908	amended	Ch. 429	HB 213
19-2-909	amended	Ch. 429	HB 213
19-2-1010	amended	Ch. 429	HB 213
19-3-108	amended	Ch. 429	HB 213
	amended	Ch. 602	SB. 347
19-3-401	amended	Ch. 429	HB 213
19-3-403	amended	Ch. 429	HB 213
19-3-412	amended	Ch. 402	SB 110
	amended	Ch. 429	HB 213
19-3-503	amended	Ch. 26	HB 44
	amended	Ch. 289	SB. 66
	amended	Ch. 429	HB 213
19-3-504	amended	Ch. 429	HB 213
19-3-505	amended	Ch. 429	HB 213
19-3-509	repealed	Ch. 429	HB 213
19-3-510	amended	Ch. 429	HB 213
19-3-511	amended	Ch. 429	HB 213
19-3-512	amended	Ch. 429	HB 213
19-3-513	amended	Ch. 429	HB 213
19-3-514	amended	Ch. 292	SB 145
	amended	Ch. 429	HB 213
19-3-515	enacted	Ch. 292	SB 145
19-3-521	amended	Ch. 429	HB 213
19-3-904	amended	Ch. 429	HB 213
19-3-906	amended	Ch. 429	HB 213
19-3-908	amended	Ch. 429	HB 213
19-3-1002	amended	Ch. 429	HB 213
19-3-1008	amended	Ch. 429	HB 213
19-3-1015	amended	Ch. 429	HB 213
19-3-1106	amended	Ch. 402	SB 110
	amended	Ch. 429	HB 213
19-3-1201	amended	Ch. 429	HB 213
19-3-1202	amended	Ch. 429	HB 213
19-3-1205	amended	Ch. 429	HB 213
19-3-1210	amended	Ch. 429	HB 213
19-3-1501	amended	Ch. 429	HB 213
19-3-1604	repealed	Ch. 429	HB 213
19-3-2103	amended	Ch. 429	HB 213
19-3-2111	amended	Ch. 429	HB 213
19-3-2112	amended	Ch. 429	HB 213
19-3-2113	amended	Ch. 429	HB 213
19-3-2114	amended	Ch. 429	HB 213
19-3-2115	amended	Ch. 429	HB 213
19-3-2116	amended	Ch. 429	HB 213
19-3-2117	amended	Ch. 114	SB 10
	amended	Ch. 429	HB 213

19-3-2126 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-3-2133 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-3-2141 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-5-101 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-5-301 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-5-409 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-5-410. . . . . enacted . . . . . Ch. 26 . . . . . HB 44
19-5-411. . . . . enacted . . . . . Ch. 26 . . . . . HB 44
19-5-412. . . . . enacted . . . . . Ch. 289 . . . . . SB 66
19-5-413. . . . . enacted . . . . . Ch. 289 . . . . . SB 66
19-5-501 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-5-502 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-5-701 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-5-902 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
19-6-101 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-401 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-502 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-503 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-601 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-709 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-711 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
19-6-801 . . . . . amended . . . . . Ch. 26 . . . . . HB 44
amended . . . . . Ch. 289 . . . . . SB. . 66
amended . . . . . Ch. 429 . . . . . HB 213
19-6-802. . . . . repealed . . . . . Ch. 429 . . . . . HB 213
19-6-803 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-804 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-6-805 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-101 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-301 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-312 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-502 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-601 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-801 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-802. . . . . repealed . . . . . Ch. 429 . . . . . HB 213
19-7-803 . . . . . amended . . . . . Ch. 26 . . . . . HB 44
amended . . . . . Ch. 289 . . . . . SB. . 66
amended . . . . . Ch. 429 . . . . . HB 213
19-7-804 . . . . . amended . . . . . Ch. 26 . . . . . HB 44
amended . . . . . Ch. 289 . . . . . SB. . 66
amended . . . . . Ch. 429 . . . . . HB 213
19-7-805 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-7-1001 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-101 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-301 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-302 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-308 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-604 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-701 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-801 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-901 . . . . . amended . . . . . Ch. 26 . . . . . HB 44
amended . . . . . Ch. 289 . . . . . SB. . 66
amended . . . . . Ch. 429 . . . . . HB 213
19-8-902. . . . . repealed . . . . . Ch. 429 . . . . . HB 213
19-8-904 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-905 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-8-906 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-9-104 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-9-301 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
19-9-403 . . . . . amended . . . . . Ch. 26 . . . . . HB 44
amended . . . . . Ch. 289 . . . . . SB. . 66
amended . . . . . Ch. 429 . . . . . HB 213

19-9-405	amended	Ch. 429	HB 213
	repealed	Ch. 429	HB 213
19-9-406	amended	Ch. 429	HB 213
19-9-410	amended	Ch. 429	HB 213
19-9-411	amended	Ch. 429	HB 213
19-9-903	amended	Ch. 429	HB 213
19-9-1013	amended	Ch. 114	SB 10
19-9-1202	amended	Ch. 429	HB 213
19-9-1204	amended	Ch. 114	SB 10
	amended	Ch. 261	HB 686
	amended	Ch. 429	HB 213
19-9-1205	amended	Ch. 429	HB 213
19-9-1206	amended	Ch. 429	HB 213
19-9-1207	amended	Ch. 429	HB 213
19-9-1208	amended	Ch. 429	HB 213
19-13-104	amended	Ch. 429	HB 213
19-13-301	amended	Ch. 429	HB 213
19-13-403	amended	Ch. 26	HB 44
	amended	Ch. 289	SB. 66
	amended	Ch. 429	HB 213
19-13-404	repealed	Ch. 429	HB 213
19-13-405	amended	Ch. 429	HB 213
19-13-406	amended	Ch. 429	HB 213
19-13-701	amended	Ch. 429	HB 213
19-13-704	amended	Ch. 429	HB 213
19-13-803	amended	Ch. 429	HB 213
19-13-1007	amended	Ch. 429	HB 213
19-13-1011	amended	Ch. 114	SB 10
19-17-108	amended	Ch. 429	HB 213
19-17-401	amended	Ch. 262	HB 731
19-17-402	amended	Ch. 429	HB 213
19-17-403	amended	Ch. 429	HB 213
19-17-404	amended	Ch. 262	HB 731
19-17-405	amended	Ch. 429	HB 213
19-20-101	amended	Ch. 114	SB 10
	amended	Ch. 174	HB 154
19-20-201	amended	Ch. 174	HB 154
19-20-208	amended	Ch. 174	HB 154
19-20-212	amended	Ch. 174	HB 154
19-20-302	amended	Ch. 402	SB 110
19-20-402	amended	Ch. 174	HB 154
19-20-414	amended	Ch. 174	HB 154
19-20-705	amended	Ch. 174	HB 154
19-20-710	amended	Ch. 174	HB 154
19-20-715	amended	Ch. 174	HB 154
19-20-718	amended	Ch. 174	HB 154
19-20-719	amended	Ch. 174	HB 154
19-20-804	amended	Ch. 120	HB 178
	amended	Ch. 402	SB. 110
19-20-805	amended	Ch. 174	HB 154
19-20-806	enacted	Ch. 120	HB 178
19-20-905	amended	Ch. 174	HB 154
19-20-1101	amended	Ch. 174	HB 154
19-21-203	amended	Ch. 114	SB 10
19-21-214	amended	Ch. 114	SB 10
19-50-102	amended	Ch. 114	SB 10
	amended	Ch. 429	HB 213
19-50-103	amended	Ch. 114	SB 10
20-1-214	enacted	Ch. 352	HB 105
20-1-303	amended	Ch. 21	HB 78
20-1-408	repealed	Ch. 374	HB 67
20-3-106	amended	Ch. 21	HB 78
	amended	Ch. 374	HB . 67

20-3-109 . . . . . enacted . . . . . Ch. 171 . . . . . SB 81
20-3-205 . . . . . amended . . . . . Ch. 151 . . . . . SB 16
20-3-209 . . . . . amended . . . . . Ch. 276 . . . . . SB 97
20-3-322 . . . . . amended . . . . . Ch. 86 . . . . . HB 366
20-3-324 . . . . . amended . . . . . Ch. 21 . . . . . HB 78
amended . . . . . Ch. 340 . . . . . SB. 380
20-4-109 . . . . . amended . . . . . Ch. 173 . . . . . SB 202
20-5-324 . . . . . amended . . . . . Ch. 130 . . . . . HB 135
20-5-412 . . . . . enacted . . . . . Ch. 421 . . . . . HB 573
20-5-413 . . . . . enacted . . . . . Ch. 421 . . . . . HB 573
20-6-105 . . . . . enacted . . . . . Ch. 151 . . . . . SB 16
20-6-213 . . . . . repealed . . . . . Ch. 151 . . . . . SB 16
20-6-214 . . . . . amended . . . . . Ch. 151 . . . . . SB 16
20-6-215 . . . . . amended . . . . . Ch. 151 . . . . . SB 16
20-6-308 . . . . . amended . . . . . Ch. 151 . . . . . SB 16
20-6-309 . . . . . repealed . . . . . Ch. 151 . . . . . SB 16
20-6-320 . . . . . repealed . . . . . Ch. 151 . . . . . SB 16
20-6-322 . . . . . amended . . . . . Ch. 151 . . . . . SB 16
20-7-134 . . . . . enacted . . . . . Ch. 271 . . . . . HB 285
20-7-401 . . . . . amended . . . . . Ch. 479 . . . . . SB 76
20-7-436 . . . . . amended . . . . . Ch. 479 . . . . . SB 76
20-7-461 . . . . . amended . . . . . Ch. 16 . . . . . HB 153
20-8-101 . . . . . amended . . . . . Ch. 72 . . . . . SB 41
20-8-102 . . . . . amended . . . . . Ch. 73 . . . . . SB 42
amended . . . . . Ch. 74 . . . . . SB. . 43
20-9-101 . . . . . amended . . . . . Ch. 276 . . . . . SB 97
20-9-122 . . . . . amended . . . . . Ch. 34 . . . . . HB 207
20-9-235 . . . . . amended . . . . . Ch. 411 . . . . . SB 307
20-9-306 . . . . . amended . . . . . Ch. 550 . . . . . SB 424
20-9-326 . . . . . enacted . . . . . Ch. 550 . . . . . SB 424
20-9-331 . . . . . amended . . . . . Ch. 41 . . . . . HB 88
20-9-344 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
20-9-366 . . . . . amended . . . . . Ch. 550 . . . . . SB 424
20-9-370 . . . . . amended . . . . . Ch. 550 . . . . . SB 424
20-9-371 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
amended . . . . . Ch. 550 . . . . . SB. 424
20-9-403 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-406 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-408 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-412 . . . . . amended . . . . . Ch. 277 . . . . . SB 150
20-9-422 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-423 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-426 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-427 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-430 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-433 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-437 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-438 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-439 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-440 . . . . . amended . . . . . Ch. 492 . . . . . SB 441
20-9-472 . . . . . enacted . . . . . Ch. 492 . . . . . SB 441
20-9-501 . . . . . amended . . . . . Ch. 276 . . . . . SB 97
amended . . . . . Ch. 550 . . . . . SB. 424
20-9-542 . . . . . amended . . . . . Ch. 550 . . . . . SB 424
20-9-622 . . . . . amended . . . . . Ch. 291 . . . . . SB 135
20-9-630 . . . . . amended . . . . . Ch. 550 . . . . . SB 424
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20-9-631 . . . . . amended . . . . . Ch. 518 . . . . . SB 454
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20-10-101 . . . . . amended . . . . . Ch. 550 . . . . . SB 424

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20-10-128 . . . repealed . . . Ch. 550 . . . SB 424
20-10-141 . . . amended . . . Ch. 550 . . . SB 424
20-10-146 . . . amended . . . Ch. 276 . . . SB 97
20-10-205 . . . amended . . . Ch. 114 . . . SB 10
20-20-421 . . . amended . . . Ch. 414 . . . HB 155
20-25-301 . . . amended . . . Ch. 114 . . . SB 10
20-25-312 . . . amended . . . Ch. 220 . . . HB 639
20-25-321 . . . amended . . . Ch. 416 . . . HB 256
20-25-421 . . . amended . . . Ch. 255 . . . SB 183
20-25-427 . . . amended . . . Ch. 114 . . . SB 10
20-25-901 . . . amended . . . Ch. 566 . . . HB 539
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22-2-601 . . . amended . . . Ch. 569 . . . HB 609
22-3-1002 . . . amended . . . Ch. 485 . . . SB 232
22-3-1003 . . . amended . . . Ch. 542 . . . SB 101
22-3-1004 . . . amended . . . Ch. 542 . . . SB 101
22-3-1101 . . . enacted . . . Ch. 77 . . . HB 601
23-1-105 . . . amended . . . Ch. 114 . . . SB 10
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23-1-130 . . . repealed . . . Ch. 233 . . . HB 63
23-2-502 . . . amended . . . Ch. 477 . . . HB 538
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23-2-508 . . . amended . . . Ch. 477 . . . HB 538
23-2-509 . . . repealed 1/1/2004 . . . Ch. 477 . . . HB 538
23-2-510 . . . repealed 1/1/2004 . . . Ch. 477 . . . HB 538
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23-2-511 . . . amended . . . Ch. 592 . . . HB 559
23-2-512 . . . amended . . . Ch. 592 . . . HB 559
23-2-513 . . . amended . . . Ch. 477 . . . HB 538
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23-2-514 . . . amended . . . Ch. 592 . . . HB 559
23-2-515 . . . amended . . . Ch. 592 . . . HB 559
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23-2-517 . . . amended . . . Ch. 592 . . . HB 559
23-2-518 . . . amended . . . Ch. 592 . . . HB 559
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23-2-520 . . . repealed 1/1/2004 . . . Ch. 477 . . . HB 538
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23-2-601 . . . amended . . . Ch. 477 . . . HB 538
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23-2-611 . . . amended . . . Ch. 477 . . . HB 538
23-2-612 . . . repealed 1/1/2004 . . . Ch. 477 . . . HB 538
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23-2-613 . . . repealed 1/1/2004 . . . Ch. 477 . . . HB 538
23-2-614 . . . amended . . . Ch. 477 . . . HB 538
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23-2-615 . . . amended . . . Ch. 477 . . . HB 538
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23-2-616 . . . amended . . . Ch. 477 . . . HB 538
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23-2-617 . . . amended . . . Ch. 592 . . . HB 559
23-2-618 . . . repealed 1/1/2004 . . . Ch. 592 . . . HB 559
23-2-619 . . . amended . . . Ch. 477 . . . HB 538
23-2-620 . . . repealed 1/1/2004 . . . Ch. 477 . . . HB 538
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23-2-622 . . . amended . . . Ch. 477 . . . HB 538
23-2-626 . . . amended . . . Ch. 592 . . . HB 559
23-2-631 . . . amended . . . Ch. 477 . . . HB 538
23-2-634 . . . amended . . . Ch. 477 . . . HB 538
23-2-641 . . . amended . . . Ch. 477 . . . HB 538

23-2-642 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
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23-2-644 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
23-2-801 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
23-2-803 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
23-2-804 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
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23-2-807 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
23-2-809 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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23-2-810 . . . . . repealed 1/1/2004 . . . . . Ch. 477 . . . . . HB 538
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23-2-811 . . . . . repealed 1/1/2004 . . . . . Ch. 477 . . . . . HB 538
23-2-812 . . . . . repealed 1/1/2004 . . . . . Ch. 477 . . . . . HB 538
23-2-813 . . . . . repealed 1/1/2004 . . . . . Ch. 477 . . . . . HB 538
23-2-814 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
23-2-817 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
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23-2-818 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
23-3-405 . . . . . amended . . . . . Ch. 375 . . . . . HB 98
23-3-501 . . . . . amended . . . . . Ch. 375 . . . . . HB 98
23-5-119 . . . . . amended . . . . . Ch. 110 . . . . . SB 40
23-5-177 . . . . . amended . . . . . Ch. 110 . . . . . SB 40
23-5-602 . . . . . amended . . . . . Ch. 210 . . . . . HB 122
23-5-610 . . . . . amended . . . . . Ch. 210 . . . . . HB 122
23-5-611 . . . . . amended . . . . . Ch. 210 . . . . . HB 122
23-5-612 . . . . . amended . . . . . Ch. 29 . . . . . HB 162
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23-5-621 . . . . . amended . . . . . Ch. 210 . . . . . HB 122
23-5-631 . . . . . amended . . . . . Ch. 190 . . . . . HB 182
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23-7-202 . . . . . amended . . . . . Ch. 211 . . . . . HB 165
23-7-306 . . . . . amended . . . . . Ch. 107 . . . . . SB 32
23-7-310 . . . . . amended . . . . . Ch. 107 . . . . . SB 32
25-1-201 . . . . . amended . . . . . Ch. 100 . . . . . HB 450
25-2-118 . . . . . amended . . . . . Ch. 314 . . . . . SB 283
25-9-302 . . . . . amended . . . . . Ch. 45 . . . . . HB 209
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25-9-303 . . . . . amended . . . . . Ch. 510 . . . . . SB 275
25-13-402 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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25-13-608 . . . . . amended . . . . . Ch. 429 . . . . . HB 213
25-30-102 . . . . . amended . . . . . Ch. 510 . . . . . SB 275
25-33-301 . . . . . amended . . . . . Ch. 389 . . . . . HB 358
27-1-220 . . . . . amended . . . . . Ch. 457 . . . . . SB 363
27-1-221 . . . . . amended . . . . . Ch. 121 . . . . . HB 212
27-1-434. . . . . enacted . . . . . Ch. 366 . . . . . HB 553
27-1-710 . . . . . amended . . . . . Ch. 489 . . . . . SB 337
27-1-717 . . . . . amended . . . . . Ch. 510 . . . . . SB 275
27-1-732 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
27-1-737 . . . . . repealed . . . . . Ch. 463 . . . . . SB 447
27-2-208 . . . . . amended . . . . . Ch. 412 . . . . . SB 389
27-12-104 . . . . . amended . . . . . Ch. 175 . . . . . HB 621
27-12-206 . . . . . amended . . . . . Ch. 271 . . . . . HB 285
28-2-2101 . . . . . amended . . . . . Ch. 274 . . . . . HB 438
28-2-2103 . . . . . amended . . . . . Ch. 274 . . . . . HB 438
28-2-2111. . . . . enacted . . . . . Ch. 305 . . . . . HB 482
28-2-2115. . . . . enacted . . . . . Ch. 274 . . . . . HB 438
28-2-2116. . . . . enacted . . . . . Ch. 274 . . . . . HB 438
28-2-2117. . . . . enacted . . . . . Ch. 274 . . . . . HB 438
30-9A-311 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
30-10-103 . . . . . amended . . . . . Ch. 156 . . . . . SB 144
amended . . . . . Ch. 493 . . . . . SB. 444

30-10-105	amended	Ch. 202	SB 125
30-10-107	amended	Ch. 156	SB 144
30-10-209	amended	Ch. 156	SB 144
30-10-211	amended	Ch. 156	SB 144
30-10-324	amended	Ch. 446	HB 667
30-10-325	amended	Ch. 446	HB 667
30-13-206	amended	Ch. 75	HB 194
30-13-207	amended	Ch. 75	HB 194
30-13-301	amended	Ch. 257	HB 323
30-13-302	repealed	Ch. 257	HB 323
30-13-303	amended	Ch. 257	HB 323
30-13-310	enacted	Ch. 257	HB 323
30-13-311	amended	Ch. 257	HB 323
30-13-312	amended	Ch. 257	HB 323
30-13-313	amended	Ch. 257	HB 323
30-13-314	repealed	Ch. 257	HB 323
30-13-315	amended	Ch. 257	HB 323
30-13-316	repealed	Ch. 257	HB 323
30-13-317	amended	Ch. 257	HB 323
30-13-318	amended	Ch. 257	HB 323
30-13-319	repealed	Ch. 257	HB 323
30-13-331	amended	Ch. 257	HB 323
30-13-332	amended	Ch. 257	HB 323
30-13-333	amended	Ch. 257	HB 323
30-13-334	amended	Ch. 257	HB 323
30-13-335	amended	Ch. 257	HB 323
30-13-337	enacted	Ch. 257	HB 323
30-13-341	repealed	Ch. 257	HB 323
30-14-102	amended	Ch. 322	HB 127
30-14-105	amended	Ch. 322	HB 127
30-14-111	amended	Ch. 322	HB 127
30-14-131	amended	Ch. 322	HB 127
30-14-133	amended	Ch. 322	HB 127
30-14-142	amended	Ch. 322	HB 127
30-14-143	enacted	Ch. 136	HB 126
30-14-211	amended	Ch. 322	HB 127
30-14-215	repealed	Ch. 322	HB 127
30-14-219	amended	Ch. 322	HB 127
30-14-220	amended	Ch. 322	HB 127
30-14-222	amended	Ch. 322	HB 127
30-14-223	amended	Ch. 322	HB 127
30-14-224	amended	Ch. 322	HB 127
30-14-226	enacted	Ch. 136	HB 126
30-14-501	amended	Ch. 322	HB 127
30-14-502	amended	Ch. 322	HB 127
30-14-503	amended	Ch. 322	HB 127
30-14-506	amended	Ch. 322	HB 127
30-14-1501	enacted	Ch. 312	HB 637
30-14-1601	enacted	Ch. 589	HB 424
30-14-1602	enacted	Ch. 589	HB 424
30-14-1603	enacted	Ch. 589	HB 424
30-14-1604	enacted	Ch. 589	HB 424
30-14-1605	enacted	Ch. 589	HB 424
30-14-1606	enacted	Ch. 589	HB 424
30-16-103	amended	Ch. 405	SB 146
30-16-301	amended	Ch. 474	HB 159
30-16-303	amended	Ch. 190	HB 182
31-1-221	amended	Ch. 9	HB 34
31-1-704	amended	Ch. 114	SB 10
	amended	Ch. 221	SB 28
31-1-712	amended	Ch. 221	SB 28
31-1-721	amended	Ch. 221	SB 28
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31-1-724 . . . . . amended . . . . . Ch. 221 . . . . . SB 28
31-1-802 . . . . . amended . . . . . Ch. 178 . . . . . SB 26
31-1-803 . . . . . amended . . . . . Ch. 178 . . . . . SB 26
31-1-811 . . . . . amended . . . . . Ch. 178 . . . . . SB 26
31-1-816 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
31-1-817 . . . . . amended . . . . . Ch. 178 . . . . . SB 26
31-1-825 . . . . . amended . . . . . Ch. 178 . . . . . SB 26
31-1-826 . . . . . amended . . . . . Ch. 178 . . . . . SB 26
31-2-106 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
32-1-102 . . . . . amended . . . . . Ch. 340 . . . . . SB 380
32-1-115. . . . . enacted . . . . . Ch. 340 . . . . . SB 380
32-1-335 . . . . . amended . . . . . Ch. 105 . . . . . SB 21
32-1-370 . . . . . amended . . . . . Ch. 105 . . . . . SB 21
32-1-402 . . . . . amended . . . . . Ch. 105 . . . . . SB 21
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32-1-412 . . . . . amended . . . . . Ch. 105 . . . . . SB 21
32-1-423 . . . . . amended . . . . . Ch. 105 . . . . . SB 21
32-3-103 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-106 . . . . . amended . . . . . Ch. 340 . . . . . SB 380
32-3-201 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-202 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-203 . . . . . amended . . . . . Ch. 64 . . . . . HB 36
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32-3-204 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-205 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-206 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-207. . . . . enacted . . . . . Ch. 237 . . . . . HB 319
32-3-211. . . . . enacted . . . . . Ch. 237 . . . . . HB 319
32-3-212. . . . . enacted . . . . . Ch. 237 . . . . . HB 319
32-3-215. . . . . enacted . . . . . Ch. 237 . . . . . HB 319
32-3-216. . . . . enacted . . . . . Ch. 237 . . . . . HB 319
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32-3-302 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-303 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-307 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-310 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-321 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-322 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-323 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-401 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-403 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-404 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-408 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-411 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-412 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-414 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-417 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-505 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-506 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-508 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-601 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-602 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-604 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-608 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-611 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-702 . . . . . amended . . . . . Ch. 64 . . . . . HB 36
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32-3-703 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-3-704 . . . . . repealed . . . . . Ch. 64 . . . . . HB 36
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32-3-705 . . . . . amended . . . . . Ch. 237 . . . . . HB 319
32-5-102 . . . . . amended . . . . . Ch. 178 . . . . . SB 26
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32-6-104	amended	Ch. 186	SB 172
32-7-109	amended	Ch. 65	HB 45
32-7-110	amended	Ch. 65	HB 45
32-7-117	amended	Ch. 65	HB 45
32-9-101	enacted	Ch. 516	SB 402
32-9-102	enacted	Ch. 516	SB 402
32-9-103	enacted	Ch. 516	SB 402
32-9-104	enacted	Ch. 516	SB 402
32-9-108	enacted	Ch. 516	SB 402
32-9-109	enacted	Ch. 516	SB 402
32-9-110	enacted	Ch. 516	SB 402
32-9-111	enacted	Ch. 516	SB 402
32-9-115	enacted	Ch. 516	SB 402
32-9-116	enacted	Ch. 516	SB 402
32-9-117	enacted	Ch. 516	SB 402
32-9-118	enacted	Ch. 516	SB 402
32-9-121	enacted	Ch. 516	SB 402
32-9-122	enacted	Ch. 516	SB 402
32-9-123	enacted	Ch. 516	SB 402
32-9-124	enacted	Ch. 516	SB 402
32-9-125	enacted	Ch. 516	SB 402
32-9-126	enacted	Ch. 516	SB 402
32-9-130	enacted	Ch. 516	SB 402
32-9-131	enacted	Ch. 516	SB 402
32-9-132	enacted	Ch. 516	SB 402
32-9-133	enacted	Ch. 516	SB 402
33-1-220	enacted	Ch. 427	HB 169
33-1-235	enacted	Ch. 380	HB 145
33-1-315	amended	Ch. 493	SB 444
33-1-318	amended	Ch. 493	SB 444
33-1-408	amended	Ch. 380	HB 145
33-1-705	amended	Ch. 380	HB 145
33-1-1202	amended	Ch. 380	HB 145
33-2-115	amended	Ch. 380	HB 145
33-2-305	amended	Ch. 427	HB 169
33-2-307	amended	Ch. 380	HB 145
33-2-326	amended	Ch. 380	HB 145
33-2-708	amended	Ch. 380	HB 145
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33-2-724	enacted	Ch. 582	SB 484
33-3-201	amended	Ch. 380	HB 145
33-3-401	amended	Ch. 493	SB 444
33-3-441	amended	Ch. 380	HB 145
33-3-450	enacted	Ch. 380	HB 145
33-3-451	enacted	Ch. 380	HB 145
33-3-452	enacted	Ch. 380	HB 145
33-3-453	enacted	Ch. 380	HB 145
33-4-101	amended	Ch. 380	HB 145
33-4-202	amended	Ch. 380	HB 145
33-5-201	amended	Ch. 500	HB 577
33-7-525	amended	Ch. 427	HB 169
33-7-532	amended	Ch. 427	HB 169
33-10-102	amended	Ch. 380	HB 145
33-10-201	amended	Ch. 195	SB 151
33-10-202	amended	Ch. 195	SB 151
33-10-203	amended	Ch. 195	SB 151
33-10-205	amended	Ch. 195	SB 151
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33-10-207	amended	Ch. 195	SB 151
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33-10-210	amended	Ch. 195	SB 151
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33-10-217 . . . . . amended . . . . . Ch. 195 . . . . . SB 151
33-10-219 . . . . . amended . . . . . Ch. 195 . . . . . SB 151
33-10-220 . . . . . amended . . . . . Ch. 195 . . . . . SB 151
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33-10-235. . . . . enacted . . . . . Ch. 195 . . . . . SB 151
33-10-236. . . . . enacted . . . . . Ch. 195 . . . . . SB 151
33-15-1101 . . . . . amended . . . . . Ch. 501 . . . . . HB 588
33-15-1104 . . . . . amended . . . . . Ch. 339 . . . . . SB 341
33-15-1105 . . . . . amended . . . . . Ch. 339 . . . . . SB 341
33-15-1106 . . . . . amended . . . . . Ch. 339 . . . . . SB 341
33-15-1108. . . . . enacted . . . . . Ch. 501 . . . . . HB 588
33-16-403 . . . . . amended . . . . . Ch. 380 . . . . . HB 145
33-17-102 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-103 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-201 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-211 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-212 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-214 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-219. . . . . enacted . . . . . Ch. 427 . . . . . HB 169
33-17-220. . . . . enacted . . . . . Ch. 427 . . . . . HB 169
33-17-301 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-409. . . . . enacted . . . . . Ch. 427 . . . . . HB 169
33-17-502 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-503 . . . . . amended . . . . . Ch. 380 . . . . . HB 145
33-17-504 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
33-17-511 . . . . . amended . . . . . Ch. 380 . . . . . HB 145
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33-17-1102 . . . . . amended . . . . . Ch. 380 . . . . . HB 145
33-17-1203 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
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33-17-1207 . . . . . amended . . . . . Ch. 427 . . . . . HB 169
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33-19-105 . . . . . amended . . . . . Ch. 385 . . . . . HB 205
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33-19-306 . . . . . amended . . . . . Ch. 385 . . . . . HB 205
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33-20-1206	amended	Ch. 380	HB 145
33-20-1207	amended	Ch. 380	HB 145
33-20-1209	amended	Ch. 380	HB 145
33-20-1210	amended	Ch. 380	HB 145
33-20-1213	amended	Ch. 380	HB 145
33-20-1302	amended	Ch. 493	SB 444
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33-20-1317	amended	Ch. 114	SB 10
33-22-101	amended	Ch. 380	HB 145
33-22-107	amended	Ch. 380	HB 145
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33-22-301	amended	Ch. 325	HB 384
33-22-303	amended	Ch. 380	HB 145
33-22-512	amended	Ch. 380	HB 145
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33-22-706	amended	Ch. 325	HB 384
33-22-1501	amended	Ch. 453	SB 111
33-22-1502	amended	Ch. 453	SB 111
33-22-1512	amended	Ch. 380	HB 145
33-22-1513	amended	Ch. 380	HB 145
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33-23-214	amended	Ch. 339	SB 341
33-23-302	amended	Ch. 339	SB 341
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33-23-401	amended	Ch. 339	SB 341
33-26-108	enacted	Ch. 427	HB 169
33-28-101	amended	Ch. 383	HB 179
33-28-102	amended	Ch. 383	HB 179
33-28-104	amended	Ch. 383	HB 179
33-28-105	amended	Ch. 383	HB 179
33-28-107	amended	Ch. 383	HB 179
33-28-108	amended	Ch. 383	HB 179
33-28-201	amended	Ch. 383	HB 179
33-28-207	amended	Ch. 383	HB 179
33-28-301	enacted	Ch. 383	HB 179
33-28-302	enacted	Ch. 383	HB 179
33-28-303	enacted	Ch. 383	HB 179
33-28-304	enacted	Ch. 383	HB 179
33-28-305	enacted	Ch. 383	HB 179
33-28-306	enacted	Ch. 383	HB 179
33-30-102	amended	Ch. 380	HB 145
33-30-107	amended	Ch. 380	HB 145
33-30-204	amended	Ch. 380	HB 145
33-30-307	repealed 1/1/2004	Ch. 384	HB 183
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37-4-103 ..... amended ..... Ch. 67 ..... HB 65
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37-5-301	repealed	Ch. 224	SB 109
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37-5-305	repealed	Ch. 224	SB 109
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37-5-312	repealed	Ch. 224	SB 109
37-6-304	amended	Ch. 224	SB 109
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37-7-103	amended	Ch. 60	HB 181
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37-7-602	amended	Ch. 114	SB 10
37-8-101	amended	Ch. 448	HB 681
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37-9-305	amended	Ch. 271	HB 285
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37-11-201	amended	Ch. 271	HB 285
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37-12-102	amended	Ch. 224	SB 109
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37-14-102	amended	Ch. 307	HB 501
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37-14-310	amended	Ch. 271	HB 285
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37-15-308	amended	Ch. 271	HB 285
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37-17-306	amended	Ch. 271	HB 285
37-17-307	amended	Ch. 271	HB 285
37-18-104	amended	Ch. 60	HB 181
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37-18-601	enacted	Ch. 60	HB 181
37-18-602	enacted	Ch. 60	HB 181
37-18-603	enacted	Ch. 60	HB 181
37-18-604	enacted	Ch. 60	HB 181
37-18-605	enacted	Ch. 60	HB 181
37-18-606	enacted	Ch. 60	HB 181
37-19-302	amended	Ch. 224	SB 109
37-19-303	amended	Ch. 224	SB 109
37-19-306	amended	Ch. 271	HB 285
37-20-302	amended	Ch. 224	SB 109
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37-20-303	amended	Ch. 224	SB 109
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37-21-302	amended	Ch. 271	HB 285
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37-23-205	amended	Ch. 271	HB 285
37-24-103	amended	Ch. 101	HB 542
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37-24-106	amended	Ch. 101	HB 542
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37-24-303 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
37-24-308 . . . . . amended . . . . . Ch. 271 . . . . . HB 285
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37-29-304 . . . . . amended . . . . . Ch. 224 . . . . . SB 109
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37-30-201 . . . . . repealed . . . . . Ch. 243 . . . . . HB 196
37-30-202 . . . . . repealed . . . . . Ch. 243 . . . . . HB 196
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37-30-303 . . . . . repealed . . . . . Ch. 243 . . . . . HB 196
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37-31-103 . . . . . enacted . . . . . Ch. 243 . . . . . HB 196
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37-31-323 . . . . . amended . . . . . Ch. 243 . . . . . HB 196
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37-32-305	repealed	Ch. 243	HB 196
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37-32-306	repealed	Ch. 243	HB 196
37-32-311	repealed	Ch. 243	HB 196
37-34-201	amended	Ch. 271	HB 285
37-35-203	amended	Ch. 271	HB 285
37-40-302	amended	Ch. 196	HB 174
37-40-304	amended	Ch. 271	HB 285
37-42-308	amended	Ch. 271	HB 285
37-43-307	amended	Ch. 271	HB 285
37-43-313	amended	Ch. 271	HB 285
37-47-304	amended	Ch. 196	HB 174
37-47-307	amended	Ch. 271	HB 285
37-47-310	amended	Ch. 91	HB 411
37-50-102	amended	Ch. 375	HB 98
37-50-203	amended	Ch. 375	HB 98
37-50-204	amended	Ch. 196	HB 174
37-50-301	amended	Ch. 375	HB 98
37-50-305	amended	Ch. 196	HB 174
37-50-308	amended	Ch. 196	HB 174
37-50-309	amended	Ch. 196	HB 174
37-50-311	amended	Ch. 375	HB 98
37-50-312	amended	Ch. 375	HB 98
37-50-313	amended	Ch. 375	HB 98
37-50-317	amended	Ch. 271	HB 285
37-50-335	amended	Ch. 375	HB 98
37-51-204	amended	Ch. 375	HB 98
37-51-303	amended	Ch. 196	HB 174
37-51-307	repealed	Ch. 375	HB 98
37-51-310	amended	Ch. 271	HB 285
37-53-103	amended	Ch. 271	HB 285
37-53-203	amended	Ch. 271	HB 285
37-54-102	amended	Ch. 341	SB 432
37-54-105	amended	Ch. 196	HB 174
37-54-110	repealed	Ch. 375	HB 98
37-54-201	amended	Ch. 196	HB 174
37-54-202	amended	Ch. 341	SB 432
37-54-211	amended	Ch. 271	HB 285
37-54-302	amended	Ch. 196	HB 174
37-54-304	repealed	Ch. 196	HB 174
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37-54-305	amended	Ch. 196	HB 174
37-54-311	amended	Ch. 271	HB 285
37-60-303	amended	Ch. 375	HB 98
37-60-304	amended	Ch. 375	HB 98
37-60-312	amended	Ch. 271	HB 285
37-65-303	amended	Ch. 196	HB 174
37-65-306	amended	Ch. 271	HB 285
37-66-307	amended	Ch. 271	HB 285
37-67-303	amended	Ch. 196	HB 174
37-67-311	amended	Ch. 196	HB 174
37-67-315	amended	Ch. 271	HB 285
37-68-304	amended	Ch. 196	HB 174
37-68-305	amended	Ch. 196	HB 174
37-68-307	amended	Ch. 196	HB 174
37-68-310	amended	Ch. 271	HB 285
37-68-311	amended	Ch. 196	HB 174
37-69-304	amended	Ch. 196	HB 174
37-69-305	amended	Ch. 196	HB 174
37-69-307	amended	Ch. 196	HB 174
	amended	Ch. 271	HB 285
37-72-303	amended	Ch. 196	HB 174

37-72-304	amended	Ch. 196	HB 174
37-72-305	amended	Ch. 196	HB 174
37-72-306	amended	Ch. 271	HB 285
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37-76-102	enacted	Ch. 410	SB 306
37-76-103	enacted	Ch. 410	SB 306
37-76-104	enacted	Ch. 410	SB 306
37-76-105	enacted	Ch. 410	SB 306
37-76-106	enacted	Ch. 410	SB 306
37-76-107	enacted	Ch. 410	SB 306
37-76-108	enacted	Ch. 410	SB 306
37-76-109	enacted	Ch. 410	SB 306
37-76-113	enacted	Ch. 410	SB 306
37-76-114	enacted	Ch. 410	SB 306
37-76-115	enacted	Ch. 410	SB 306
37-76-116	enacted	Ch. 410	SB 306
37-76-117	enacted	Ch. 410	SB 306
37-76-118	enacted	Ch. 410	SB 306
37-76-119	enacted	Ch. 410	SB 306
37-76-120	enacted	Ch. 410	SB 306
37-76-121	enacted	Ch. 410	SB 306
37-76-122	enacted	Ch. 410	SB 306
37-76-123	enacted	Ch. 410	SB 306
39-3-204	amended	Ch. 301	HB 230
39-3-406	amended	Ch. 54	HB 51
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39-8-102	amended	Ch. 149	HB 493
39-10-204	amended	Ch. 114	SB 10
39-11-101	enacted	Ch. 567	HB 564
39-11-102	enacted	Ch. 567	HB 564
39-11-103	enacted	Ch. 567	HB 564
39-11-201	enacted	Ch. 567	HB 564
39-11-202	enacted	Ch. 567	HB 564
39-11-203	enacted	Ch. 567	HB 564
39-11-204	enacted	Ch. 567	HB 564
39-29-101	amended	Ch. 24	HB 35
39-51-201	amended	Ch. 267	SB 162
39-51-204	amended	Ch. 83	HB 150
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39-51-301	amended	Ch. 597	SB 271
39-51-404	amended	Ch. 94	HB 72
39-51-1109	amended	Ch. 597	SB 271
39-51-1206	amended	Ch. 95	HB 117
39-51-1218	amended	Ch. 432	HB 338
39-51-1301	amended	Ch. 95	HB 117
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39-51-2201	amended	Ch. 432	HB 338
39-51-2204	amended	Ch. 432	HB 338
39-51-2302	amended	Ch. 94	HB 72
39-51-2402	amended	Ch. 597	SB 271
39-51-2501	amended	Ch. 114	SB 10
39-71-116	amended	Ch. 224	SB 109
39-71-401	amended	Ch. 83	HB 150
	amended	Ch. 193	SB. 108
39-71-407	amended	Ch. 435	HB 410
39-71-503	amended	Ch. 193	SB 108
39-71-504	amended	Ch. 193	SB 108
39-71-506	amended	Ch. 193	SB 108
39-71-520	amended	Ch. 193	SB 108
39-71-535	enacted	Ch. 193	SB 108
39-71-604	amended	Ch. 464	SB 450

39-71-611	amended	Ch. 464	SB 450
39-71-612	amended	Ch. 464	SB 450
39-71-702	amended	Ch. 138	HB 164
39-71-703	amended	Ch. 464	SB 450
39-71-704	amended	Ch. 377	HB 110
39-71-736	amended	Ch. 486	SB 282
39-71-901	amended	Ch. 193	SB 108
39-71-911	amended	Ch. 193	SB 108
39-71-915	amended	Ch. 193	SB 108
39-71-920	enacted	Ch. 193	SB 108
39-71-1004	amended	Ch. 193	SB 108
39-71-1501	amended	Ch. 170	HB 656
39-71-1502	amended	Ch. 170	HB 656
39-71-1503	amended	Ch. 170	HB 656
39-71-2316	amended	Ch. 603	SB 360
39-71-2320	amended	Ch. 603	SB 360
39-71-2322	amended	Ch. 603	SB 360
39-71-2327	amended	Ch. 603	SB 360
39-71-2352	amended	Ch. 588	HB 363
39-71-2615	amended	Ch. 226	SB 216
40-4-104	amended	Ch. 314	SB 283
40-4-121	amended	Ch. 309	HB 579
40-4-305	amended	Ch. 314	SB 283
40-5-225	amended	Ch. 573	HB 693
40-5-248	amended	Ch. 477	HB 538
40-5-906	amended	Ch. 114	SB 10
40-5-909	amended	Ch. 114	SB 10
40-15-402	amended	Ch. 259	HB 496
40-15-403	amended	Ch. 259	HB 496
41-1-401	amended	Ch. 396	HB 647
41-1-402	amended	Ch. 396	HB 647
41-1-403	amended	Ch. 396	HB 647
41-2-117	amended	Ch. 260	HB 507
41-3-101	amended	Ch. 504	SB 95
41-3-102	amended	Ch. 398	HB 703
	amended	Ch. 406	SB. 191
	amended	Ch. 458	SB. 364
	amended	Ch. 504	SB. . 95
	amended	Ch. 555	HB . 90
41-3-103	amended	Ch. 504	SB 95
41-3-113	amended	Ch. 504	SB 95
41-3-202	amended	Ch. 406	SB 191
	amended	Ch. 555	HB . 90
41-3-205	amended	Ch. 504	SB 95
41-3-301	amended	Ch. 398	HB 703
	amended	Ch. 504	SB. . 95
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41-3-302	amended	Ch. 555	HB 90
41-3-422	amended	Ch. 189	SB 257
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41-3-423	amended	Ch. 555	HB 90
41-3-424	enacted	Ch. 555	HB 90
41-3-427	amended	Ch. 504	SB 95
41-3-432	amended	Ch. 189	SB 257
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41-3-434	amended	Ch. 504	SB 95
41-3-437	amended	Ch. 504	SB 95
41-3-438	amended	Ch. 504	SB 95
41-3-439	amended	Ch. 114	SB 10
41-3-442	amended	Ch. 504	SB 95
41-3-445	amended	Ch. 504	SB 95
41-3-604	amended	Ch. 504	SB 95
41-3-607	amended	Ch. 504	SB 95

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41-3-610 . . . . . repealed . . . . . Ch. 504 . . . . . SB 95
41-3-611 . . . . . amended . . . . . Ch. 504 . . . . . SB 95
41-3-1008 . . . . . amended . . . . . Ch. 504 . . . . . SB 95
41-5-103 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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41-5-111 . . . . . amended . . . . . Ch. 583 . . . . . SB 490
41-5-121 . . . . . amended . . . . . Ch. 266 . . . . . SB 133
41-5-215 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
41-5-216 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
41-5-1513 . . . . . amended . . . . . Ch. 157 . . . . . HB 156
41-5-1701 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
41-5-1702 . . . . . repealed . . . . . Ch. 152 . . . . . SB 19
41-5-1703 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
41-5-1706 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
41-5-1707 . . . . . amended . . . . . Ch. 152 . . . . . SB 19
41-5-1801 . . . . . amended . . . . . Ch. 61 . . . . . SB 164
41-6-101 . . . . . amended . . . . . Ch. 194 . . . . . SB 139
42-1-103 . . . . . amended . . . . . Ch. 504 . . . . . SB 95
42-3-212 . . . . . amended . . . . . Ch. 504 . . . . . SB 95
42-6-102 . . . . . amended . . . . . Ch. 504 . . . . . SB 95
42-6-109 . . . . . amended . . . . . Ch. 504 . . . . . SB 95
42-10-101 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
44-1-1001 . . . . . amended . . . . . Ch. 215 . . . . . HB 350
44-1-1101 . . . . . amended . . . . . Ch. 465 . . . . . HB 199
44-1-1102 . . . . . amended . . . . . Ch. 465 . . . . . HB 199
44-2-117 . . . . . enacted . . . . . Ch. 302 . . . . . HB 293
44-4-301 . . . . . amended . . . . . Ch. 316 . . . . . SB 329
44-4-302 . . . . . amended . . . . . Ch. 316 . . . . . SB 329
44-4-305 . . . . . enacted . . . . . Ch. 316 . . . . . SB 329
44-5-103 . . . . . amended . . . . . Ch. 253 . . . . . SB 141
44-5-302 . . . . . amended . . . . . Ch. 229 . . . . . SB 398
44-5-303 . . . . . amended . . . . . Ch. 253 . . . . . SB 141
44-5-306 . . . . . enacted . . . . . Ch. 182 . . . . . SB 128
44-5-307 . . . . . enacted . . . . . Ch. 182 . . . . . SB 128
44-10-204 . . . . . enacted . . . . . Ch. 298 . . . . . HB 124
45-5-103 . . . . . amended . . . . . Ch. 22 . . . . . HB 84
45-5-206 . . . . . amended . . . . . Ch. 438 . . . . . HB 484
45-5-220 . . . . . amended . . . . . Ch. 344 . . . . . HB 54
45-5-502 . . . . . amended . . . . . Ch. 450 . . . . . HB 733
45-5-503 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
45-5-603 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
45-5-621 . . . . . amended . . . . . Ch. 286 . . . . . HB 546
45-5-623 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
45-5-624 . . . . . amended . . . . . Ch. 611 . . . . . SB 362
45-5-625 . . . . . amended . . . . . Ch. 344 . . . . . HB 54
45-6-203 . . . . . amended . . . . . Ch. 5 . . . . . HB 188
45-6-301 . . . . . amended . . . . . Ch. 380 . . . . . HB 145
45-8-211 . . . . . amended . . . . . Ch. 358 . . . . . HB 317
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45-8-212 . . . . . amended . . . . . Ch. 344 . . . . . HB 54
45-8-213 . . . . . amended . . . . . Ch. 344 . . . . . HB 54
45-8-217 . . . . . enacted . . . . . Ch. 366 . . . . . HB 553
45-9-101 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
45-9-102 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
45-9-103 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
45-9-110 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
45-9-132 . . . . . amended . . . . . Ch. 146 . . . . . HB 402
45-10-107 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
46-1-401 . . . . . amended . . . . . Ch. 154 . . . . . SB 68
46-3-112 . . . . . amended . . . . . Ch. 344 . . . . . HB 54
46-5-401 . . . . . amended . . . . . Ch. 343 . . . . . HB 40

46-5-402	repealed	Ch. 343	HB 40
46-6-107	enacted	Ch. 142	HB 246
46-6-311	amended	Ch. 304	HB 456
46-6-507	enacted	Ch. 386	HB 222
46-7-102	amended	Ch. 309	HB 579
46-8-103	amended	Ch. 19	HB 48
46-8-202	amended	Ch. 583	SB 490
46-9-108	amended	Ch. 27	HB 53
46-9-302	amended	Ch. 465	HB 199
46-9-401	amended	Ch. 465	HB 199
46-9-503	amended	Ch. 420	HB 521
46-9-510	amended	Ch. 420	HB 521
46-14-101	amended	Ch. 595	SB 57
46-14-102	amended	Ch. 452	SB 35
46-14-103	amended	Ch. 452	SB 35
46-14-206	amended	Ch. 452	SB 35
46-14-214	amended	Ch. 164	SB 56
46-14-221	amended	Ch. 452	SB 35
46-14-301	amended	Ch. 164	SB 56
46-14-311	amended	Ch. 452	SB 35
46-14-312	amended	Ch. 452	SB 35
46-16-105	amended	Ch. 96	HB 166
	amended	Ch. 346	HB 171
46-16-220	enacted	Ch. 456	SB 263
46-17-202	amended	Ch. 441	HB 540
46-17-203	amended	Ch. 354	HB 210
46-17-303	amended	Ch. 510	SB 275
46-17-311	amended	Ch. 13	HB 70
	amended	Ch. 354	HB 210
	amended	Ch. 389	HB 358
46-18-116	amended	Ch. 141	HB 240
46-18-201	amended	Ch. 258	HB 389
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	amended	Ch. 437	HB 478
46-18-203	amended	Ch. 345	HB 170
	amended	Ch. 386	HB 222
46-18-237	amended	Ch. 272	HB 220
46-18-241	amended	Ch. 272	HB 220
46-18-242	amended	Ch. 272	HB 220
46-18-243	amended	Ch. 272	HB 220
46-18-244	amended	Ch. 272	HB 220
46-18-245	amended	Ch. 272	HB 220
46-18-302	amended	Ch. 154	SB 68
46-18-305	amended	Ch. 154	SB 68
46-18-310	amended	Ch. 154	SB 68
46-18-604	repealed	Ch. 102	SB 3
46-18-901	amended	Ch. 69	HB 149
46-18-902	amended	Ch. 69	HB 149
46-18-903	amended	Ch. 69	HB 149
46-18-904	amended	Ch. 69	HB 149
46-18-905	amended	Ch. 69	HB 149
46-19-101	amended	Ch. 141	HB 240
46-19-102	amended	Ch. 510	SB 275
46-21-110	enacted	Ch. 79	HB 77
46-21-111	enacted	Ch. 79	HB 77
46-23-103	amended	Ch. 559	HB 211
46-23-104	amended	Ch. 559	HB 211
46-23-107	repealed	Ch. 559	HB 211
46-23-109	amended	Ch. 559	HB 211
46-23-201	amended	Ch. 559	HB 211
46-23-202	amended	Ch. 559	HB 211
46-23-215	amended	Ch. 559	HB 211
46-23-216	amended	Ch. 559	HB 211

46-23-218 . . . . . amended . . . . . Ch. 559 . . . . . HB 211
46-23-502 . . . . . amended . . . . . Ch. 146 . . . . . HB 402
46-23-1004 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
46-23-1025 . . . . . amended . . . . . Ch. 559 . . . . . HB 211
46-23-1031 . . . . . amended . . . . . Ch. 386 . . . . . HB 222
46-23-1033 . . . . . repealed . . . . . Ch. 114 . . . . . SB 10
46-24-211 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
46-24-212 . . . . . amended . . . . . Ch. 559 . . . . . HB 211
49-2-101 . . . . . amended . . . . . Ch. 243 . . . . . HB 196
49-4-301 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
49-4-302 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
49-4-304 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
50-1-101 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
50-1-202 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
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50-2-101 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
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50-2-116 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
50-2-118 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
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50-2-130 . . . . . amended . . . . . Ch. 391 . . . . . HB 499
50-3-102 . . . . . amended . . . . . Ch. 387 . . . . . HB 269
50-3-103 . . . . . amended . . . . . Ch. 387 . . . . . HB 269
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50-3-109 . . . . . amended . . . . . Ch. 380 . . . . . HB 145
50-4-312 . . . . . repealed . . . . . Ch. 114 . . . . . SB 10
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50-4-502 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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50-4-504 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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50-4-505 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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50-5-101 . . . . . amended . . . . . Ch. 54 . . . . . HB 51
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50-5-103 . . . . . amended . . . . . Ch. 401 . . . . . SB 105
50-5-105 . . . . . amended . . . . . Ch. 224 . . . . . SB 109
50-5-106 . . . . . amended . . . . . Ch. 396 . . . . . HB 647
50-5-220 . . . . . enacted . . . . . Ch. 348 . . . . . HB 524
50-5-225 . . . . . amended . . . . . Ch. 54 . . . . . HB 51
50-5-226 . . . . . amended . . . . . Ch. 54 . . . . . HB 51
50-5-227 . . . . . amended . . . . . Ch. 54 . . . . . HB 51
50-5-238 . . . . . enacted . . . . . Ch. 403 . . . . . SB 113
50-5-301 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
50-5-1202 . . . . . amended . . . . . Ch. 54 . . . . . HB 51
50-6-203 . . . . . amended . . . . . Ch. 271 . . . . . HB 285
50-8-101 . . . . . amended . . . . . Ch. 54 . . . . . HB 51
50-9-102 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-103 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-104 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-105 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-106 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-107 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
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50-9-202 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-203 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-204 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-205 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-9-206 . . . . . amended . . . . . Ch. 240 . . . . . HB 585
50-10-101 . . . . . amended . . . . . Ch. 240 . . . . . HB 585

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50-10-103	amended	Ch. 240	HB 585
50-10-104	amended	Ch. 240	HB 585
50-10-106	amended	Ch. 240	HB 585
50-15-107	amended	Ch. 434	HB 408
50-16-201	amended	Ch. 396	HB 647
50-16-502	amended	Ch. 396	HB 647
50-16-504	amended	Ch. 396	HB 647
50-16-505	enacted	Ch. 396	HB 647
50-16-527	amended	Ch. 464	SB 450
50-16-535	amended	Ch. 396	HB 647
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50-16-536	amended	Ch. 504	SB 95
50-16-603	amended	Ch. 391	HB 499
	amended	Ch. 504	SB. 95
50-16-605	amended	Ch. 504	SB 95
50-16-801	enacted	Ch. 396	HB 647
50-16-802	enacted	Ch. 396	HB 647
50-16-803	enacted	Ch. 396	HB 647
50-16-804	enacted	Ch. 396	HB 647
50-16-805	enacted	Ch. 396	HB 647
50-16-811	enacted	Ch. 396	HB 647
50-16-812	enacted	Ch. 396	HB 647
50-16-816	enacted	Ch. 396	HB 647
50-16-817	enacted	Ch. 396	HB 647
50-16-818	enacted	Ch. 396	HB 647
50-16-1009	amended	Ch. 396	HB 647
50-19-402	amended	Ch. 396	HB 647
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50-19-403	amended	Ch. 413	SB 449
50-19-404	amended	Ch. 413	SB 449
50-19-405	amended	Ch. 396	HB 647
	amended	Ch. 413	SB. 449
50-19-406	amended	Ch. 396	HB 647
	amended	Ch. 413	SB. 449
50-31-103	amended	Ch. 373	HB 50
50-31-110	amended	Ch. 373	HB 50
50-31-205	repealed	Ch. 373	HB 50
50-31-206	repealed	Ch. 373	HB 50
50-31-207	repealed	Ch. 373	HB 50
50-31-208	amended	Ch. 373	HB 50
50-31-236	repealed	Ch. 373	HB 50
50-31-238	repealed	Ch. 373	HB 50
50-31-312	amended	Ch. 373	HB 50
50-31-501	amended	Ch. 373	HB 50
50-37-106	amended	Ch. 108	SB 33
50-37-108	amended	Ch. 387	HB 269
50-40-102	amended	Ch. 361	HB 437
50-50-102	amended	Ch. 474	HB 159
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50-50-103	amended	Ch. 528	SB 464
50-50-106	amended	Ch. 474	HB 159
50-50-107	amended	Ch. 474	HB 159
50-50-108	amended	Ch. 474	HB 159
50-50-110	amended	Ch. 474	HB 159
50-50-202	amended	Ch. 528	SB 464
50-50-205	amended	Ch. 528	SB 464
50-50-301	amended	Ch. 528	SB 464
50-53-102	amended	Ch. 93	HB 49
50-53-107	amended	Ch. 93	HB 49
50-53-201	amended	Ch. 93	HB 49
50-53-209	amended	Ch. 93	HB 49
50-57-101	enacted	Ch. 474	HB 159

50-57-102	enacted	Ch. 474	HB 159
50-57-103	enacted	Ch. 474	HB 159
50-57-104	enacted	Ch. 474	HB 159
50-57-105	enacted	Ch. 474	HB 159
50-57-106	enacted	Ch. 474	HB 159
50-57-107	enacted	Ch. 474	HB 159
50-57-108	enacted	Ch. 474	HB 159
50-57-109	enacted	Ch. 474	HB 159
50-57-110	enacted	Ch. 474	HB 159
50-57-201	enacted	Ch. 474	HB 159
50-57-203	enacted	Ch. 474	HB 159
50-57-205	enacted	Ch. 474	HB 159
50-57-206	enacted	Ch. 474	HB 159
50-57-207	enacted	Ch. 474	HB 159
50-57-208	enacted	Ch. 474	HB 159
50-57-209	enacted	Ch. 474	HB 159
50-57-210	enacted	Ch. 474	HB 159
50-57-211	enacted	Ch. 474	HB 159
50-57-212	enacted	Ch. 474	HB 159
50-57-213	enacted	Ch. 474	HB 159
50-57-301	enacted	Ch. 474	HB 159
50-57-302	enacted	Ch. 474	HB 159
50-57-305	enacted	Ch. 474	HB 159
50-60-101	amended	Ch. 443	HB 640
50-60-102	amended	Ch. 443	HB 640
50-60-106	amended	Ch. 443	HB 640
50-60-107	amended	Ch. 443	HB 640
50-60-109	amended	Ch. 443	HB 640
50-60-110	amended	Ch. 443	HB 640
50-60-115	amended	Ch. 443	HB 640
50-60-118	amended	Ch. 443	HB 640
50-60-205	amended	Ch. 443	HB 640
50-60-211	amended	Ch. 443	HB 640
50-60-212	amended	Ch. 443	HB 640
50-60-213	amended	Ch. 443	HB 640
50-60-301	amended	Ch. 443	HB 640
50-60-302	amended	Ch. 443	HB 640
50-60-303	amended	Ch. 443	HB 640
50-60-304	enacted	Ch. 443	HB 640
50-60-310	repealed	Ch. 443	HB 640
50-60-311	repealed	Ch. 443	HB 640
50-60-312	repealed	Ch. 443	HB 640
50-60-313	amended	Ch. 114	SB 10
	amended	Ch. 190	HB 182
	repealed	Ch. 443	HB 640
50-60-314	repealed	Ch. 443	HB 640
50-60-404	amended	Ch. 443	HB 640
50-60-506	amended	Ch. 443	HB 640
50-60-510	amended	Ch. 443	HB 640
50-60-604	amended	Ch. 443	HB 640
50-60-605	amended	Ch. 443	HB 640
50-60-607	amended	Ch. 443	HB 640
50-61-101	amended	Ch. 387	HB 269
50-61-103	amended	Ch. 387	HB 269
50-61-112	repealed	Ch. 387	HB 269
50-61-113	repealed	Ch. 387	HB 269
50-61-114	amended	Ch. 387	HB 269
50-63-203	amended	Ch. 387	HB 269
50-74-303	amended	Ch. 392	HB 525
50-74-304	amended	Ch. 392	HB 525
50-74-310	repealed	Ch. 196	HB 174
50-74-312	amended	Ch. 196	HB 174
50-74-320	enacted	Ch. 196	HB 174

50-76-104	amended	Ch. 196	HB 174
52-1-103	amended	Ch. 114	SB 10
52-1-104	amended	Ch. 54	HB 51
52-2-115	amended	Ch. 504	SB 95
52-2-301	amended	Ch. 118	SB 94
52-2-302	amended	Ch. 118	SB 94
52-2-303	amended	Ch. 118	SB 94
52-2-304	amended	Ch. 118	SB 94
52-2-305	repealed	Ch. 118	SB 94
52-2-306	repealed	Ch. 118	SB 94
52-2-307	repealed	Ch. 118	SB 94
52-2-308	amended	Ch. 118	SB 94
52-2-602	amended	Ch. 504	SB 95
52-2-603	amended	Ch. 504	SB 95
52-2-710	enacted	Ch. 394	HB 569
52-3-803	amended	Ch. 350	HB 17
	amended	Ch. 493	SB. 444
52-3-811	amended	Ch. 54	HB 51
52-3-825	amended	Ch. 350	HB 17
52-5-129	amended	Ch. 382	HB 161
53-1-107	amended	Ch. 353	HB 134
	amended	Ch. 363	HB 453
53-1-109	enacted	Ch. 353	HB 134
53-1-210	enacted	Ch. 575	HB 727
53-1-214	enacted	Ch. 255	SB 183
53-1-401	amended	Ch. 207	SB 104
53-1-402	amended	Ch. 575	HB 727
53-1-404	amended	Ch. 207	SB 104
53-1-413	amended	Ch. 57	HB 121
53-1-602	amended	Ch. 575	HB 727
	amended	Ch. 602	SB. 347
53-1-610	enacted	Ch. 576	HB 744
53-1-611	enacted	Ch. 576	HB 744
53-1-612	enacted	Ch. 576	HB 744
53-2-103	amended	Ch. 114	SB 10
53-2-303	repealed	Ch. 114	SB 10
53-2-607	amended	Ch. 510	SB 275
53-2-1203	amended	Ch. 190	HB 182
53-3-115	amended	Ch. 114	SB 10
53-4-221	amended	Ch. 114	SB 10
53-4-222	amended	Ch. 114	SB 10
53-4-232	amended	Ch. 114	SB 10
53-4-601	amended	Ch. 114	SB 10
53-4-609	amended	Ch. 114	SB 10
53-6-101	amended	Ch. 54	HB 51
	amended	Ch. 576	HB 744
	amended	Ch. 602	SB. 347
53-6-149	enacted	Ch. 390	HB 481
53-6-165	amended	Ch. 403	SB 113
53-6-171	amended	Ch. 403	SB 113
53-6-702	amended	Ch. 401	SB 105
	amended	Ch. 403	SB. 113
53-6-1001	enacted	Ch. 551	SB 473
53-6-1002	enacted	Ch. 551	SB 473
53-6-1003	enacted	Ch. 551	SB 473
53-6-1010	enacted	Ch. 551	SB 473
53-6-1011	enacted	Ch. 551	SB 473
53-6-1012	enacted	Ch. 551	SB 473
53-6-1013	enacted	Ch. 551	SB 473
53-6-1101(1)	enacted	Ch. 531	HB 722
53-6-1101	enacted	Ch. 608	SB 485
53-18-101	amended	Ch. 114	SB 10
53-19-302	amended	Ch. 417	HB 266

53-19-306 . . . . . amended . . . . . Ch. 417 . . . . . HB 266
53-19-307 . . . . . amended . . . . . Ch. 417 . . . . . HB 266
53-19-310 . . . . . amended . . . . . Ch. 417 . . . . . HB 266
53-19-311 . . . . . amended . . . . . Ch. 417 . . . . . HB 266
53-20-102 . . . . . amended . . . . . Ch. 575 . . . . . HB 727
53-20-171. . . . . enacted . . . . . Ch. 590 . . . . . HB 452
53-20-206 . . . . . amended . . . . . Ch. 478 . . . . . HB 734
53-20-501 . . . . . repealed . . . . . Ch. 575 . . . . . HB 727
53-20-502 . . . . . repealed . . . . . Ch. 575 . . . . . HB 727
53-21-102 . . . . . amended . . . . . Ch. 513 . . . . . SB 348
53-21-104 . . . . . amended . . . . . Ch. 602 . . . . . SB 347
53-21-116 . . . . . amended . . . . . Ch. 583 . . . . . SB 490
53-21-120 . . . . . amended . . . . . Ch. 513 . . . . . SB 348
53-21-121 . . . . . amended . . . . . Ch. 165 . . . . . SB 64
53-21-127 . . . . . amended . . . . . Ch. 163 . . . . . SB 55
amended . . . . . Ch. 513 . . . . . SB. 348
amended . . . . . Ch. 554 . . . . . HB . 56
53-21-128 . . . . . amended . . . . . Ch. 513 . . . . . SB 348
amended . . . . . Ch. 554 . . . . . HB . 56
53-21-129 . . . . . amended . . . . . Ch. 513 . . . . . SB 348
53-21-132 . . . . . amended . . . . . Ch. 583 . . . . . SB 490
53-21-138 . . . . . amended . . . . . Ch. 513 . . . . . SB 348
amended . . . . . Ch. 561 . . . . . HB 247
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53-21-186 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
53-21-193. . . . . enacted . . . . . Ch. 513 . . . . . SB 348
53-21-194. . . . . enacted . . . . . Ch. 513 . . . . . SB 348
53-21-201 . . . . . repealed 7/1/2005 . . . . . Ch. 602 . . . . . SB 347
53-21-202 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-203 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-204 . . . . . repealed 7/1/2005 . . . . . Ch. 602 . . . . . SB 347
53-21-205 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-206 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-211 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-212 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-213 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-214 . . . . . repealed . . . . . Ch. 602 . . . . . SB 347
53-21-414 . . . . . amended . . . . . Ch. 554 . . . . . HB 56
53-21-1001. . . . . enacted . . . . . Ch. 602 . . . . . SB 347
53-21-1002. . . . . enacted . . . . . Ch. 602 . . . . . SB 347
53-21-1006. . . . . enacted . . . . . Ch. 602 . . . . . SB 347
53-21-1007. . . . . enacted . . . . . Ch. 602 . . . . . SB 347
53-21-1010. . . . . enacted . . . . . Ch. 602 . . . . . SB 347
53-21-1011. . . . . enacted . . . . . Ch. 602 . . . . . SB 347
53-21-1012. . . . . enacted . . . . . Ch. 602 . . . . . SB 347
53-24-108 . . . . . amended . . . . . Ch. 140 . . . . . HB 180
53-24-204 . . . . . amended . . . . . Ch. 140 . . . . . HB 180
53-24-206 . . . . . amended . . . . . Ch. 140 . . . . . HB 180
53-24-306 . . . . . amended . . . . . Ch. 396 . . . . . HB 647
53-30-132 . . . . . amended . . . . . Ch. 272 . . . . . HB 220
53-30-402 . . . . . amended . . . . . Ch. 386 . . . . . HB 222
53-30-403 . . . . . amended . . . . . Ch. 78 . . . . . HB 29
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53-30-603 . . . . . amended . . . . . Ch. 362 . . . . . HB 451
60-1-209. . . . . enacted . . . . . Ch. 256 . . . . . SB 413
60-1-210. . . . . enacted . . . . . Ch. 538 . . . . . SB 489
60-2-111 . . . . . amended . . . . . Ch. 192 . . . . . SB 83
60-2-112 . . . . . amended . . . . . Ch. 192 . . . . . SB 83
60-2-134. . . . . enacted . . . . . Ch. 192 . . . . . SB 83
60-2-135. . . . . enacted . . . . . Ch. 192 . . . . . SB 83
60-2-136. . . . . enacted . . . . . Ch. 192 . . . . . SB 83
60-2-137. . . . . enacted . . . . . Ch. 192 . . . . . SB 83
60-2-242 . . . . . amended . . . . . Ch. 538 . . . . . SB 489

60-4-104 . . . . . amended . . . . . Ch. 330 . . . . . SB 34
60-5-110 . . . . . amended . . . . . Ch. 168 . . . . . HB 30
61-1-102 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-1-129 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-1-134 . . . . . amended . . . . . Ch. 428 . . . . . HB 185
61-1-135 . . . . . amended . . . . . Ch. 428 . . . . . HB 185
61-1-142. . . . . enacted . . . . . Ch. 428 . . . . . HB 185
61-1-509 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-1-515. . . . . enacted . . . . . Ch. 592 . . . . . HB 559
61-1-601. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-1-602. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-1-603. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-1-604. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-2-107 . . . . . amended . . . . . Ch. 442 . . . . . HB 618
61-2-302 . . . . . amended . . . . . Ch. 556 . . . . . HB 197
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61-3-101 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-103 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
amended . . . . . Ch. 477 . . . . . HB 538
amended . . . . . Ch. 562 . . . . . HB 261
61-3-105 . . . . . repealed 1/1/2004 . . . . . Ch. 477 . . . . . HB 538
61-3-106 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-107 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-109 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-110. . . . . enacted . . . . . Ch. 279 . . . . . HB 474
61-3-201 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-202 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-203 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-204 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
amended . . . . . Ch. 562 . . . . . HB 261
61-3-205 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-206 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-207 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-208 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-210 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-211 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-212 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-216. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-217. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-218. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-219. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-220. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-221. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-222. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-223. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-224. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-301 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-303 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
amended . . . . . Ch. 592 . . . . . HB 559
61-3-305 . . . . . repealed 1/1/2004 . . . . . Ch. 477 . . . . . HB 538
61-3-311 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-3-312 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
amended . . . . . Ch. 592 . . . . . HB 559
61-3-313 . . . . . amended . . . . . Ch. 393 . . . . . HB 556
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amended . . . . . Ch. 592 . . . . . HB 559
61-3-315 . . . . . amended . . . . . Ch. 42 . . . . . HB 93
61-3-317 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
amended . . . . . Ch. 592 . . . . . HB 559
61-3-321 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
amended . . . . . Ch. 399 . . . . . SB. . 65
amended . . . . . Ch. 491 . . . . . SB. 401

61-3-321 (Continued) . . . . . amended . . . . . Ch. 592 . . . . . HB 559
amended . . . . . Ch. 601 . . . . . SB. 336
61-3-322 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-332 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
amended . . . . . Ch. 399 . . . . . SB. . 65
amended . . . . . Ch. 592 . . . . . HB 559
61-3-333 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
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61-3-342 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-407 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
61-3-411 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-412 . . . . . amended . . . . . Ch. 143 . . . . . HB 280
amended . . . . . Ch. 477 . . . . . HB 538
61-3-413. . . . . enacted . . . . . Ch. 143 . . . . . HB 280
61-3-415. . . . . enacted . . . . . Ch. 533 . . . . . HB 767
61-3-424 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-426 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
61-3-435. . . . . enacted . . . . . Ch. 477 . . . . . HB 538
61-3-452 . . . . . repealed 1/1/2004 . . . . . Ch. 399 . . . . . SB 65
61-3-453 . . . . . repealed 1/1/2004 . . . . . Ch. 399 . . . . . SB 65
61-3-454 . . . . . repealed 1/1/2004 . . . . . Ch. 399 . . . . . SB 65
61-3-455 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
61-3-456 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
61-3-457 . . . . . repealed 1/1/2004 . . . . . Ch. 399 . . . . . SB 65
61-3-458. . . . . enacted . . . . . Ch. 399 . . . . . SB 65
61-3-459. . . . . enacted . . . . . Ch. 399 . . . . . SB 65
61-3-460. . . . . enacted . . . . . Ch. 399 . . . . . SB 65
61-3-463 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-3-465 . . . . . amended . . . . . Ch. 250 . . . . . HB 549
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61-3-473 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-474 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
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61-3-475 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-476 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-477 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-478 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-479 . . . . . amended . . . . . Ch. 248 . . . . . HB 458
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61-3-480 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-481 . . . . . amended . . . . . Ch. 280 . . . . . SB 118
61-3-518 . . . . . repealed 1/1/2004 . . . . . Ch. 477 . . . . . HB 538
61-3-519 . . . . . amended . . . . . Ch. 477 . . . . . HB 538
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61-3-521 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-3-523 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-3-524 . . . . . repealed 1/1/2004 . . . . . Ch. 592 . . . . . HB 559
61-3-525 . . . . . repealed 1/1/2004 . . . . . Ch. 592 . . . . . HB 559
61-3-526 . . . . . amended . . . . . Ch. 393 . . . . . HB 556
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61-3-527 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-3-530 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-3-535 . . . . . amended . . . . . Ch. 592 . . . . . HB 559
61-3-550 . . . . . amended . . . . . Ch. 562 . . . . . HB 261
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61-3-560 . . . . . amended . . . . . Ch. 399 . . . . . SB 65
amended . . . . . Ch. 592 . . . . . HB 559
61-3-562 . . . . . amended . . . . . Ch. 143 . . . . . HB 280
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61-3-570 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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61-3-603 . . . . . amended . . . . . Ch. 477 . . . . . HB 538

61-3-606	repealed 1/1/2004	Ch. 592	HB 559
61-3-701	amended	Ch. 477	HB 538
61-3-736	amended	Ch. 114	SB 10
61-4-101	amended	Ch. 299	HB 186
61-4-102	amended	Ch. 299	HB 186
61-4-104	amended	Ch. 299	HB 186
	amended	Ch. 477	HB 538
61-4-105	amended	Ch. 299	HB 186
61-4-107	amended	Ch. 299	HB 186
61-4-109	enacted	Ch. 299	HB 186
61-4-110	enacted	Ch. 299	HB 186
61-4-111	amended	Ch. 299	HB 186
	amended	Ch. 477	HB 538
61-4-112	amended	Ch. 477	HB 538
61-4-120	amended	Ch. 299	HB 186
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61-4-121	amended	Ch. 477	HB 538
61-4-123	amended	Ch. 299	HB 186
61-4-124	amended	Ch. 299	HB 186
61-4-125	amended	Ch. 299	HB 186
61-4-129	amended	Ch. 299	HB 186
61-4-131	amended	Ch. 335	SB 241
61-4-206	amended	Ch. 299	HB 186
61-4-301	amended	Ch. 299	HB 186
61-4-501	amended	Ch. 360	HB 385
61-4-516	amended	Ch. 360	HB 385
61-4-518	amended	Ch. 360	HB 385
61-4-519	amended	Ch. 360	HB 385
61-5-102	amended	Ch. 428	HB 185
61-5-107	amended	Ch. 428	HB 185
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61-5-110	amended	Ch. 428	HB 185
61-5-111	amended	Ch. 251	HB 711
	amended	Ch. 428	HB 185
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61-5-112	amended	Ch. 428	HB 185
61-5-114	amended	Ch. 558	HB 206
61-5-117	repealed	Ch. 428	HB 185
61-5-118	amended	Ch. 428	HB 185
61-5-121	amended	Ch. 558	HB 206
61-5-127	enacted	Ch. 441	HB 540
61-5-205	amended	Ch. 379	HB 141
	amended	Ch. 556	HB 197
61-5-206	amended	Ch. 556	HB 197
61-5-208	amended	Ch. 300	HB 195
	amended	Ch. 329	SB. . 13
	amended	Ch. 556	HB 197
61-5-212	amended	Ch. 428	HB 185
	amended	Ch. 556	HB 197
61-5-214	amended	Ch. 437	HB 478
	amended	Ch. 465	HB 199
61-5-215	amended	Ch. 133	HB 215
	amended	Ch. 465	HB 199
61-5-216	amended	Ch. 133	HB 215
	amended	Ch. 465	HB 199
61-5-218	enacted	Ch. 133	HB 215
61-5-219	enacted	Ch. 556	HB 197
61-5-301	amended	Ch. 230	HB 557
61-7-103	amended	Ch. 556	HB 197
61-7-118	amended	Ch. 364	HB 480
61-8-102	amended	Ch. 20	HB 68
61-8-105	amended	Ch. 20	HB 68
61-8-201	amended	Ch. 53	HB 22

61-8-202 . . . . . amended . . . . . Ch. 53 . . . . . HB 22
61-8-203 . . . . . amended . . . . . Ch. 53 . . . . . HB 22
61-8-205 . . . . . repealed . . . . . Ch. 53 . . . . . HB 22
61-8-207 . . . . . amended . . . . . Ch. 53 . . . . . HB 22
61-8-208 . . . . . amended . . . . . Ch. 53 . . . . . HB 22
61-8-209 . . . . . amended . . . . . Ch. 53 . . . . . HB 22
61-8-210 . . . . . amended . . . . . Ch. 53 . . . . . HB 22
61-8-211 . . . . . enacted . . . . . Ch. 53 . . . . . HB 22
61-8-301 . . . . . amended . . . . . Ch. 46 . . . . . HB 112
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61-8-303 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
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61-8-311 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-312 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-315 . . . . . repealed . . . . . Ch. 352 . . . . . HB 105
61-8-316 . . . . . enacted . . . . . Ch. 379 . . . . . HB 141
61-8-317 . . . . . enacted . . . . . Ch. 352 . . . . . HB 105
61-8-320 . . . . . enacted . . . . . Ch. 352 . . . . . HB 105
61-8-321 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-323 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-324 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-325 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-326 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-327 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-328 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-329 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-330 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-331 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-332 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
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61-8-334 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-336 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-338 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-340 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-341 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-342 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-343 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-344 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-345 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-346 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-347 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
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61-8-348 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-349 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-350 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-351 . . . . . amended . . . . . Ch. 46 . . . . . HB 112
61-8-354 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-355 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-356 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-359 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-360 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-361 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-362 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-363 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-364 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-365 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-368 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
61-8-369 . . . . . amended . . . . . Ch. 352 . . . . . HB 105
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61-8-402 . . . . . amended . . . . . Ch. 213 . . . . . HB 284
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61-8-409	amended	Ch. 556	HB 197
61-8-421	amended	Ch. 300	HB 195
61-8-442	amended	Ch. 300	HB 195
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61-8-501	amended	Ch. 374	HB 67
61-8-502	amended	Ch. 374	HB 67
61-8-504	amended	Ch. 374	HB 67
61-8-506	amended	Ch. 374	HB 67
61-8-507	amended	Ch. 374	HB 67
61-8-508	amended	Ch. 374	HB 67
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61-8-516	enacted	Ch. 374	HB 67
61-8-517	enacted	Ch. 374	HB 67
61-8-714	amended	Ch. 300	HB 195
61-8-715	amended	Ch. 46	HB 112
	amended	Ch. 352	HB 105
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61-8-722	amended	Ch. 300	HB 195
61-8-733	amended	Ch. 300	HB 195
61-8-734	amended	Ch. 556	HB 197
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61-8-806	amended	Ch. 428	HB 185
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61-8-814	enacted	Ch. 428	HB 185
61-8-903	amended	Ch. 88	HB 636
61-8-904	amended	Ch. 88	HB 636
61-8-905	amended	Ch. 88	HB 636
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61-8-907	amended	Ch. 88	HB 636
61-8-908	amended	Ch. 88	HB 636
61-8-910	amended	Ch. 88	HB 636
61-8-912	enacted	Ch. 88	HB 636
61-8-913	enacted	Ch. 176	HB 635
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61-9-416	amended	Ch. 352	HB 105
61-9-420	amended	Ch. 407	SB 217
61-9-426	enacted	Ch. 418	HB 270
61-9-427	enacted	Ch. 418	HB 270
61-9-431	amended	Ch. 352	HB 105
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61-9-521	enacted	Ch. 357	HB 237
61-10-124	amended	Ch. 285	HB 445
61-10-125	amended	Ch. 311	HB 591
61-10-206	amended	Ch. 55	HB 80
61-11-102	amended	Ch. 428	HB 185
61-11-105	amended	Ch. 533	HB 767
61-11-203	amended	Ch. 329	SB 13
	amended	Ch. 556	HB 197
61-11-204	amended	Ch. 556	HB 197
61-11-503	amended	Ch. 533	HB 767
61-11-509	amended	Ch. 533	HB 767
61-11-510	amended	Ch. 533	HB 767
61-12-402	amended	Ch. 176	HB 635
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69-3-303 ..... amended ..... Ch. 570 ..... HB 642
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69-3-815 ..... enacted ..... Ch. 423 ..... HB 641
69-3-829 ..... enacted ..... Ch. 310 ..... HB 580
69-3-830 ..... enacted ..... Ch. 310 ..... HB 580
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69-3-1305 ..... amended ..... Ch. 249 ..... HB 479
69-3-1308 ..... enacted ..... Ch. 249 ..... HB 479
69-3-1309 ..... enacted ..... Ch. 249 ..... HB 479
69-3-1310 ..... enacted ..... Ch. 249 ..... HB 479
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69-3-1315 ..... enacted ..... Ch. 249 ..... HB 479
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69-8-102 ..... amended ..... Ch. 565 ..... HB 509
69-8-103 ..... amended ..... Ch. 565 ..... HB 509
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69-8-208 ..... amended ..... Ch. 565 ..... HB 509
69-8-210 ..... amended ..... Ch. 509 ..... SB 247
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69-8-211 ..... amended ..... Ch. 565 ..... HB 509
69-8-215 ..... enacted ..... Ch. 472 ..... SB 458
69-8-301 ..... amended ..... Ch. 565 ..... HB 509
69-8-402 ..... amended ..... Ch. 290 ..... SB 77
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69-8-403 ..... amended ..... Ch. 565 ..... HB 509
69-8-408 ..... amended ..... Ch. 565 ..... HB 509
69-8-409 ..... amended ..... Ch. 565 ..... HB 509
69-8-412 ..... amended ..... Ch. 180 ..... SB 70
69-8-416 ..... repealed ..... Ch. 565 ..... HB 509
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69-8-420 . . . . . enacted . . . . . Ch. 509 . . . . . SB 247
69-8-421 . . . . . enacted . . . . . Ch. 509 . . . . . SB 247
69-8-501 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
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69-8-502 . . . . . repealed . . . . . Ch. 565 . . . . . HB 509
69-8-503 . . . . . amended . . . . . Ch. 565 . . . . . HB 509
69-12-102 . . . . . amended . . . . . Ch. 88 . . . . . HB 636
69-14-562 . . . . . amended . . . . . Ch. 303 . . . . . HB 419
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69-14-610 . . . . . amended . . . . . Ch. 527 . . . . . SB 399
69-14-620 . . . . . enacted . . . . . Ch. 527 . . . . . SB 399
69-14-1205 . . . . . amended . . . . . Ch. 490 . . . . . SB 400
70-9-802 . . . . . amended . . . . . Ch. 480 . . . . . SB 89
70-16-302 . . . . . amended . . . . . Ch. 596 . . . . . SB 130
70-16-701 . . . . . enacted . . . . . Ch. 584 . . . . . HB 536
70-16-702 . . . . . enacted . . . . . Ch. 584 . . . . . HB 536
70-16-703 . . . . . enacted . . . . . Ch. 584 . . . . . HB 536
70-19-426 . . . . . enacted . . . . . Ch. 412 . . . . . SB 389
70-19-427 . . . . . enacted . . . . . Ch. 412 . . . . . SB 389
70-19-428 . . . . . enacted . . . . . Ch. 412 . . . . . SB 389
70-22-105 . . . . . amended . . . . . Ch. 549 . . . . . SB 406
70-22-109 . . . . . amended . . . . . Ch. 549 . . . . . SB 406
70-24-104 . . . . . amended . . . . . Ch. 282 . . . . . SB 292
70-24-303 . . . . . amended . . . . . Ch. 408 . . . . . SB 226
70-24-321 . . . . . amended . . . . . Ch. 408 . . . . . SB 226
70-24-422 . . . . . amended . . . . . Ch. 408 . . . . . SB 226
70-24-427 . . . . . amended . . . . . Ch. 408 . . . . . SB 226
70-24-436 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
70-30-102 . . . . . amended . . . . . Ch. 451 . . . . . HB 761
70-30-302 . . . . . amended . . . . . Ch. 330 . . . . . SB 34
70-30-311 . . . . . amended . . . . . Ch. 330 . . . . . SB 34
71-3-1201 . . . . . amended . . . . . Ch. 444 . . . . . HB 648
71-3-1202 . . . . . amended . . . . . Ch. 444 . . . . . HB 648
71-3-1205 . . . . . enacted . . . . . Ch. 444 . . . . . HB 648
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72-3-609 . . . . . amended . . . . . Ch. 68 . . . . . HB 106
72-3-1006 . . . . . amended . . . . . Ch. 68 . . . . . HB 106
72-4-303 . . . . . amended . . . . . Ch. 68 . . . . . HB 106
72-4-305 . . . . . amended . . . . . Ch. 68 . . . . . HB 106
72-5-231 . . . . . amended . . . . . Ch. 238 . . . . . HB 340
72-5-233 . . . . . amended . . . . . Ch. 238 . . . . . HB 340
72-5-321 . . . . . amended . . . . . Ch. 238 . . . . . HB 340
72-5-324 . . . . . amended . . . . . Ch. 238 . . . . . HB 340
72-16-607 . . . . . amended . . . . . Ch. 114 . . . . . SB 10
72-16-906 . . . . . amended . . . . . Ch. 68 . . . . . HB 106
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72-17-106 . . . . . enacted . . . . . Ch. 230 . . . . . HB 557
72-17-201 . . . . . amended . . . . . Ch. 230 . . . . . HB 557
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72-34-113 . . . . . amended . . . . . Ch. 484 . . . . . SB 230
72-34-114 . . . . . amended . . . . . Ch. 484 . . . . . SB 230
72-34-121 . . . . . repealed . . . . . Ch. 484 . . . . . SB 230
72-34-401 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-402 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-403 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-404 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-405 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-406 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-407 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-408 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231
72-34-409 . . . . . repealed . . . . . Ch. 506 . . . . . SB 231

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72-34-412	repealed	Ch. 506	SB	231
72-34-416	repealed	Ch. 506	SB	231
72-34-421	enacted	Ch. 506	SB	231
72-34-422	enacted	Ch. 506	SB	231
72-34-423	enacted	Ch. 506	SB	231
72-34-424	enacted	Ch. 506	SB	231
72-34-425	enacted	Ch. 506	SB	231
72-34-426	enacted	Ch. 506	SB	231
72-34-427	enacted	Ch. 506	SB	231
72-34-428	enacted	Ch. 506	SB	231
72-34-429	enacted	Ch. 506	SB	231
72-34-430	enacted	Ch. 506	SB	231
72-34-431	enacted	Ch. 506	SB	231
72-34-432	enacted	Ch. 506	SB	231
72-34-433	enacted	Ch. 506	SB	231
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72-34-442	enacted	Ch. 506	SB	231
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72-34-444	enacted	Ch. 506	SB	231
72-34-445	enacted	Ch. 506	SB	231
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72-34-448	enacted	Ch. 506	SB	231
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72-34-450	enacted	Ch. 506	SB	231
72-34-451	enacted	Ch. 506	SB	231
72-34-452	enacted	Ch. 506	SB	231
72-34-453	enacted	Ch. 506	SB	231
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72-34-603	enacted	Ch. 484	SB	230
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72-34-605	enacted	Ch. 484	SB	230
72-34-606	enacted	Ch. 484	SB	230
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72-34-609	enacted	Ch. 484	SB	230
72-34-610	enacted	Ch. 484	SB	230
75-1-102	amended	Ch. 361	HB	437
75-1-103	amended	Ch. 361	HB	437
75-1-104	amended	Ch. 131	HB	142
75-1-107	enacted	Ch. 361	HB	437
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75-1-201	amended	Ch. 125	SB	78
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75-1-324	amended	Ch. 33	HB	175
75-2-102	amended	Ch. 361	HB	437
75-2-104	amended	Ch. 361	HB	437
75-2-111	amended	Ch. 231	HB	700
75-2-204	amended	Ch. 231	HB	700
75-2-211	amended	Ch. 99	HB	427
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75-2-218	amended	Ch. 231	HB	700
75-2-221	amended	Ch. 231	HB	700

75-2-234	enacted	Ch. 231	HB 700
75-2-503	amended	Ch. 25	HB 43
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75-3-607	amended	Ch. 28	HB 102
75-5-101	amended	Ch. 361	HB 437
75-5-102	amended	Ch. 361	HB 437
75-5-201	amended	Ch. 468	HB 545
75-5-315	amended	Ch. 208	HB 467
75-5-316	amended	Ch. 208	HB 467
75-5-401	amended	Ch. 231	HB 700
75-5-516	amended	Ch. 468	HB 545
75-5-605	amended	Ch. 460	SB 383
75-5-703	amended	Ch. 128	HB 89
75-5-1122	amended	Ch. 18	HB 46
75-6-227	amended	Ch. 18	HB 46
75-6-231	amended	Ch. 90	SB 69
75-7-102	amended	Ch. 361	HB 437
75-7-103	amended	Ch. 447	HB 676
75-7-111	amended	Ch. 581	SB 381
75-7-112	amended	Ch. 581	SB 381
75-7-113	amended	Ch. 581	SB 381
75-7-116	amended	Ch. 581	SB 381
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75-7-121	amended	Ch. 361	HB 437
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75-7-123	amended	Ch. 470	HB 677
75-7-124	repealed	Ch. 470	HB 677
75-7-125	enacted	Ch. 288	HB 678
75-7-303	amended	Ch. 537	SB 446
75-10-103	amended	Ch. 405	SB 146
75-10-104	amended	Ch. 405	SB 146
75-10-105	amended	Ch. 405	SB 146
75-10-106	amended	Ch. 405	SB 146
75-10-121	repealed	Ch. 405	SB 146
75-10-122	repealed	Ch. 405	SB 146
75-10-123	repealed	Ch. 405	SB 146
75-10-124	repealed	Ch. 405	SB 146
75-10-125	repealed	Ch. 405	SB 146
75-10-202	amended	Ch. 361	HB 437
75-10-250	enacted	Ch. 580	SB 375
75-10-402	amended	Ch. 361	HB 437
75-10-420	amended	Ch. 361	HB 437
75-10-512	amended	Ch. 477	HB 538
75-10-513	amended	Ch. 281	SB 211
	amended	Ch. 477	HB 538
75-10-532	amended	Ch. 281	SB 211
75-10-534	amended	Ch. 200	SB 107
75-10-621	amended	Ch. 199	SB 103
	amended	Ch. 496	HB . 10
75-10-622	amended	Ch. 496	HB 10
75-10-623	amended	Ch. 496	HB 10
75-10-631	enacted	Ch. 496	HB 10
75-10-704	amended	Ch. 199	SB 103
75-10-706	amended	Ch. 361	HB 437
75-10-743	amended	Ch. 199	SB 103
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75-10-752	repealed	Ch. 368	HB 584
75-10-902	amended	Ch. 361	HB 437
75-11-202	amended	Ch. 361	HB 437
75-11-301	amended	Ch. 361	HB 437
75-11-302	amended	Ch. 114	SB 10

75-11-307 . . . . . amended . . . . . Ch. 137 . . . . . HB 144
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75-11-308 . . . . . amended . . . . . Ch. 245 . . . . . HB 368
75-11-309 . . . . . amended . . . . . Ch. 245 . . . . . HB 368
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75-11-509 . . . . . amended . . . . . Ch. 137 . . . . . HB 144
75-20-102 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
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75-20-104 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
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75-20-201 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
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75-20-211 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
75-20-213 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
75-20-215 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
75-20-216 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
75-20-223 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
75-20-231 . . . . . amended . . . . . Ch. 217 . . . . . HB 443
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76-1-103 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-1-106 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-1-223 . . . . . amended . . . . . Ch. 269 . . . . . SB 197
76-1-306 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-1-601 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-1-603 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-1-604 . . . . . amended . . . . . Ch. 87 . . . . . HB 511
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76-1-605 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-2-117. . . . . enacted . . . . . Ch. 439 . . . . . HB 512
76-2-201 . . . . . amended . . . . . Ch. 87 . . . . . HB 511
amended . . . . . Ch. 599 . . . . . SB. 326
76-2-203 . . . . . amended . . . . . Ch. 87 . . . . . HB 511
76-2-206 . . . . . amended . . . . . Ch. 87 . . . . . HB 511
76-2-303 . . . . . amended . . . . . Ch. 87 . . . . . HB 511
76-2-304 . . . . . amended . . . . . Ch. 87 . . . . . HB 511
76-2-310 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-2-411 . . . . . amended . . . . . Ch. 400 . . . . . SB 98
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76-2-412 . . . . . amended . . . . . Ch. 504 . . . . . SB 95
76-3-201 . . . . . amended . . . . . Ch. 549 . . . . . SB 406
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76-3-207 . . . . . amended . . . . . Ch. 436 . . . . . HB 441
amended . . . . . Ch. 563 . . . . . HB 298
76-3-210 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-3-403 . . . . . amended . . . . . Ch. 190 . . . . . HB 182
76-3-404 . . . . . amended . . . . . Ch. 549 . . . . . SB 406
76-3-504 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-3-505 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-3-621 . . . . . amended . . . . . Ch. 469 . . . . . HB 669
76-4-121 . . . . . amended . . . . . Ch. 543 . . . . . SB 325
76-4-122 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
76-4-127 . . . . . amended . . . . . Ch. 599 . . . . . SB 326
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77-1-121	amended	Ch. 147	HB 436
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90-8-104	amended	Ch. 405	SB	146
90-8-201	amended	Ch. 351	HB	76

SESSION LAWS AFFECTED

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Laws of 1989			
Ch. 409, sec. 5	amended	333	SB 166
Laws of 1993			
Ch. 196, sec. 2	amended	333	SB 166
Ch. 465, sec. 14	repealed	216	HB 420
Special Laws of November 1993			
Ch. 9, sec. 21	repealed	223	SB 84
Laws of 1995			
Ch. 213, sec. 1	amended	587	HB 11
Ch. 361, sec. 4	amended	498	HB 18
Ch. 428, sec. 4	repealed	82	HB 137
Laws of 1997			
Ch. 90, sec. 4	repealed	477	HB 538
Ch. 415, sec. 30	repealed	368	HB 584
Ch. 447, secs. 2, 8	amended	235	HB 236
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Ch. 71, sec. 1	amended	498	HB 18
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Ch. 260, sec. 2	repealed	477	HB 538
Ch. 269, sec. 5	amended	295	SB 249
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Ch. 10, sec. 10	amended	481	SB 115
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Ch. 293, sec. 17	amended	514	SB 386
Ch. 394, sec. 9	repealed	477	HB 538
Ch. 394, sec. 5	amended	562	HB 261
Ch. 402, sec. 21	repealed	280	SB 118
Ch. 414, sec. 17	amended	114	SB 10
Ch. 432, sec. 8	repealed	490	SB 400
Ch. 435, sec. 9	repealed	587	HB 11
Ch. 520, sec. 4	repealed	313	SB 180
Ch. 522, sec. 5	amended	114	SB 10
Ch. 522, sec. 5	repealed	275	HB 684
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Ch. 574, secs. 244, 245	amended	550	SB 424
Ch. 575, sec. 3	repealed	127	HB 55
Ch. 585, sec. 57	amended	583	SB 490
Ch. 589, sec. 1	amended	295	SB 249
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Ch. 13, secs. 26, 27	amended	518	SB 454
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Laws of 2003
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Ch.	394		HB	569	07/01/2003
Ch.	395		HB	610	04/18/2003
Ch.	396		HB	647	04/18/2003
Ch.	397		HB	663	04/17/2003
Ch.	398	§§ 1 and 3.	HB	703	04/18/2003
		§ 2			10/01/2003
Ch.	399		SB	65	01/01/2004
Ch.	400		SB	98	10/01/2003
Ch.	401		SB	105	10/01/2003
Ch.	402		SB	110	04/17/2003
Ch.	403		SB	113	07/01/2003
Ch.	404		SB	137	07/01/2003
Ch.	405		SB	146	10/01/2003
Ch.	406		SB	191	10/01/2003
Ch.	407		SB	217	10/01/2003
Ch.	408		SB	226	10/01/2003
Ch.	409		SB	254	10/01/2003
Ch.	410		SB	306	10/01/2003
Ch.	411		SB	307	10/01/2003
Ch.	412		SB	389	10/01/2003
Ch.	413		SB	449	10/01/2003
Ch.	414		HB	155	10/01/2003
Ch.	415		HB	253	10/01/2003
Ch.	416		HB	256	10/01/2003
Ch.	417		HB	266	07/01/2003
Ch.	418		HB	270	04/18/2003
Ch.	419		HB	468	10/01/2003

Ch.	420		HB	521	04/18/2003
Ch.	421		HB	573	10/01/2003
Ch.	422		HB	631	04/18/2003
Ch.	423		HB	641	07/01/2003
Ch.	424		HB	9	07/01/2003
Ch.	425		HB	94	04/22/2003
Ch.	426		HB	152	07/01/2003
Ch.	427		HB	169	07/01/2003
Ch.	428		HB	185	10/01/2003
Ch.	429		HB	213	07/01/2003
Ch.	430		HB	292	04/21/2003
Ch.	431		HB	299	04/21/2003
Ch.	432		HB	338	04/21/2003
Ch.	433		HB	396	10/01/2003
Ch.	434		HB	408	04/22/2003
Ch.	435		HB	410	04/21/2003
Ch.	436		HB	441	10/01/2003
Ch.	437		HB	478	10/01/2003
Ch.	438		HB	484	10/01/2003
Ch.	439		HB	512	10/01/2003
Ch.	440		HB	537	04/21/2003
Ch.	441		HB	540	10/01/2005
Ch.	442		HB	618	10/01/2003
Ch.	443	§§ 25 and 28	HB	640	04/21/2003
		§§ 1-24, 26 and 27.			10/01/2003
Ch.	444		HB	648	04/21/2003
Ch.	445		HB	653	04/22/2003
Ch.	446		HB	667	10/01/2003
Ch.	447		HB	676	04/21/2003
Ch.	448		HB	681	10/01/2003
Ch.	449		HB	698	01/01/2004
Ch.	450		HB	733	10/01/2003
Ch.	451		HB	761	04/21/2003
Ch.	452		SB	35	10/01/2003
Ch.	453		SB	111	04/22/2003
Ch.	454		SB	209	04/21/2003
Ch.	455		SB	243	07/01/2003
Ch.	456		SB	263	07/01/2003
Ch.	457		SB	363	10/01/2003
Ch.	458		SB	364	04/22/2003
Ch.	459		SB	366	04/21/2003
Ch.	460		SB	383	04/22/2003
Ch.	461		SB	392	04/21/2003
Ch.	462		SB	423	10/01/2003
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Ch.	464		SB	450	04/21/2003
Ch.	465		HB	199	10/01/2003
Ch.	466		HB	249	04/23/2003
Ch.	467		HB	315	04/23/2003
Ch.	468		HB	545	04/23/2003
Ch.	469		HB	669	10/01/2003
Ch.	470		HB	677	04/23/2003
Ch.	471		HB	758	04/23/2003
Ch.	472		SB	458	04/23/2003
Ch.	473		HB	7	07/01/2003
Ch.	474	§§ 1-13 and 15-36.	HB	159	01/01/2004
		§ 14			01/01/2005
Ch.	475		HB	190	01/01/2004
Ch.	476		HB	517	04/24/2003
Ch.	477		HB	538	01/01/2004
Ch.	478		HB	734	07/01/2003

Ch.	479	SB	76	Effective on the date by which Congress, in the reauthorization of the Individuals with Disabilities Education Act, requires all states to implement the changes required by reauthorization.	
Ch.	480	SB	89		04/24/2003
Ch.	481	SB	115		07/01/2005
Ch.	482	SB	143		04/24/2003
Ch.	483	SB	194		04/24/2003
Ch.	484	SB	230		10/01/2003
Ch.	485	SB	232		07/01/2003
Ch.	486	SB	282		07/01/2003
Ch.	487	SB	288		04/24/2003
Ch.	488	SB	321		04/24/2003
Ch.	489	SB	337		10/01/2003
Ch.	490	SB	400		04/24/2003
Ch.	491	SB	401		01/01/2004
Ch.	492	SB	441		04/24/2003
Ch.	493	SB	444		04/24/2003
Ch.	494	HB	3		04/25/2003
Ch.	495	HB	4		04/25/2003
Ch.	496	HB	10		07/01/2003
Ch.	497	HB	12		07/01/2003
Ch.	498	HB	18		06/28/2003
Ch.	499	HB	100		07/01/2003
Ch.	500	HB	577		10/01/2003
Ch.	501	HB	588		10/01/2003
Ch.	502	HB	735		07/01/2003
Ch.	503	HB	741		07/01/2003
Ch.	504	SB	95		10/01/2003
Ch.	505	SB	155		04/25/2003
Ch.	506	SB	231		10/01/2003
Ch.	507	SB	244		04/25/2003
Ch.	508	SB	246		10/01/2003
Ch.	509	SB	247		04/24/2003
Ch.	510	SB	275		10/01/2003
Ch.	511	SB	294		04/25/2003
Ch.	512	SB	344		04/24/2003
Ch.	513	SB	348		07/01/2003
Ch.	514	SB	386		04/25/2003
Ch.	515	SB	387		07/01/2003
Ch.	516	SB	402		04/25/2003
Ch.	517	SB	434		04/25/2003
Ch.	518	SB	454		07/01/2003
Ch.	519	SB	480		04/25/2003
Ch.	520	HB	277	On approval by the electorate.	
Ch.	521	HB	721		10/01/2003
Ch.	522	HB	748		04/26/2003
Ch.	523	SB	46		04/25/2003
Ch.	524	SB	138		04/26/2003
Ch.	525	SB	320		04/26/2003
Ch.	526	SB	384		10/01/2003
Ch.	527	SB	399		04/26/2003
Ch.	528	§§ 1-4 and 6-8. SB	464		01/01/2004
		§ 5			01/01/2005
Ch.	529	SB	478		04/26/2003
Ch.	530	HB	283		04/29/2003
Ch.	531	HB	722		04/29/2003
Ch.	532	HB	743		07/01/2003
Ch.	533	§§ 2-8 HB	767		07/01/2003
		§ 1			01/01/2004

Ch.	534	§§ 1-7, 9, and 10	SB	112	01/01/2004
		§ 8			03/01/2004
Ch.	535		SB	414	04/29/2003
Ch.	536		SB	442	01/01/2004
Ch.	537		SB	446	07/01/2003
Ch.	538		SB	489	10/01/2003
Ch.	539		SB	491	07/01/2003
Ch.	540		HB	259	05/23/2003
Ch.	541		HB	705	07/01/2003
Ch.	542		SB	101	04/30/2003
Ch.	543		SB	325	04/30/2003
Ch.	544	§§ 1-39, 47, and 49-62	SB	407	04/30/2003
		§§ 40-46 and 48			01/01/2005
Ch.	545		SB	408	04/30/2003
Ch.	546		SB	429	10/01/2003
Ch.	547		SB	492	07/01/2003
Ch.	548		HB	736	05/01/2003
Ch.	549		SB	406	10/01/2003
Ch.	550	§§ 14-19.	SB	424	05/01/2003
		§§ 2, 4-6, and 8-13			07/01/2003
		§§ 1, 3, and 7			07/01/2004
Ch.	551		SB	473	07/01/2003
Ch.	552		HB	13	07/01/2003
Ch.	553		HB	42	05/05/2003
Ch.	554		HB	56	10/01/2003
Ch.	555		HB	90	10/01/2003
Ch.	556		HB	197	05/05/2003
Ch.	557		HB	201	10/01/2003
Ch.	558		HB	206	07/01/2003
Ch.	559	§§ 15 and 17	HB	211	05/05/2003
		§§ 1-14 and 16.			07/01/2003
Ch.	560		HB	218	01/01/2004
Ch.	561		HB	247	05/05/2003
Ch.	562		HB	261	07/01/2003
Ch.	563		HB	298	05/05/2003
Ch.	564		HB	403	05/05/2003
Ch.	565		HB	509	07/01/2003
Ch.	566		HB	539	10/01/2003
Ch.	567		HB	564	05/05/2003
Ch.	568		HB	608	10/01/2003
Ch.	569		HB	609	Effective on the date that the State Treasurer certifies to the Governor that sufficient private funds have been received to finance the construction of the monument and tribal flag circle.
Ch.	570		HB	642	05/05/2003
Ch.	571		HB	680	07/01/2005
Ch.	572		HB	689	05/05/2003
Ch.	573		HB	693	05/05/2003
Ch.	574		HB	720	10/01/2003
Ch.	575		HB	727	07/01/2003
Ch.	576		HB	744	07/01/2003
Ch.	577		SB	126	10/01/2003
Ch.	578		SB	270	05/05/2003
Ch.	579		SB	370	05/05/2003
Ch.	580		SB	375	05/05/2003
Ch.	581		SB	381	10/01/2003
Ch.	582		SB	484	10/01/2003
Ch.	583		SB	490	07/01/2003
Ch.	584		HB	536	05/05/2003
Ch.	585		HB	489	07/01/2003
Ch.	586		HB	5	05/09/2003

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Ch.	588		HB	363	05/09/2003
Ch.	589		HB	424	07/01/2003
Ch.	590		HB	452	05/09/2003
Ch.	591		HB	558	07/01/2003
Ch.	592		HB	559	01/01/2004
Ch.	593		HB	775	05/09/2003
Ch.	594		SB	47	05/09/2003
Ch.	595		SB	57	10/01/2003
Ch.	596		SB	130	03/01/2004
Ch.	597	§§ 1, 3, 4, 6, 7, 11, and 13-18	SB	271	05/09/2003
		§§ 2, 5, and 12			07/01/2003
		§§ 8-10			Effective on the date that the Commissioner of Labor and Industry certifies to the Governor that the delegation of duties in 39-51-301 is terminated.
Ch.	598		SB	304	05/09/2003
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Ch.	600		SB	330	05/09/2003
Ch.	601		SB	336	01/01/2004
Ch.	602	§§ 1, 3-5, 7-9, 11-15, 16(1), and 17-20	SB	347	10/01/2003
		§§ 2, 6, 10, and 16(2)			07/01/2005
Ch.	603		SB	360	05/09/2003
Ch.	604		SB	395	05/09/2003
Ch.	605		SB	415	05/09/2003
Ch.	606	§§ 1, 3-7, and 9-14	SB	461	05/09/2003
		§ 8			07/01/2003
		§ 2			01/01/2009
Ch.	607		SB	483	10/01/2003
Ch.	608		SB	485	07/01/2003
Ch.	609	§§ 2, 3, and 5	SB	487	05/09/2003
		§§ 1 and 4			07/01/2005
Ch.	610		SB	493	07/01/2003
Ch.	611		SB	362	10/01/2003
Ch.	612		HB	2	07/01/2003

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01/01/2004 . . . . . Ch. 134 . . . . . HB 250
01/01/2004 . . . . . Ch. 204 . . . . . HB 373
01/01/2004 . . . . . Ch. 280 . . . . . SB 118
§§ 2, 4, and 6
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01/01/2004 . . . . . Ch. 384 . . . . . HB 183
01/01/2004 . . . . . Ch. 385 . . . . . HB 205
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01/01/2004 . . . . . Ch. 449 . . . . . HB 698
01/01/2004 . . . . . Ch. 474 . . . . . HB 159
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01/01/2004 . . . . . Ch. 477 . . . . . HB 538
01/01/2004 . . . . . Ch. 491 . . . . . SB 401
01/01/2004 . . . . . Ch. 528 . . . . . SB 464
§§ 1-4 and 6-8
01/01/2004 . . . . . Ch. 533 . . . . . HB 767
§ 1
01/01/2004 . . . . . Ch. 534 . . . . . SB 112
§§ 1-7, 9, and 10
01/01/2004 . . . . . Ch. 536 . . . . . SB 442
01/01/2004 . . . . . Ch. 560 . . . . . HB 218
01/01/2004 . . . . . Ch. 592 . . . . . HB 559
01/01/2004 . . . . . Ch. 601 . . . . . SB 336
03/01/2004 . . . . . Ch. 534 . . . . . SB 112
§ 8
03/01/2004 . . . . . Ch. 596 . . . . . SB 130
07/01/2004 . . . . . Ch. 550 . . . . . SB 424
§§ 1, 3, and 7
01/01/2005 . . . . . Ch. 474 . . . . . HB 159
§ 14
01/01/2005 . . . . . Ch. 528 . . . . . SB 464
§ 5
01/01/2005 . . . . . Ch. 544 . . . . . SB 407
§§ 40-46 and 48
07/01/2005 . . . . . Ch. 63 . . . . . HB 128
On ap proval by elec tor ate
07/01/2005 . . . . . Ch. 481 . . . . . SB 115
07/01/2005 . . . . . Ch. 571 . . . . . HB 680
07/01/2005 . . . . . Ch. 602 . . . . . SB 347
§§ 2, 6, 10, and 16(2)
07/01/2005 . . . . . Ch. 609 . . . . . SB 487
§§ 1 and 4
10/01/2005 . . . . . Ch. 441 . . . . . HB 540
01/01/2009 . . . . . Ch. 606 . . . . . SB 461
§ 2
? . . . . . Ch. 194 . . . . . SB 139
(Ef fec tive upon re ceipt of writ ten no ti fi ca tion by the Sec re tary of State from the Di rec tor of the De part ment of Cor rec tions that the com pact has been leg is la tively en acted in law by the 35th compacting state.)
? . . . . . Ch. 209 . . . . . HB 306
(On ap proval by the elec tor ate.)
? . . . . . Ch. 284 . . . . . HB 417
(Ef fec tive on the ef fec tive date of the re peal of 16 U.S.C. 824a-3.)

? . . . . . Ch. 479 . . . . . SB 76
(Effective on the date by which Congress, in the reauthorization of the Individuals with Disabilities Education Act, requires all states to implement the changes required by reauthorization.)
? . . . . . Ch. 520 . . . . . HB 277
(On approval by the elector ate.)
? . . . . . Ch. 569 . . . . . HB 609
(Effective on the date that the State Treasurer certifies to the Governor that sufficient private funds have been received to finance the construction of the monument and tribal flag circle.)
? . . . . . Ch. 597 . . . . . SB 271
(§§ 8-10, Effective on the date that the Commissioner of Labor and Industry certifies to the Governor that the delegation of duties in 39-51-301 is terminated.)

SESSION LAW TO CODE

Ch.	Sec.	MCA
1	1	Appropriations
	2	Sec. 1, Ch. 1, L. 2001
	3	Effective date
2	1	1-1-525
	2	Codification instruction
3	1	5-1-115 Repealed by sec. 11(3), Ch. 546 (coordination section), effective October 1, 2003
	2	5-1-111 Amendments repealed by sec. 11(3), Ch. 546 (coordination section), effective October 1, 2003
	3	Codification instruction
	4	Severability
	5	Effective date
	6	Retroactive applicability
4	1	5-1-116
	2	Codification instruction
	3	Effective date
5	1	15-7-139
	2	15-7-140
	3	Notification of appraisal and audit
	4	45-6-203
	5	Codification instruction
	6	Effective date
	7	Termination
6	1	Appropriation — time limits
	2	Effective date
7	1	13-10-201
8	1	80-10-201
	2	80-10-207
	3	Effective date
9	1	31-1-221
10	1	15-30-142
11	1	80-6-315
	2	80-6-101
	3	80-6-105
	4	80-6-202
	5	80-6-303
	6	Repealer
	7	Codification instruction
	8	Effective date
12	1	1-5-405
	2	1-5-416
	3	1-5-610
13	1	46-17-311
14	1	85-2-516
	2	Effective date
15	1	7-1-4112
	2	7-1-4116
	3	Effective date
16	1	20-7-461
	2	Effective date
17	1	10-1-104
18	1	75-5-1122
	2	75-6-227
	3	Two-thirds vote required
	4	Effective date
19	1	46-8-103
20	1	61-8-102
	2	61-8-105
21	1	20-1-303
	2	20-3-106
	3	20-3-324
	4	Effective date
22	1	45-5-103
	2	Applicability
23	1	17-7-142
	2	Effective date
24	1	39-29-101
	2	Applicability
25	1	75-2-503
	2	75-2-504
	3	Effective date
26	1	19-3-503
	2	19-6-801
	3	19-7-803
	4	19-7-804
	5	19-8-901
	6	19-9-403
	7	19-13-403
	8	19-5-410
	9	19-5-411
	10	Codification instruction
	11	Effective date
27	1	46-9-108
28	1	75-3-607
	2	Effective date
29	1	23-5-612
	2	Effective date
30	1	2-6-202
	2	2-6-206
	3	2-6-211
	4	2-6-213
	5	2-6-401
31	1	5-7-108
	2	5-7-306
	3	5-7-209
	4	5-7-305
	5	Codification instruction
	6	Effective date
32	1	15-35-108
	2	Effective date
33	1	75-1-324
	2	Effective date
34	1	7-6-4410
	2	15-8-201
	3	15-8-204
	4	15-10-202
	5	20-9-122
	6	85-7-2104
	7	85-9-603
	8	Effective date
	9	Retroactive applicability
35	1	7-6-616
	2	7-7-2101
	3	7-14-2506
	4	7-21-3406
	5	7-21-3413
	6	7-33-2111
	7	Repealer
	8	Effective date
36	1	Repealer
	2	Saving clause
	3	Effective date
37	1	10-3-1204
38	1	19-2-511
	2	Two-thirds vote required
	3	Effective date
39	1	15-32-115
	2	Effective date
40	1	81-4-301
41	1	17-1-501

	2	17-1-502
	3	17-1-505
	4	17-3-222
	5	20-9-331
	6	Repealer
	7	Effective date
42	1	61-3-315
43	1	69-3-870
	2	17-7-502
	3	Codification instruction
	4	Effective date
44	1	41-3-609
	2	Effective date
45	1	25-9-302
	2	Effective date
46	1	61-8-301
	2	61-8-351
	3	61-8-715
47	1	13-4-106
48	1	15-1-122
	2	Effective date
49	1	85-2-410
	2	Effective date
50	1	87-2-805
	2	Effective date
51	1	15-1-232
	2	Codification instruction
	3	Effective date
52	1	5-7-102
	2	5-7-103 Voided by sec. 7(2), Ch. 572 (coordination section)
	3	Notification to tribal governments
	4	Effective date
53	1	61-8-201
	2	61-8-202
	3	61-8-203
	4	61-8-207
	5	61-8-208
	6	61-8-209
	7	61-8-211
	8	61-8-210
	9	Repealer
	10	Codification instruction
54	1	39-3-406
	2	50-5-101
	3	50-5-225
	4	50-5-226
	5	50-5-227
	6	50-5-1202
	7	50-8-101
	8	52-1-104
	9	52-3-811
	10	53-6-101
	11	87-2-802
	12	Name change — directions to code commissioner
55	1	61-10-206
	2	Effective date
56	1	2-17-803
	2	2-17-804
	3	2-17-805
	4	2-17-807
	5	2-17-812
	6	2-17-808
	7	2-17-813
	8	Codification instruction
57	1	53-1-413
	2	Effective date
58	1	2-2-121
	2	Effective date
59	1	13-35-227
	2	Effective date
60	1	37-18-601
	2	37-18-602
	3	37-18-603
	4	37-18-604
	5	37-18-605
	6	37-18-606
	7	37-7-103
	8	37-18-104
	9	Codification instruction
	10	Effective date
	11	Termination
61	1	41-5-1801
	2	Effective date
62	1	2-17-809
	2	Codification instruction
	3	Coordination instruction
63	1	Art. IX, sec. 6, Mont. Const.
	2	Submission to electorate
64	1	32-3-203
	2	32-3-702
	3	Repealer
65	1	32-7-109
	2	32-7-110
	3	32-7-117
66	1	15-30-174
	2	Effective date
67	1	37-4-103
	2	37-4-340
	3	Codification instruction
	4	Severability
	5	Saving clause
	6	Effective date
68	1	72-3-607
	2	72-3-609
	3	72-3-1006
	4	72-4-303
	5	72-4-305
	6	72-16-906
	7	Repealer
	8	Effective date
	9	Retroactive applicability
69	1	46-18-901
	2	46-18-902
	3	46-18-903
	4	46-18-904
	5	46-18-905
	6	Effective date
70	1	1-1-519
	2	Codification instruction
71	1	80-1-103
	2	Codification instruction
	3	Effective date
72	1	20-8-101
	2	Effective date
73	1	20-8-102
74	1	20-8-102
75	1	35-1-1315
	2	35-12-620
	3	30-13-206
	4	30-13-207
	5	35-1-216
	6	35-1-217
	7	35-1-314
	8	35-1-1031
	9	35-1-1308
	10	35-1-1309
	11	35-2-310
	12	35-6-201

	13	35-8-105
	14	35-8-202
	15	35-8-210
	16	35-8-912
	17	35-12-601
	18	35-12-606
	19	35-12-611
	20	35-12-612
	21	35-12-1302
	22	35-12-1303
	23	Codification instruction
76	1	Repealer
	2	Effective date
77	1	22-3-1101
	2	Codification instruction
78	1	53-30-402 Voided by sec. 6, Ch. 386 (coordination section)
	2	53-30-403
79	1	46-21-110
	2	46-21-111
	3	Codification instruction
80	1	87-2-103
	2	87-2-105
	3	87-2-106
	4	87-2-107
	5	87-2-114
	6	87-2-125
	7	Codification instruction
	8	Saving clause
	9	Severability
	10	Effective date
81	1	2-15-2017
	2	Codification instruction
	3	Effective date
	4	Termination
82	1	Repealer
	2	Effective date
83	1	39-3-406
	2	39-51-204
	3	39-71-401
84	1	87-2-101
	2	87-2-306
	3	87-2-806
	4	87-3-204
	5	87-3-205
	6	87-4-601
	7	87-4-609
	8	87-4-610
	9	Effective date
85	1	37-3-102
	2	37-3-103
	3	37-3-303
	4	37-3-304
	5	37-3-104
	6	Codification instruction
	7	Effective date
86	1	20-3-322
	2	Effective date
87	1	76-1-604
	2	76-2-201
	3	76-2-203
	4	76-2-206
	5	76-2-303
	6	76-2-304
	7	Effective date
88	1	61-8-903
	2	61-8-904
	3	61-8-905
	4	61-8-912
	5	61-8-906
	6	61-8-907
	7	61-8-908
	8	61-8-910
	9	69-12-102
	10	Codification instruction
89	1	90-6-111
90	1	75-6-231
91	1	37-47-310
	2	Effective date
92	1	2-17-512
	2	17-5-807
	3	Codification instruction
	4	Effective date
93	1	50-53-102
	2	50-53-107
	3	50-53-201
	4	50-53-209
94	1	39-51-204
	2	39-51-404
	3	39-51-2302
	4	Saving clause
	5	Effective date
	6	Applicability
95	1	15-30-209
	2	39-51-1206
	3	39-51-1301
	4	Effective date
96	1	46-16-105
	2	Effective date
97	1	80-2-208
	2	80-2-244
	3	Effective date
98	1	7-22-2101
	2	80-7-701
99	1	75-2-211
	2	Effective date
100	1	25-1-201
	2	Effective date
101	1	37-24-103
	2	37-24-106
	3	37-24-107
	4	37-24-108
	5	37-24-109
	6	Codification instruction
102	1	Repealer
	2	Effective date
103	1	85-2-217
	2	85-2-702
	3	Notification to tribal governments
	4	Effective date
104	1	1-2-201
	2	Effective date
105	1	32-1-335
	2	32-1-370
	3	32-1-402
	4	32-1-412
	5	32-1-423
106	1	80-7-814
	2	80-7-816
	3	Effective date
107	1	23-7-306
	2	23-7-310
	3	Effective date
108	1	50-37-106
	2	Effective date
109	1	13-37-117
	2	Effective date
110	1	16-4-414
	2	16-1-106
	3	16-1-302

	4	16-1-304
	5	16-4-207
	6	16-4-402
	7	16-4-406
	8	16-4-420
	9	23-5-119
	10	23-5-177
	11	Repealer
	12	Codification instruction
	13	Effective date
111	1	Repealer
	2	Effective date
112	1	7-4-2110
113	1	85-1-624
	2	Two-thirds vote required
	3	Effective date
114	1	1-11-102
	2	2-2-106
	3	2-7-501
	4	2-15-114
	5	2-17-512
	6	3-2-605
	7	3-10-207
	8	3-20-103
	9	5-5-227
	10	7-1-202
	11	7-4-2502
	12	7-6-611
	13	7-6-612
	14	7-14-112
	15	7-15-4283
	16	7-15-4288
	17	7-32-2128
	18	13-35-226
	19	15-6-138
	20	15-7-102
	21	15-7-307
	22	15-23-703
	23	15-30-106
	24	15-30-111
	25	15-30-121
	26	15-30-136
	27	15-30-201
	28	15-30-301
	29	15-31-102
	30	15-31-114
	31	15-31-150
	32	15-31-404
	33	15-31-405
	34	15-32-405
	35	15-36-324
	36	15-50-205
	37	15-50-206
	38	15-70-201
	39	15-72-102
	40	16-11-101
	41	17-4-106
	42	17-5-703
	43	17-5-1102
	44	17-5-1103
	45	17-5-1111
	46	17-7-140
	47	19-1-102
	48	19-2-303
	49	19-2-405
	50	19-2-408
	51	19-3-2117
	52	19-5-902
	53	19-6-711
	54	19-9-1013
	55	19-9-1204
	56	19-13-1011
	57	19-20-101
	58	19-21-203
	59	19-21-214
	60	19-50-102
	61	19-50-103
	62	20-9-344
	63	20-10-205
	64	20-25-301
	65	20-25-427
	66	23-1-105
	67	23-2-809
	68	25-13-402
	69	27-1-732
	70	31-1-704
	71	31-2-106
	72	33-20-1317
	73	37-7-602
	74	37-24-104
	75	37-24-303
	76	39-10-204
	77	39-51-2501
	78	40-5-906
	79	40-5-909
	80	41-3-439
	81	41-5-103
	82	41-5-215
	83	41-5-216
	84	42-10-101
	85	45-5-503
	86	45-5-603
	87	45-9-101
	88	45-9-102
	89	45-9-103
	90	45-9-110
	91	45-10-107
	92	46-18-242 Voided by sec. 9, Ch. 272 (coordination section)
	93	46-23-1004
	94	46-24-211
	95	50-2-111
	96	50-4-502
	97	50-4-504
	98	50-4-505
	99	50-5-101
	100	50-5-301
	101	50-60-313
	102	52-1-103
	103	53-2-103
	104	53-3-115
	105	53-4-221
	106	53-4-222
	107	53-4-232
	108	53-4-601
	109	53-4-609
	110	53-18-101
	111	53-21-186
	112	53-30-403
	113	61-3-103
	114	61-3-570
	115	61-3-736
	116	61-8-906
	117	69-8-104
	118	69-8-501
	119	70-24-436
	120	72-16-607
	121	75-11-302
	122	75-20-301
	123	76-6-109

	124	77-6-114
	125	80-7-814
	126	80-8-120
	127	81-6-105
	128	85-20-1004
	129	85-20-1005
	130	85-20-1007
	131	87-1-209
	132	87-1-221
	133	90-6-127
	134	90-6-715
	135	Sec. 17, Ch. 414, L. 2001
	136	Sec. 5, Ch. 522, L. 2001
	137	Repealer
	138	Instructions to code commissioner
115	1	15-10-420
116	1	2-6-401
	2	7-4-2614
	3	Effective date
117	1	Directions to code commissioner
118	1	52-2-301
	2	52-2-302
	3	52-2-303
	4	52-2-304
	5	52-2-308
	6	Repealer
	7	Effective date
119	1	87-1-287
	2	Codification instruction
	3	Effective date
120	1	19-20-806
	2	19-20-804
	3	Codification instruction
	4	Saving clause
	5	Effective date — applicability
	6	Termination
121	1	27-1-221
	2	Effective date
122	1	85-2-407
	2	Effective date
	3	Termination
123	1	15-30-115
	2	Retroactive applicability
124	1	15-31-141
	2	Effective date
	3	Applicability
125	1	75-1-201
	2	Effective date
126	1	87-3-124
	2	87-2-521
	3	Codification instruction
	4	Effective date
127	1	87-1-301
	2	Repealer
128	1	75-5-703
129	1	87-4-201
130	1	20-5-324
	2	Effective date — applicability
131	1	75-1-104
	2	75-1-201
	3	Effective date
	4	Applicability
132	1	13-27-312
133	1	61-5-218
	2	61-5-215
	3	61-5-216
	4	Codification instruction
	5	Effective date
	6	Applicability
134	1	61-3-332 Voided by sec. 19(1), Ch. 399 (coordination section)
	2	Effective date Voided by sec. 19(1), Ch. 399 (coordination section)
135	1	81-23-101
	2	81-23-202
	3	Effective date
136	1	30-14-143
	2	30-14-226
	3	Codification instruction
	4	Effective date
137	1	75-11-307
	2	75-11-503
	3	75-11-505
	4	75-11-509
	5	Saving clause
	6	Effective date
	7	Applicability
138	1	39-71-702
	2	Effective date — applicability
139	1	17-5-205
	2	Effective date
140	1	17-7-502
	2	53-24-108
	3	53-24-204
	4	53-24-206
	5	Effective date
141	1	46-18-116
	2	46-19-101
142	1	46-6-107
	2	Codification instruction
143	1	61-3-412
	2	61-3-413
	3	61-3-562
	4	Codification instruction
144	1	2-16-214
	2	Codification instruction
	3	Effective date
145	1	7-6-2401
	2	Repealer
146	1	45-9-132
	2	46-23-502
147	1	77-1-121
	2	Effective date
148	1	80-9-101
	2	80-9-301
	3	Effective date
149	1	39-8-102
150	1	69-3-1302
	2	69-3-1303
	3	Effective date
151	1	20-6-105
	2	20-3-205
	3	20-6-214
	4	20-6-215
	5	20-6-308
	6	20-6-322
	7	Repealer
	8	Codification instruction
	9	Effective date — applicability
152	1	3-5-510
	2	3-5-511
	3	3-5-601
	4	3-5-902 Voided by sec. 11, Ch. 583 (coordination section)
	5	3-15-204
	6	41-5-1701
	7	41-5-1703
	8	41-5-1706
	9	41-5-1707

	10	Repealer
	11	Effective date
153	1	18-4-132
	2	Effective date
154	1	46-1-401
	2	46-18-302
	3	46-18-305
	4	46-18-310
155	1	15-32-102
	2	15-32-203
	3	Saving clause
	4	Effective date
	5	Retroactive applicability
156	1	30-10-103
	2	30-10-107
	3	30-10-209
	4	30-10-211
157	1	41-5-1513
158	1	90-6-715
	2	Effective date
159	1	15-30-106
	2	15-32-402 Voided by sec. 5(1), Ch. 524 (coordination section)
	3	15-32-405
	4	Repealer
	5	Effective date
	6	Retroactive applicability
160	1	Tax reform study committee
	2	Appropriation
	3	Effective dates
161	1	85-2-402
	2	Notification to tribal governments
	3	Severability
	4	Effective date
162	1	18-8-212
	2	85-1-219
	3	Effective date
163	1	53-21-127
164	1	46-14-214
	2	46-14-301
165	1	53-21-121
	2	Effective date
166	1	80-7-1102
	2	Effective date
167	1	67-2-302
168	1	60-5-110
169	1	17-7-140
	2	Effective date — applicability
170	1	39-71-1501
	2	39-71-1502
	3	39-71-1503
	4	Repealer
	5	Effective date
171	1	20-3-109
	2	Codification instruction
	3	Effective date
172	1	37-4-405
173	1	20-4-109
174	1	19-20-101
	2	19-20-201
	3	19-20-208
	4	19-20-212
	5	19-20-402
	6	19-20-414
	7	19-20-705
	8	19-20-710
	9	19-20-715
	10	19-20-718
	11	19-20-719
	12	19-20-805
	13	19-20-905
	14	19-20-1101
	15	Effective date
175	1	27-12-104
	2	Effective date
176	1	61-12-402
	2	61-12-404
	3	61-12-405
	4	61-12-406
	5	61-8-913
	6	Codification instruction
177	1	80-4-420
	2	Effective date
178	1	31-1-802
	2	31-1-803
	3	31-1-811
	4	31-1-817
	5	31-1-825
	6	31-1-826
	7	32-5-102
	8	Effective date
179	1	85-5-101
	2	Effective date — applicability
180	1	69-8-412
	2	Effective date
181	1	2-4-102
182	1	44-5-306
	2	44-5-307
	3	17-7-402
	4	Codification instruction
	5	Effective date
183	1	17-6-345
	2	17-6-346
	3	17-6-347
	4	17-6-302
	5	Codification instruction
	6	Effective date
184	1	10-4-114
	2	Codification instruction
	3	Effective date
185	1	2-15-2221
	2	2-15-2222
	3	2-15-2223
	4	2-15-2224
	5	2-15-2225
	6	2-15-2226
	7	Codification instruction
	8	Effective date
186	1	32-6-104
	2	Effective date
187	1	69-3-840
	2	Effective date
188	1	41-5-103
	2	Effective date
189	1	41-3-422
	2	41-3-432
190	1	2-15-150
	2	23-5-631
	3	30-16-303
	4	50-60-313
	5	53-2-1203
	6	76-3-403
	7	90-1-114
	8	Effective date
191	1	13-37-206
	2	Notification to tribal governments
192	1	60-2-134
	2	60-2-135
	3	60-2-136
	4	60-2-137

	5	18-8-204
	6	18-8-205
	7	60-2-111
	8	60-2-112
	9	Codification instruction
	10	Effective date
193	1	39-71-401
	2	39-71-503
	3	39-71-504
	4	39-71-506
	5	39-71-520
	6	39-71-535
	7	39-71-901
	8	39-71-911
	9	39-71-915
	10	39-71-920
	11	39-71-1004
	12	Codification instruction
	13	Severability
	14	Saving clause
	15	Effective date
194	1	41-6-101
	2	Two-thirds vote required
	3	Contingent effective date
195	1	33-10-235
	2	33-10-236
	3	33-10-201
	4	33-10-202
	5	33-10-203
	6	33-10-205
	7	33-10-206
	8	33-10-207
	9	33-10-210
	10	33-10-215
	11	33-10-217
	12	33-10-219
	13	33-10-220
	14	33-10-221
	15	33-10-222
	16	33-10-223
	17	33-10-224
	18	33-10-226
	19	33-10-227
	20	Codification instruction
	21	Effective date
196	1	37-40-302
	2	37-47-304
	3	37-50-204
	4	37-50-305
	5	37-50-308
	6	37-50-309
	7	37-51-303
	8	37-54-105
	9	37-54-201
	10	37-54-302
	11	37-54-305
	12	37-65-303
	13	37-67-303
	14	37-67-311
	15	37-68-304
	16	37-68-305
	17	37-68-307
	18	37-68-311
	19	37-69-304
	20	37-69-305
	21	37-69-307
	22	37-72-303
	23	37-72-304
	24	37-72-305
	25	50-74-320
	26	50-74-312
	27	50-76-104
	28	Repealer
	29	Codification instruction
197	1	39-51-204
	2	Effective date
198	1	7-12-2109
199	1	75-10-621
	2	75-10-704
	3	75-10-743
	4	Contingent appropriation of orphan share funds
	5	Effective date
	6	Contingent termination
200	1	75-10-534
	2	Effective date
201	1	87-2-104
	2	87-2-501
	3	87-2-505
	4	87-2-702
	5	87-2-704
	6	Effective date
202	1	30-10-105
203	1	18-1-203
	2	18-2-201
	3	18-2-302
	4	18-4-312
204	1	82-4-202
	2	82-4-203
	3	82-4-221
	4	82-4-222
	5	82-4-231
	6	82-4-232
	7	82-4-233
	8	82-4-234
	9	82-4-235
	10	82-4-236
	11	82-4-222(6), (7)
	12	Codification instruction
	13	Severability
	14	Saving clause
	15	Contingent voidness
	16	Effective date
205	1	Sec. 11, Ch. 24, Special L. August 2002
	2	Repealer
	3	Effective date
206	1	50-4-312
	2	50-4-504
	3	50-4-505
	4	Repealer
	5	Effective date
207	1	53-1-401
	2	53-1-404
	3	Effective date
208	1	75-5-315
	2	75-5-316
	3	Severability
	4	Effective date
	5	Applicability
209	1	Art. IX, sec. 6, Mont. Const.
	2	Effective date
	3	Submission to electorate
210	1	23-5-602
	2	23-5-610
	3	23-5-611
	4	23-5-621
	5	23-5-637
	6	Effective date
211	1	23-7-202

	2	Effective date
212	1	87-1-217
	2	Codification instruction
	3	Severability
	4	Effective date
213	1	61-8-402
214	1	7-6-204
	2	Effective date
215	1	44-1-1001
216	1	80-8-203
	2	80-8-207
	3	80-8-213
	4	Repealer
	5	Effective date
217	1	7-1-111
	2	69-3-1205
	3	75-20-102
	4	75-20-104
	5	75-20-201
	6	75-20-211
	7	75-20-213
	8	75-20-215
	9	75-20-216
	10	75-20-223
	11	75-20-231
	12	75-20-232
	13	75-20-301
	14	75-20-303
	15	85-2-124
	16	85-2-607
	17	85-15-107
	18	90-6-207
	19	Saving clause
	20	Severability
	21	Effective date
218	1	13-1-209
	2	Codification instruction
	3	Effective date
219	1	7-14-1001
	2	7-14-1002
	3	7-14-1003
	4	7-14-1004
	5	7-14-1005
	6	7-14-1006
	7	7-14-1007
	8	Codification instruction
220	1	20-25-312
221	1	31-1-704
	2	31-1-712
	3	31-1-721
	4	31-1-722
	5	31-1-724
	6	32-5-102
	7	Effective date
222	1	10-1-901
	2	10-1-902
	3	10-1-903
	4	10-1-904
	5	Codification instruction
	6	Saving clause
	7	Effective date
223	1	Repealer
224	1	2-15-1733
	2	15-6-217
	3	37-3-102
	4	37-3-103
	5	37-3-203
	6	37-3-303
	7	37-3-304
	8	37-3-307
	9	37-3-313
	10	37-3-315
	11	37-3-345
	12	37-4-301
	13	37-4-311
	14	37-4-312
	15	37-4-402
	16	37-6-304
	17	37-12-102
	18	37-12-302
	19	37-12-304
	20	37-13-306 Replaced by sec. 33, Ch. 224 (coordination section)
	21	37-16-403
	22	37-19-302
	23	37-19-303
	24	37-20-302
	25	37-20-303
	26	37-26-301
	27	37-27-105
	28	37-27-202
	29	37-29-304
	30	39-71-116
	31	50-5-105
	32	Repealer
	33	Coordination instruction
	34	Severability
	35	Saving clause
	36	Effective date
225	1	15-30-101
	2	15-30-1102
	3	15-30-1112
	4	15-30-1113
226	1	39-71-2615
	2	Effective date
227	1	87-3-204
228	1	87-2-307
	2	87-1-605
	3	87-2-104
	4	87-2-306
	5	87-2-805
	6	87-3-236
	7	Codification instruction
	8	Effective date
229	1	44-5-302
	2	Effective date
230	1	72-17-105
	2	72-17-106
	3	61-5-301
	4	72-17-201
	5	Codification instruction
231	1	75-2-111
	2	75-2-204
	3	75-2-211
	4	75-2-218
	5	75-2-221
	6	75-5-401
	7	75-2-234
	8	Codification instruction
	9	Severability
	10	Effective date
	11	Retroactive applicability
232	1	5-11-303
	2	5-11-304
	3	5-11-305
	4	5-11-707
	5	Repealer
	6	Codification instruction
	7	Effective date
233	1	Repealer

	2	Effective date
234	1	Sec. 5, Ch. 529, L. 1999
	2	Effective date
235	1	Sec. 2, Ch. 447, L. 1997
	2	Sec. 8, Ch. 447, L. 1997
	3	Sec. 2, Ch. 519, L. 1999
	4	Sec. 5, Ch. 519, L. 1999
	5	Effective date
	6	Retroactive applicability
236	1	15-1-121
	2	17-4-105
	3	Effective date
237	1	32-3-103
	2	32-3-215
	3	32-3-216
	4	32-3-201
	5	32-3-202
	6	32-3-203
	7	32-3-204
	8	32-3-205
	9	32-3-211
	10	32-3-212
	11	32-3-207
	12	32-3-206
	13	32-3-301
	14	32-3-302
	15	32-3-303
	16	32-3-307
	17	32-3-310
	18	32-3-321
	19	32-3-322
	20	32-3-323
	21	32-3-401
	22	32-3-403
	23	32-3-404
	24	32-3-408
	25	32-3-411
	26	32-3-412
	27	32-3-414
	28	32-3-417
	29	32-3-505
	30	32-3-506
	31	32-3-508
	32	32-3-601
	33	32-3-602
	34	32-3-604
	35	32-3-608
	36	32-3-611
	37	32-3-702
	38	32-3-703
	39	32-3-705
	40	Repealer
	41	Codification instruction
238	1	72-5-231
	2	72-5-233
	3	72-5-321
	4	72-5-324
239	1	90-2-1113
	2	Effective date
	3	Termination
240	1	50-9-102
	2	50-9-103
	3	50-9-104
	4	50-9-105
	5	50-9-106
	6	50-9-107
	7	50-9-201
	8	50-9-202
	9	50-9-203
	10	50-9-204
	11	50-9-205
	12	50-9-206
	13	50-10-101
	14	50-10-102
	15	50-10-103
	16	50-10-104
	17	50-10-106
241	1	15-17-121
242	1	76-13-408
	2	Effective date
243	1	2-15-1747
	2	15-30-256
	3	37-31-103
	4	37-20-303
	5	37-31-101
	6	37-31-102
	7	37-31-203
	8	37-31-301
	9	37-31-302
	10	37-31-303
	11	37-31-304
	12	37-31-305
	13	37-31-308
	14	37-31-311
	15	37-31-312
	16	37-31-321
	17	37-31-322
	18	37-31-323
	19	37-31-331
	20	39-51-204
	21	49-2-101
	22	50-61-103 Voided by sec. 10, Ch. 387 (coordination section)
	23	Repealer
	24	Codification instruction
	25	Severability
244	1	Exemptions Voided by sec. 4, Ch. 244 (coordination section)
	2	37-31-102
	3	Codification instruction
	4	Coordination instruction
	5	Effective date
245	1	75-11-307
	2	75-11-308
	3	75-11-309
	4	75-11-312
	5	75-11-313
	6	75-11-318
	7	Codification instruction
	8	Saving clause
	9	Applicability
246	1	23-2-511 Voided by sec. 47(1), Ch. 592 (coordination section)
	2	23-2-512 Voided by sec. 47(1), Ch. 592 (coordination section)
	3	23-2-616 Voided by sec. 47(1), Ch. 592 (coordination section)
	4	23-2-618 Voided by sec. 47(1), Ch. 592 (coordination section)
	5	23-2-817 Voided by sec. 47(1), Ch. 592 (coordination section)
	6	Effective date Voided by sec. 47(1), Ch. 592 (coordination section)
247	1	82-4-336 Voided by sec. 2, Ch. 247 (coordination section)
	2	Coordination instruction
	3	Effective date Voided by sec. 2, Ch. 247 (coordination section)

	4	Retroactive applicability Voided by sec. 2, Ch. 247 (coordination section)
248	1	61-3-479
249	1	69-3-1301
	2	69-3-1302
	3	69-3-1303
	4	69-3-1305
	5	69-3-1308
	6	69-3-1309
	7	69-3-1310
	8	69-3-1311
	9	69-3-1315
	10	69-3-1316
	11	Codification instruction
	12	Effective date
250	1	61-3-465
	2	Effective date
251	1	61-5-111
252	1	15-1-121
	2	Effective date
	3	Retroactive applicability
253	1	44-5-103
	2	44-5-303
	3	Applicability
254	1	2-15-1508
	2	2-15-1821
	3	2-15-1822
	4	5-1-102
	5	Saving clause
255	1	53-1-214
	2	20-25-421
	3	Codification instruction
	4	Effective date
	5	Retroactive applicability
256	1	60-1-209
	2	Codification instruction
	3	Notification to tribal governments
257	1	30-13-301
	2	30-13-303
	3	30-13-311
	4	30-13-310
	5	30-13-312
	6	30-13-313
	7	30-13-315
	8	30-13-317
	9	30-13-318
	10	30-13-331
	11	30-13-332
	12	30-13-333
	13	30-13-334
	14	30-13-335
	15	30-13-337
	16	Repealer
	17	Codification instruction
	18	Effective date
258	1	46-18-201
	2	Effective date
	3	Retroactive applicability
259	1	40-15-402
	2	40-15-403
	3	Effective date
260	1	41-2-117
	2	Effective date
261	1	19-9-1204
	2	Effective date
	3	Retroactive applicability
262	1	19-17-401
	2	19-17-404
	3	Effective date
263	1	80-5-130
	2	80-5-131
	3	Effective date
264	1	7-5-2133
	2	7-5-4125
	3	Codification instruction
	4	Effective date
265	1	5-11-105
266	1	41-5-121
267	1	39-51-201
	2	Effective date — applicability
268	1	7-6-617
	2	Codification instruction
	3	Effective date
269	1	76-1-223
270	1	80-11-206
	2	Effective date
271	1	20-7-134
	2	37-1-138
	3	13-1-112
	4	27-12-206
	5	37-1-105
	6	37-1-136
	7	37-3-313
	8	37-3-346
	9	37-4-307
	10	37-4-406
	11	37-5-307
	12	37-6-304
	13	37-7-303
	14	37-8-431
	15	37-9-305
	16	37-10-307
	17	37-11-201
	18	37-11-308
	19	37-12-307
	20	37-13-306
	21	37-14-310
	22	37-15-308
	23	37-16-407
	24	37-17-306
	25	37-17-307
	26	37-18-307
	27	37-19-306
	28	37-20-302
	29	37-21-302
	30	37-22-304
	31	37-23-205
	32	37-24-308
	33	37-25-307
	34	37-26-201
	35	37-27-105
	36	37-28-203
	37	37-29-306
	38	37-31-322
	39	37-32-305
	40	37-34-201
	41	37-35-203
	42	37-40-304
	43	37-42-308
	44	37-43-307
	45	37-43-313
	46	37-47-307
	47	37-50-317
	48	37-51-310
	49	37-53-103
	50	37-53-203
	51	37-54-211
	52	37-54-311
	53	37-60-312

	54	37-65-306
	55	37-66-307
	56	37-67-315
	57	37-68-310
	58	37-69-307
	59	37-72-306
	60	50-6-203
	61	Codification instruction
	62	Effective date
	63	Retroactive applicability
272	1	46-18-201
	2	46-18-237
	3	46-18-241
	4	46-18-242
	5	46-18-243
	6	46-18-244
	7	46-18-245
	8	53-30-132
	9	Coordination instruction
	10	Retroactive applicability
273	1	7-33-2205
274	1	28-2-2101
	2	28-2-2103
	3	28-2-2115
	4	28-2-2116
	5	28-2-2117
	6	Codification instruction
	7	Applicability
275	1	Repealer
	2	Effective date
276	1	20-3-209
	2	20-9-101
	3	20-9-501
	4	20-10-146
	5	Effective date — applicability
277	1	7-7-2304
	2	7-7-2316
	3	7-7-4304
	4	7-7-4316
	5	7-7-4502
	6	7-12-2109
	7	7-12-2141
	8	7-12-2120
	9	7-12-2161
	10	7-12-2168
	11	7-12-2171
	12	7-12-4110
	13	7-12-4137
	14	7-12-4174
	15	7-12-4203
	16	7-13-114
	17	7-13-3043
	18	7-14-4712
	19	7-14-4732
	20	17-5-2102
	21	20-9-412
	22	Codification instruction
	23	Repealer
	24	Effective date
278	1	Repealer
	2	Effective date
	3	Retroactive applicability
279	1	61-3-110
	2	Codification instruction
280	1	61-3-301
	2	61-3-321
	3	61-3-332
	4	61-3-333
	5	61-3-424
	6	61-3-465
	7	61-3-473
	8	61-3-474
	9	61-3-475
	10	61-3-476
	11	61-3-477
	12	61-3-478
	13	61-3-479
	14	61-3-480
	15	61-3-481
	16	61-3-562
	17	Repealer
	18	Effective dates
	19	Applicability
281	1	75-10-513
	2	75-10-532
	3	Effective date
282	1	70-24-104
283	1	Natural resource damage program appropriation
	2	Loan agreement
	3	Three-fourths vote required
	4	Effective dates
284	1	Repealer
	2	Saving clause
	3	Effective date — notification to code commissioner
	4	Applicability
285	1	61-10-124
	2	Contingent voidness
	3	Effective date
286	1	45-5-621
	2	Effective date
287	1	82-4-337
	2	Effective date
	3	Retroactive applicability
288	1	75-7-125
	2	Codification instruction
	3	Effective date
	4	Retroactive applicability — applicability
289	1	19-3-503
	2	19-6-801
	3	19-7-803
	4	19-7-804
	5	19-8-901
	6	19-9-403
	7	19-13-403
	8	19-5-412
	9	19-5-413
	10	Codification instruction
	11	Effective date
290	1	69-8-402
	2	Effective date
291	1	20-9-622
	2	77-1-109
	3	Effective date
292	1	19-3-515
	2	19-3-514
	3	Codification instruction
293	1	18-2-401
	2	Effective date
294	1	69-1-104
	2	Transition
	3	Saving clause
295	1	Sec. 1, Ch. 589, L. 2001 17-5-820 (sec. 5, Ch. 269, L. 1999)
	2	Effective date
296	1	Appropriations from the renewable resource grant and loan state special revenue account

	2	Condition of grants
	3	Conditions for grants
	4	Appropriations established
	5	Review of previously authorized grants
	6	Severability
	7	Notification to tribal governments
	8	Effective dates
297	1	Approval of renewable resource projects and authorization to provide loans
	2	Projects not completing requirements — projects reauthorized
	3	Coal severance tax bonds authorized
	4	Condition of loans
	5	Private and discount purchase of loans
	6	Appropriation established
	7	Creation of state debt — appropriation of coal severance tax — bonding provisions
	8	Severability
	9	Effective date
298	1	44-10-204
	2	3-1-318
	3	Codification instruction
	4	Effective date — applicability
299	1	61-4-109
	2	61-4-110
	3	61-4-101
	4	61-4-102
	5	61-4-104
	6	61-4-105
	7	61-4-107
	8	61-4-111
	9	61-4-120
	10	61-4-123
	11	61-4-124
	12	61-4-125
	13	61-4-129
	14	61-4-206
	15	61-4-301
	16	Codification instruction
	17	Effective date
	18	Applicability
300	1	61-2-302 Voided by sec. 15(7), Ch. 556 (coordination section)
	2	61-5-208
	3	61-8-421
	4	61-8-442
	5	61-8-714
	6	61-8-722
	7	61-8-733
	8	Effective date
	9	Applicability
301	1	39-3-204
	2	Effective date — applicability
302	1	44-2-117
	2	Codification instruction
	3	Effective date
303	1	69-14-562
	2	Effective date
304	1	46-6-311
305	1	28-2-2111
	2	Codification instruction
	3	Effective date — applicability
306	1	37-3-304
	2	37-3-305
307	1	37-14-102
	2	37-14-301
	3	37-14-313
	4	Codification instruction
308	1	32-5-301
309	1	40-4-121
	2	46-7-102
310	1	69-3-832
	2	69-3-829
	3	69-3-830
	4	Codification instruction
	5	Effective date
311	1	61-10-125
312	1	30-14-1501
	2	Codification instruction
313	1	Repealer
	2	Effective date
314	1	25-2-118
	2	40-4-104
	3	40-4-305
315	1	15-17-131
	2	15-7-138
	3	15-16-102
	4	Codification instruction
316	1	44-4-305
	2	44-4-301
	3	44-4-302
	4	Codification instruction
	5	Effective date
317	1	37-8-102
	2	37-8-431
	3	37-8-443
	4	Effective date
318	1	77-1-1001
	2	77-1-1002
	3	77-1-121
	4	77-3-301
	5	Notification to tribal government
	6	Codification instruction
	7	Effective date
319	1	87-2-811
	2	87-2-812
	3	Codification instruction
320	1	13-17-108
	2	Codification instruction
	3	Effective date
321	1	87-2-601
	2	87-2-603
	3	87-2-605
	4	Effective date
322	1	30-14-102
	2	30-14-105
	3	30-14-111
	4	30-14-131
	5	30-14-133
	6	30-14-142
	7	30-14-211
	8	30-14-219
	9	30-14-220
	10	30-14-222
	11	30-14-223
	12	30-14-224
	13	30-14-501
	14	30-14-502
	15	30-14-503
	16	30-14-506
	17	Repealer
	18	Coordination instruction
	19	Effective date
323	1	13-27-111

	2	13-27-201
	3	13-27-202
	4	13-27-204
	5	13-27-205
	6	13-27-206
	7	13-27-207
	8	13-27-301
	9	13-27-302
	10	13-27-303
	11	13-27-304
	12	13-27-307
	13	Effective date
324	1	75-20-104
	2	Effective date
325	1	33-22-261
	2	33-22-262
	3	33-22-263
	4	33-22-301
	5	33-22-706
	6	33-30-1001
	7	33-31-111
	8	33-31-202
	9	33-31-301
	10	33-36-201
	11	33-36-205
	12	Codification instruction
	13	Effective date
	14	Termination
326	1	77-2-306
	2	Effective date
327	1	2-2-111
	2	Effective date
328	1	Vehicle purchases — leasing guideline
	2	Effective date
329	1	61-5-205 Voided by sec. 15(4), Ch. 556 (coordination section)
	2	61-5-208
	3	61-8-401
	4	61-8-406
	5	61-8-442
	6	61-11-203
	7	Code commissioner instruction
	8	Effective date
330	1	60-4-104
	2	70-30-302
	3	70-30-311
	4	Effective date
	5	Applicability
331	1	5-2-205
332	1	17-2-108
	2	17-2-304
	3	17-7-111
	4	17-7-402
	5	Effective date
333	1	87-4-601
	2	Sec. 5, Ch. 409, L. 1989
	3	Sec. 2, Ch. 196, L. 1993
	4	Effective date
334	1	7-2-4211
	2	Codification instruction
335	1	61-4-131
336	1	5-2-402
	2	5-2-403
	3	5-2-404
	4	5-2-406
	5	5-2-407
	6	Effective date
337	1	Feasibility study on rail freight competition
	2	Effective date
338	1	15-32-106
	2	15-32-503
	3	15-32-507
339	1	33-15-1104
	2	33-15-1105
	3	33-15-1106
	4	33-23-212
	5	33-23-214
	6	33-23-302
	7	33-23-312
	8	33-23-401
	9	Codification instruction
	10	Applicability
340	1	32-1-115
	2	20-3-324
	3	32-1-102
	4	32-1-402
	5	32-3-106
	6	Codification instruction
	7	Effective date
341	1	37-54-102
	2	37-54-202
	3	37-54-304
342	1	15-23-801
	2	15-37-103
	3	Effective date
	4	Applicability
343	1	46-5-401
	2	Repealer
344	1	45-5-220
	2	45-5-625
	3	45-8-212
	4	45-8-213
	5	46-3-112
345	1	46-18-203
	2	Effective date
	3	Retroactive applicability
346	1	46-16-105
	2	Effective date
	3	Applicability
347	1	85-7-2125
	2	Codification instruction
	3	Saving clause
	4	Effective date
	5	Termination
348	1	50-5-101
	2	50-5-220
	3	Codification instruction
	4	Effective date
349	1	85-8-302
	2	Effective date
350	1	52-3-803
	2	52-3-825
	3	Coordination instruction
	4	Effective date
351	1	2-15-1820
	2	15-35-108
	3	17-6-403
	4	90-1-116
	5	90-8-201
	6	Repealer
	7	Notification to tribal governments
	8	Codification instruction
	9	Effective dates
352	1	61-8-301
	2	61-8-303
	3	61-8-311
	4	61-8-312
	5	61-8-317

	6	61-8-321
	7	61-8-323
	8	61-8-324
	9	61-8-325
	10	61-8-326
	11	61-8-327
	12	61-8-328
	13	61-8-329
	14	61-8-330
	15	61-8-331
	16	61-8-332
	17	61-8-333 Replaced by sec. 51(2)(a), Ch. 352 (coordination section)
	18	61-8-334
	19	61-8-336
	20	61-8-338 Replaced by sec. 51(2)(b), Ch. 352 (coordination section)
	21	61-8-340
	22	61-8-341
	23	61-8-342
	24	61-8-320
	25	61-8-343
	26	61-8-344
	27	61-8-345
	28	61-8-346
	29	61-8-347
	30	61-8-348
	31	61-8-349
	32	61-8-350
	33	61-8-354
	34	61-8-355
	35	61-8-356
	36	61-8-359
	37	61-8-360
	38	61-8-361
	39	61-8-362
	40	61-8-363
	41	61-8-364
	42	61-8-365
	43	61-8-368
	44	61-8-369
	45	61-8-715
	46	61-9-402
	47	61-9-416
	48	61-9-431
	49	20-1-214
	50	Repealer
	51	Coordination instruction
	52	Codification instruction
353	1	17-7-502
	2	53-1-107
	3	53-1-109
	4	Codification instruction
	5	Coordination instruction
354	1	46-17-203
	2	46-17-311
	3	Effective date
	4	Applicability
355	1	17-3-1003
	2	17-7-502
	3	18-2-107
	4	77-1-109
	5	77-2-301
	6	77-2-306
	7	77-2-309
	8	77-2-323
	9	77-2-328
	10	77-2-337
	11	77-2-361
	12	77-2-362
	13	77-2-363
	14	77-2-364
	15	77-2-365
	16	77-2-366
	17	77-2-367
	18	Repealer
	19	Codification instruction
	20	Severability
	21	Effective date
356	1	Repealer
	2	Effective date
357	1	61-9-321
	2	61-9-521
	3	Codification instruction
	4	Applicability
358	1	45-8-211
	2	Saving clause
	3	Effective date
359	1	69-4-602
	2	69-4-603
	3	Effective date
360	1	61-4-501
	2	61-4-516
	3	61-4-518
	4	61-4-519
361	1	2-4-702
	2	75-1-107, 82-1-401
	3	2-4-704
	4	50-40-102
	5	75-1-102
	6	75-1-103
	7	75-2-102
	8	75-2-104
	9	75-5-101
	10	75-5-102
	11	75-7-102
	12	75-7-121
	13	75-10-202
	14	75-10-402
	15	75-10-420
	16	75-10-706
	17	75-10-902
	18	75-11-202
	19	75-11-301
	20	75-11-502
	21	75-20-102
	22	75-20-201
	23	75-20-401
	24	75-20-406
	25	76-6-102
	26	76-7-102
	27	82-4-102
	28	82-4-202
	29	82-4-239
	30	82-4-252
	31	82-4-301
	32	82-4-349
	33	82-4-402
	34	82-4-427
	35	82-4-436
	36	87-5-103
	37	75-1-108
	38	Codification instruction
	39	Severability
	40	Effective date
	41	Retroactive applicability
362	1	53-30-603
	2	Effective date
363	1	53-1-107
364	1	61-7-118

365	1	82-4-303
	2	82-4-335
	3	82-4-336
	4	82-4-342
	5	Effective date
366	1	45-8-211
	2	45-8-217
	3	27-1-434
	4	Codification instruction
367	1	13-13-213
	2	13-38-201
	3	85-8-302 Voided by sec. 5(1), Ch. 367 (coordination section)
	4	85-8-624
	5	Coordination instruction
368	1	75-10-743
	2	Repealer
	3	Effective date
369	1	16-1-106
	2	16-4-111
	3	16-4-204
	4	16-4-301
	5	16-4-501
	6	Effective date
370	1	15-6-227
	2	Codification instruction
	3	Effective date
	4	Retroactive applicability
371	1	7-6-2407
	2	Effective date
372	1	16-3-107
373	1	50-31-103
	2	50-31-110
	3	50-31-208
	4	50-31-312
	5	50-31-501
	6	Repealer
374	1	20-3-106
	2	61-8-501
	3	61-8-502
	4	61-8-504
	5	61-8-506
	6	61-8-507
	7	61-8-508
	8	61-8-515
	9	61-8-516
	10	61-8-517
	11	Repealer
	12	Codification instruction
375	1	23-3-405
	2	23-3-501
	3	37-50-102
	4	37-50-203
	5	37-50-301
	6	37-50-311
	7	37-50-312
	8	37-50-313
	9	37-50-335
	10	37-51-204
	11	37-60-303
	12	37-60-304
	13	Repealer
	14	Saving clause
	15	Effective date
376	1	33-22-1815
377	1	39-71-704
	2	Effective date — applicability
378	1	33-18-231
	2	33-18-232
	3	33-18-233
	4	33-18-245
	5	Codification instruction
379	1	61-8-316
	2	61-5-205
	3	61-8-301
	4	61-8-715
	5	61-9-402
	6	61-9-431
	7	Codification instruction
380	1	33-3-450
	2	33-3-451
	3	33-3-452
	4	33-3-453
	5	33-1-235
	6	33-1-408
	7	33-1-705
	8	33-1-1202
	9	33-2-115
	10	33-2-307
	11	33-2-326
	12	33-2-708
	13	33-3-201
	14	33-3-441
	15	33-4-101
	16	33-4-202
	17	33-10-102
	18	33-10-207
	19	33-16-403
	20	33-17-503
	21	33-17-511
	22	33-17-1102
	23	33-17-1204
	24	33-20-101
	25	33-20-103
	26	33-20-105
	27	33-20-114
	28	33-20-1202
	29	33-20-1203
	30	33-20-1204
	31	33-20-1205
	32	33-20-1206
	33	33-20-1207
	34	33-20-1209
	35	33-20-1210
	36	33-20-1213
	37	33-22-101
	38	33-22-107
	39	33-22-303
	40	33-22-512
	41	33-22-1512
	42	33-22-1513
	43	33-23-212
	44	33-30-102
	45	33-30-107
	46	33-30-204
	47	33-31-111
	48	33-31-212
	49	33-35-306
	50	45-6-301
	51	50-3-109
	52	Repealer
	53	Codification instruction
	54	Coordination instruction
381	1	2-15-3405
	2	87-1-601
	3	87-2-411
	4	Repealer
	5	Effective date
382	1	52-5-129
	2	Effective date

383	1	33-28-301
	2	33-28-302
	3	33-28-303
	4	33-28-304
	5	33-28-305
	6	33-28-306
	7	Disability income insurance Voided by sec. 17, Ch. 383 (coordination section)
	8	33-28-101
	9	33-28-102
	10	33-28-104
	11	33-28-105
	12	33-28-107
	13	33-28-108
	14	33-28-201
	15	33-28-207
	16	Codification instruction
	17	Coordination instruction
	18	Effective date
384	1	33-22-107
	2	33-22-530
	3	33-22-122
	4	33-22-141
	5	33-22-142
	6	33-30-1007
	7	33-31-111
	8	33-35-306
	9	Repealer
	10	Codification instruction
	11	Effective date — applicability
385	1	33-19-104
	2	33-19-105
	3	33-19-202
	4	33-19-301
	5	33-19-306
	6	33-19-307
	7	Effective dates — applicability
386	1	46-18-203
	2	46-23-1031
	3	53-30-402
	4	46-6-507
	5	Codification instruction
	6	Coordination instruction
	7	Effective date
387	1	2-17-112
	2	50-3-102
	3	50-3-103
	4	50-37-108
	5	50-61-101
	6	50-61-103
	7	50-61-114
	8	50-63-203
	9	Repealer
	10	Coordination instruction
388	1	61-8-404
389	1	3-5-114
	2	3-6-102
	3	3-6-202
	4	3-6-204
	5	3-10-101
	6	3-10-203
	7	3-10-207
	8	3-10-115
	9	3-10-116
	10	3-10-117
	11	25-33-301
	12	46-17-311
	13	Grandfather clause
	14	Saving clause
	15	Codification instruction
	16	Effective date
390	1	15-66-101
	2	15-66-102
	3	15-66-201
	4	15-66-202
	5	15-66-203
	6	15-66-204
	7	15-66-205
	8	15-66-206
	9	15-66-207
	10	15-66-208
	11	15-66-209
	12	15-66-103
	13	15-66-104
	14	53-6-149
	15	Appropriation
	16	Codification instruction
	17	Severability
	18	Contingent voidness — payment of fees
	19	Effective date
	20	Termination
391	1	10-3-103
	2	45-5-623
	3	50-1-101
	4	50-1-202
	5	50-1-204
	6	50-2-101
	7	50-2-116
	8	50-2-118
	9	50-2-130
	10	50-16-603
	11	Effective date
392	1	50-74-303
	2	50-74-304
393	1	61-3-313
	2	61-3-526
	3	Effective date
394	1	52-2-710
	2	Codification instruction
	3	Effective date
395	1	7-13-2275
	2	Effective date
396	1	41-1-401
	2	41-1-402
	3	41-1-403
	4	50-5-106
	5	50-16-201
	6	50-16-502
	7	50-16-504
	8	50-16-505
	9	50-16-535
	10	50-16-1009
	11	50-19-402
	12	50-19-405
	13	50-19-406
	14	53-24-306
	15	50-16-801
	16	50-16-802
	17	50-16-803
	18	50-16-804
	19	50-16-805
	20	50-16-811
	21	50-16-812
	22	50-16-816
	23	50-16-817
	24	50-16-818
	25	Codification instruction
	26	Effective date

397	1	16-11-501
	2	16-11-502
	3	16-11-503
	4	16-11-504
	5	16-11-505
	6	16-11-506
	7	16-11-507
	8	16-11-508
	9	16-11-509
	10	16-11-510
	11	16-11-511
	12	16-11-512
	13	16-11-404
	14	16-11-403
	15	17-7-502
	16	Contingent voidness
	17	Severability
	18	Transition
	19	Codification instruction
	20	Effective date
	21	Retroactive applicability
398	1	41-3-102
	2	41-3-301
	3	Effective dates
399	1	61-3-458
	2	61-3-459
	3	61-3-460
	4	15-1-121
	5	15-1-122
	6	15-6-211
	7	49-4-301
	8	49-4-302
	9	49-4-304
	10	61-3-313
	11	61-3-321
	12	61-3-332
	13	61-3-407
	14	61-3-426
	15	61-3-455
	16	61-3-560
	17	Repealer
	18	Codification instruction
	19	Coordination instruction
	20	Effective date
400	1	76-2-411
	2	Coordination instruction
	3	Applicability
401	1	50-5-101
	2	50-5-103
	3	53-6-702
402	1	19-3-412
	2	19-3-1106
	3	19-20-302
	4	19-20-804
	5	Effective date
403	1	50-5-101
	2	53-6-165
	3	53-6-171
	4	53-6-702
	5	50-5-238
	6	Codification instruction
	7	Effective date
404	1	77-1-901
	2	77-1-902
	3	77-1-903
	4	77-1-904
	5	77-1-905
	6	77-1-906
	7	77-1-907
	8	77-1-908
	9	77-1-909
	10	77-1-910
	11	77-1-911
	12	77-1-912
	13	77-1-204
	14	77-2-106
	15	77-6-109
	16	77-6-503
	17	Codification instruction
	18	Saving clause
	19	Severability
	20	Effective date
	21	Applicability
405	1	15-6-225
	2	15-24-1401
	3	15-31-124
	4	15-32-402 Voided by sec. 5(2)(a), Ch. 524 (coordination section)
	5	17-6-403
	6	30-16-103
	7	75-10-103
	8	75-10-104
	9	75-10-105
	10	75-10-106
	11	80-12-201
	12	90-5-101
	13	90-8-104
	14	Repealer
	15	Coordination instruction
406	1	41-3-102
	2	41-3-202
407	1	61-9-420
	2	61-13-103
408	1	70-24-303
	2	70-24-321
	3	70-24-422
	4	70-24-427
409	1	33-17-1501
	2	33-17-1502
	3	33-17-1503
	4	33-17-1504
	5	33-17-1505
	6	Codification instruction
	7	Applicability
410	1	37-76-101
	2	37-76-102
	3	37-76-103
	4	37-76-104
	5	37-76-105
	6	37-76-106
	7	37-76-107
	8	37-76-108
	9	37-76-109
	10	37-76-113
	11	37-76-114
	12	37-76-115
	13	37-76-116
	14	37-76-117
	15	37-76-118
	16	37-76-119
	17	37-76-120
	18	37-76-121
	19	37-76-122
	20	37-76-123
	21	37-1-401
	22	Codification instruction
	23	Severability
411	1	20-9-235
412	1	70-19-426
	2	70-19-427

	3	70-19-428
	4	27-2-208
	5	Codification instruction
	6	Saving clause
	7	Severability
413	1	50-19-402
	2	50-19-403
	3	50-19-404
	4	50-19-405
	5	50-19-406
	6	Notification to tribal governments
414	1	13-15-112
	2	13-15-206
	3	13-17-211
	4	13-17-212
	5	13-1-101
	6	13-1-103
	7	13-1-202
	8	13-1-203
	9	13-3-105
	10	13-4-101
	11	13-4-102
	12	13-4-203
	13	13-10-204
	14	13-10-208
	15	13-10-209
	16	13-10-211
	17	13-10-301
	18	13-10-302
	19	13-10-303
	20	13-10-311
	21	13-12-201
	22	13-12-202
	23	13-12-203
	24	13-12-204
	25	13-12-205
	26	13-12-212
	27	13-13-111
	28	13-13-112
	29	13-13-115
	30	13-13-116
	31	13-13-117
	32	13-13-201
	33	13-13-203
	34	13-13-205
	35	13-13-211 Replaced by sec. 93(2)(a), Ch. 414 (coordination section)
	36	13-13-212
	37	13-13-214 Replaced by sec. 93(2)(b), Ch. 414 (coordination section)
	38	13-13-222
	39	13-13-229
	40	13-13-231 Voided by sec. 93(3)(a), Ch. 414 (coordination section)
	41	13-13-232 Voided by sec. 93(3)(b), Ch. 414 (coordination section)
	42	13-13-233
	43	13-13-234
	44	13-13-241 Voided by sec. 93(3)(c), Ch. 414 (coordination section)
	45	13-13-244 Replaced by sec. 93(3)(d), Ch. 414 (coordination section)
	46	13-14-115
	47	13-14-116
	48	13-14-117
	49	13-14-118
	50	13-14-212
	51	13-15-101
	52	13-15-103 (renum. 13-15-207)
	53	13-15-104
	54	13-15-105
	55	13-15-201
	56	13-16-201
	57	13-16-303
	58	13-16-411
	59	13-16-412
	60	13-16-414
	61	13-16-417
	62	13-16-420
	63	13-17-101
	64	13-17-102
	65	13-17-103
	66	13-17-104
	67	13-17-105
	68	13-17-106
	69	13-17-107
	70	13-17-201
	71	13-17-203
	72	13-17-204
	73	13-17-206
	74	13-17-305
	75	13-17-306
	76	13-19-106
	77	13-19-309
	78	13-19-312
	79	13-19-314
	80	13-25-101
	81	13-27-501
	82	13-27-502
	83	13-35-202
	84	13-35-205
	85	13-35-206
	86	13-37-126
	87	13-37-250
	88	13-38-201
	89	20-20-421
	90	76-15-303
	91	Repealer
	92	Codification instruction
	93	Coordination instruction
415	1	13-35-225
416	1	20-25-321
417	1	53-19-302
	2	53-19-306
	3	53-19-307
	4	53-19-310
	5	53-19-311
	6	Effective date
418	1	61-9-426
	2	61-9-427
	3	Codification instruction
	4	Saving clause
	5	Effective date
419	1	13-35-225
420	1	46-9-503
	2	46-9-510
	3	Effective date
421	1	20-5-412
	2	20-5-413
	3	Two-thirds vote required
	4	Codification instruction
422	1	16-4-801
	2	Effective date
423	1	69-3-803
	2	69-3-815
	3	Codification instruction
	4	Saving clause

	5	Severability
	6	Effective date
424	1	Appropriation of cultural and aesthetic grant funds — priority of disbursement
	2	Appropriation of general fund money and cultural and aesthetic grant funds
	3	Reversion of grant money
	4	Reduction of grants
	5	Effective date
425	1	2-3-103
	2	Effective date
426	1	10-3-203
	2	10-3-312
	3	Effective date
427	1	33-17-219
	2	33-17-220
	3	33-1-220
	4	33-26-108
	5	33-17-409
	6	33-2-305
	7	33-2-708 Replaced by sec. 25, Ch. 427 (coordination section)
	8	33-7-525
	9	33-7-532
	10	33-17-102
	11	33-17-103
	12	33-17-201
	13	33-17-211
	14	33-17-212
	15	33-17-214
	16	33-17-301
	17	33-17-502
	18	33-17-503 Voided by sec. 54, Ch. 380 (coordination section)
	19	33-17-504
	20	33-17-1001
	21	33-17-1002
	22	33-17-1203
	23	33-17-1205
	24	33-17-1207
	25	Coordination instruction
	26	Codification instruction
	27	Effective date — applicability
428	1	61-1-142
	2	61-8-813
	3	61-8-814
	4	61-1-134
	5	61-1-135
	6	61-5-102
	7	61-5-107
	8	61-5-110
	9	61-5-111
	10	61-5-112
	11	61-5-118
	12	61-5-212
	13	61-8-402
	14	61-8-802
	15	61-8-803
	16	61-8-804
	17	61-8-805
	18	61-8-806
	19	61-11-102
	20	Repealer
	21	Codification instruction
	22	Coordination instruction
	23	Applicability
429	1	19-2-715
	2	7-33-2313
	3	19-2-303
	4	19-2-403
	5	19-2-506
	6	19-2-603
	7	19-2-702
	8	19-2-704
	9	19-2-706
	10	19-2-708
	11	19-2-709
	12	19-2-801
	13	19-2-802
	14	19-2-907
	15	19-2-908
	16	19-2-909
	17	19-2-1010
	18	19-3-108
	19	19-3-401
	20	19-3-403
	21	19-3-412
	22	19-3-503 Replaced by sec. 122(1), Ch. 429 (coordination section)
	23	19-3-504
	24	19-3-505
	25	19-3-510
	26	19-3-511
	27	19-3-512
	28	19-3-513
	29	19-3-514
	30	19-3-521
	31	19-3-904
	32	19-3-906
	33	19-3-908
	34	19-3-1002
	35	19-3-1008
	36	19-3-1015
	37	19-3-1106
	38	19-3-1201
	39	19-3-1202
	40	19-3-1205
	41	19-3-1210
	42	19-3-1501
	43	19-3-2103
	44	19-3-2111
	45	19-3-2112
	46	19-3-2113
	47	19-3-2114
	48	19-3-2115
	49	19-3-2116
	50	19-3-2117
	51	19-3-2126
	52	19-3-2133
	53	19-3-2141
	54	19-5-101
	55	19-5-301
	56	19-5-409
	57	19-5-501
	58	19-5-502
	59	19-5-701
	60	19-6-101
	61	19-6-401
	62	19-6-502
	63	19-6-503
	64	19-6-601
	65	19-6-709
	66	19-6-801 Replaced by sec. 122(2), Ch. 429 (coordination section)
	67	19-6-803
	68	19-6-804
	69	19-6-805
	70	19-7-101

	71	19-7-301
	72	19-7-312
	73	19-7-502
	74	19-7-601
	75	19-7-801
	76	19-7-803 Replaced by sec. 122(3), Ch. 429 (coordination section)
	77	19-7-804 Replaced by sec. 122(4), Ch. 429 (coordination section)
	78	19-7-805
	79	19-7-1001
	80	19-8-101
	81	19-8-301
	82	19-8-302
	83	19-8-308
	84	19-8-604
	85	19-8-701
	86	19-8-801
	87	19-8-901 Replaced by sec. 122(5), Ch. 429 (coordination section)
	88	19-8-904
	89	19-8-905
	90	19-8-906
	91	19-9-104
	92	19-9-301
	93	19-9-403 Replaced by sec. 122(6), Ch. 429 (coordination section)
	94	19-9-405
	95	19-9-406
	96	19-9-410
	97	19-9-411
	98	19-9-903
	99	19-9-1202
	100	19-9-1204
	101	19-9-1205
	102	19-9-1206
	103	19-9-1207
	104	19-9-1208
	105	19-13-104
	106	19-13-301
	107	19-13-403 Replaced by sec. 122(7), Ch. 429 (coordination section)
	108	19-13-405
	109	19-13-406
	110	19-13-701
	111	19-13-704
	112	19-13-803
	113	19-13-1007
	114	19-17-108
	115	19-17-402
	116	19-17-403
	117	19-17-405
	118	19-50-102
	119	25-13-608
	120	Repealer
	121	Codification instruction
	122	Coordination instruction
	123	Effective date
430	1	7-8-2202
	2	76-6-109
	3	Effective date
431	1	81-4-215
	2	Effective date
	3	Applicability
432	1	39-51-1218
	2	39-51-2201
	3	39-51-2204
	4	Effective date — applicability
433	1	87-2-105
434	1	50-15-107
	2	Effective date
435	1	39-71-407
	2	Effective date — applicability
436	1	15-16-102
	2	76-3-207
437	1	46-18-201
	2	61-5-214
	3	Applicability
438	1	45-5-206
439	1	76-2-117
	2	Codification instruction
440	1	77-5-222
	2	Effective date
441	1	61-5-127
	2	2-6-109
	3	3-15-301
	4	3-15-402
	5	3-15-403
	6	3-15-404
	7	46-17-202
	8	Codification instruction
	9	Effective date
	10	Applicability
442	1	61-2-107
	2	Coordination instruction
443	1	13-19-106
	2	50-3-103
	3	50-60-101
	4	50-60-102
	5	50-60-106
	6	50-60-107
	7	50-60-109
	8	50-60-110
	9	50-60-115
	10	50-60-118
	11	50-60-205
	12	50-60-211
	13	50-60-212
	14	50-60-213
	15	50-60-301
	16	50-60-302
	17	50-60-303
	18	50-60-404
	19	50-60-506
	20	50-60-510
	21	50-60-604
	22	50-60-605
	23	50-60-607
	24	50-60-304
	25	Transition
	26	Repealer
	27	Codification instruction
	28	Effective dates
444	1	71-3-1205
	2	71-3-1201
	3	71-3-1202
	4	Codification instruction
	5	Saving clause
	6	Effective date
445	1	80-4-711
	2	80-4-721
	3	Effective date
446	1	30-10-324
	2	30-10-325
447	1	75-7-103
	2	Effective date
	3	Retroactive applicability
448	1	37-8-101
	2	37-8-102
	3	37-8-202

	4	37-8-422
	5	Codification instruction
	6	Instructions to code commissioner
449	1	2-15-2217
	2	2-15-2218
	3	61-3-303 Voided by sec. 83(2), Ch. 477 (coordination section)
	4	Codification instruction
	5	Effective date
450	1	45-5-502
451	1	10-2-604
	2	Department of military affairs required to enter negotiations
	3	10-2-601
	4	70-30-102
	5	Appropriation
	6	Codification instruction
	7	Coordination instruction
	8	Effective date
452	1	46-14-102
	2	46-14-103
	3	46-14-206
	4	46-14-221
	5	46-14-311
	6	46-14-312
453	1	33-22-1501
	2	33-22-1502
	3	33-22-1513
	4	33-22-1516
	5	33-22-1524
	6	Effective date
454	1	87-1-201
	2	Effective date
455	1	90-6-131
	2	90-6-133
	3	90-6-134
	4	Effective date
456	1	46-16-220
	2	Codification instruction
	3	Saving clause
	4	Severability
	5	Effective date
	6	Applicability
457	1	27-1-220
458	1	41-3-102
	2	Effective date
459	1	82-4-336
	2	Severability
	3	Effective date
	4	Retroactive applicability
460	1	75-5-605
	2	Effective date
461	1	87-1-201
	2	Effective date
	3	Applicability
462	1	13-37-216
	2	13-37-218
	3	13-37-229
	4	13-37-250
	5	Coordination instruction
463	1	Repealer
	2	Saving clause
	3	Effective date — applicability
464	1	39-71-604
	2	39-71-611
	3	39-71-612
	4	39-71-703
	5	50-16-527
	6	Effective date — applicability dates
465	1	44-1-1101
	2	44-1-1102
	3	46-9-302
	4	46-9-401
	5	61-5-214
	6	61-5-215
	7	61-5-216 Replaced by sec. 8, Ch. 465 (coordination section)
	8	Coordination instruction
466	1	7-31-4110
	2	7-1-111
	3	7-3-1105
	4	7-3-1222
	5	7-5-201
	6	Codification instruction
	7	Saving clause
	8	Effective date
467	1	18-2-403
	2	18-2-407
	3	Effective date — applicability
468	1	75-5-201
	2	75-5-516
	3	82-4-310
	4	Effective date
469	1	76-3-621
470	1	3-10-301
	2	3-10-601
	3	75-7-123
	4	Repealer
	5	Effective date
	6	Retroactive applicability
471	1	7-1-120
	2	23-5-612
	3	Codification instruction
	4	Effective date
	5	Applicability
472	1	69-8-215
	2	Codification instruction
	3	Nonseverability
	4	Effective date
	5	Retroactive applicability
473	1	Appropriations for reclamation and development grants
	2	Approved grant projects
	3	Coordination of fund sources for grants program projects
	4	Condition of grants
	5	Other appropriations
	6	Sec. 2, Ch. 419, L. 1999
	7	Sec. 2, Ch. 232, L. 2001
	8	Severability
	9	Effective date
474	1	50-57-101
	2	50-57-102
	3	50-57-103
	4	50-57-104
	5	50-57-105
	6	50-57-106
	7	50-57-107
	8	50-57-108
	9	50-57-109
	10	50-57-110
	11	50-57-201
	12	50-57-203
	13	50-57-205
	14	50-57-205
	15	50-57-206
	16	50-57-207
	17	50-57-208
	18	50-57-209

	19	50-57-210
	20	50-57-211
	21	50-57-212
	22	50-57-213
	23	50-57-301
	24	50-57-302
	25	50-57-305
	26	30-16-301
	27	50-2-118
	28	50-50-102
	29	50-50-106
	30	50-50-107
	31	50-50-108
	32	50-50-110
	33	Codification instruction
	34	Coordination instruction
	35	Effective dates
	36	Termination
475	1	13-1-101
	2	13-1-104
	3	13-1-301
	4	13-2-107
	5	13-2-108
	6	13-2-109
	7	13-2-110
	8	13-2-115
	9	13-2-116
	10	13-2-122
	11	13-2-123
	12	13-2-205
	13	13-2-220
	14	13-2-402
	15	13-2-513
	16	13-2-514
	17	13-2-601
	18	13-10-201
	19	13-10-211
	20	13-13-112
	21	13-13-114
	22	13-13-601
	23	13-13-602
	24	13-13-603
	25	13-13-201
	26	13-13-204
	27	13-13-205
	28	13-13-212 Voided by sec. 25, Ch. 557 (coordination section)
	29	13-13-213 Voided by sec. 5(2), Ch. 367 (coordination section)
	30	13-13-214
	31	13-13-232
	32	13-13-241
	33	13-13-301
	34	13-14-112
	35	13-14-113
	36	13-15-107
	37	13-15-111
	38	13-15-401
	39	13-15-402
	40	13-19-313
	41	13-22-107
	42	13-27-410
	43	13-37-250
	44	Repealer
	45	Codification instruction
	46	Effective date
476	1	15-10-420
	2	Effective date
477	1	61-1-601
	2	61-1-602
	3	61-1-603
	4	61-1-604
	5	61-3-216
	6	61-3-217
	7	61-3-218
	8	61-3-219
	9	61-3-220
	10	61-3-221
	11	61-3-222
	12	61-3-223
	13	61-3-224
	14	15-1-116
	15	15-1-117
	16	15-1-121
	17	15-1-122
	18	23-2-502
	19	23-2-508
	20	23-2-513
	21	23-2-601
	22	23-2-611
	23	23-2-614
	24	23-2-615
	25	23-2-616
	26	23-2-619
	27	23-2-622
	28	23-2-631
	29	23-2-634
	30	23-2-641
	31	23-2-642
	32	23-2-644
	33	23-2-801
	34	23-2-804
	35	23-2-814
	36	23-2-817
	37	23-2-818
	38	30-9-311
	39	31-1-816
	40	40-5-248
	41	61-1-102
	42	61-1-509
	43	61-3-101
	44	61-3-103
	45	61-3-435
	46	61-3-106
	47	61-3-107
	48	61-3-109
	49	61-3-201
	50	61-3-202
	51	61-3-203 Replaced by sec. 83(1)(c), Ch. 477 (coordination section)
	52	61-3-204 Replaced by sec. 83(1)(d), Ch. 477 (coordination section)
	53	61-3-205
	54	61-3-206
	55	61-3-207
	56	61-3-208
	57	61-3-210
	58	61-3-211
	59	61-3-212
	60	61-3-303 Voided by sec. 47(2)(a), Ch. 592 (coordination section), replaced by sec. 83(2), Ch. 477 (coordination section)
	61	61-3-311 Voided by sec. 47(2)(b), Ch. 592 (coordination section)
	62	61-3-312
	63	61-3-317
	64	61-3-322
	65	61-3-342
	66	61-3-411

	67	61-3-412
	68	61-3-456
	69	61-3-519
	70	61-3-562
	71	61-3-603
	72	61-3-701
	73	61-4-104
	74	61-4-111
	75	61-4-112
	76	61-4-120
	77	61-4-121
	78	61-12-406
	79	75-10-512
	80	75-10-513
	81	Repealer
	82	Codification instruction
	83	Coordination instruction
	84	Effective date
	85	Applicability — retroactive applicability
478	1	2-15-1870
	2	2-15-2204 (renum. 2-15-1869)
	3	53-20-206
	4	Codification instruction
	5	Instructions to code commissioner
	6	Effective date
479	1	20-7-401
	2	20-7-436
	3	Notification of code commissioner required
	4	Contingent effective date
480	1	70-9-802
	2	Effective date
481	1	15-35-108
	2	17-7-502
	3	Sec. 10, Ch. 10, Special L. May 2000
	4	Coordination instruction
	5	Effective date
	6	Termination
482	1	33-20-701
	2	33-20-702
	3	33-20-703
	4	33-20-704
	5	33-20-705
	6	15-30-121
	7	15-30-165
	8	15-31-114
	9	Codification instruction
	10	Effective date
	11	Applicability
483	1	85-2-708
	2	Notification to tribal governments
	3	Effective date
484	1	72-34-601
	2	72-34-602
	3	72-34-603
	4	72-34-605
	5	72-34-606
	6	72-34-607
	7	72-34-608
	8	72-34-609
	9	72-34-610
	10	72-34-113
	11	72-34-114
	12	Repealer
	13	Codification instruction
	14	Instruction to code commissioner
485	1	22-3-1002
	2	Effective date
486	1	39-71-736
	2	Effective date — applicability
487	1	7-4-2503
488	1	2-15-2107
	2	Effective date
489	1	27-1-710
	2	Saving clause
	3	Severability
	4	Effective date
	5	Applicability
490	1	69-14-1205
	2	Repealer
	3	Effective date
491	1	2-15-1205
	2	10-2-102
	3	10-2-112
	4	10-2-113
	5	10-2-114
	6	10-2-115
	7	10-2-106
	8	10-2-601
	9	10-2-602
	10	10-2-603
	11	15-30-154
	12	15-1-122
	13	61-3-321
	14	Implementation
	15	Notification to tribal governments
	16	Codification instruction
	17	Effective date
492	1	20-9-371
	2	20-9-403
	3	20-9-406
	4	20-9-408
	5	20-9-422
	6	20-9-423
	7	20-9-426
	8	20-9-427
	9	20-9-430
	10	20-9-433
	11	20-9-437
	12	20-9-438
	13	20-9-439
	14	20-9-440
	15	20-9-472
	16	Codification instruction
	17	Effective date — applicability
493	1	33-17-1005
	2	30-10-103
	3	33-1-315
	4	33-1-318
	5	33-3-401
	6	33-17-1004
	7	33-20-1302
	8	33-20-1315
	9	52-3-803
	10	52-3-825 Voided by sec. 3, Ch. 350, and sec. 12, Ch. 493 (coordination sections)
	11	Codification instruction
	12	Coordination instruction
	13	Effective date
	14	Applicability
494	1	Time limits
	2	Appropriations — authorization to expend money
	3	Effective date
495	1	Time limits
	2	Appropriations
	3	Appropriation

	4	Notification to tribal governments
	5	Effective date
	6	Retroactive applicability
496	1	15-38-106
	2	75-10-621
	3	75-10-622
	4	75-10-623
	5	75-10-631
	6	Codification instruction
	7	Effective date
497	1	90-4-602
	2	90-4-614
	3	Appropriation of bond proceeds
	4	Approval of energy conservation projects — definition
	5	Bond authorization
	6	Two-thirds vote required
	7	Effective date
498	1	3-1-317
	2	Sec. 4, Ch. 361, L. 1995
	3	Sec. 1, Ch. 71, L. 1999
	4	Effective date
	5	Termination
499	1	87-2-101
	2	87-3-111
	3	87-3-402
	4	87-4-503
	5	87-4-522
	6	87-4-524
	7	87-4-526
	8	87-4-901
	9	Effective date
500	1	33-5-201
501	1	33-15-1101
	2	33-15-1108
	3	Codification instruction
502	1	2-18-1203
	2	Effective date
503	1	2-15-1027
	2	Codification instruction
	3	Effective date
504	1	41-3-101
	2	41-3-102
	3	41-3-103
	4	41-3-113
	5	41-3-205
	6	41-3-301
	7	41-3-422
	8	41-3-427
	9	41-3-432
	10	41-3-434
	11	41-3-437
	12	41-3-438
	13	41-3-442
	14	41-3-445
	15	41-3-604
	16	41-3-607
	17	41-3-609
	18	41-3-611
	19	41-3-1008
	20	42-1-103
	21	42-3-212
	22	42-6-102
	23	42-6-109
	24	50-16-535
	25	50-16-536
	26	50-16-603
	27	50-16-605
	28	52-2-115
	29	52-2-602
	30	52-2-603
	31	76-2-411
	32	76-2-412
	33	Repealer
	34	Notification to tribal governments
	35	Directions to code commissioner
505	1	15-6-138
	2	Effective date — transition
506	1	72-34-421
	2	72-34-422
	3	72-34-423
	4	72-34-424
	5	72-34-425
	6	72-34-426
	7	72-34-427
	8	72-34-428
	9	72-34-429
	10	72-34-430
	11	72-34-431
	12	72-34-432
	13	72-34-433
	14	72-34-434
	15	72-34-435
	16	72-34-436
	17	72-34-437
	18	72-34-438
	19	72-34-439
	20	72-34-440
	21	72-34-441
	22	72-34-442
	23	72-34-443
	24	72-34-444
	25	72-34-445
	26	72-34-446
	27	72-34-447
	28	72-34-448
	29	72-34-449
	30	72-34-450
	31	72-34-451
	32	72-34-452
	33	72-34-453
	34	Repealer
	35	Codification instruction
	36	Coordination instruction
507	1	Identification of association contract holders and employees for free reservoir access Voided by sec. 4, Ch. 507 (coordination section)
	2	23-1-105 Voided by sec. 4, Ch. 507 (coordination section)
	3	Codification instruction Voided by sec. 4, Ch. 507 (coordination section)
	4	Coordination instruction
	5	Effective date Voided by sec. 4, Ch. 507 (coordination section)
508	1	7-33-2401
	2	7-33-2404
	3	Saving clause
509	1	69-8-419
	2	69-8-420
	3	69-8-421
	4	69-1-114
	5	69-8-210
	6	Codification instruction
	7	Coordination instruction
	8	Effective date
	9	Applicability
510	1	3-10-601
	2	25-9-302

	3	25-9-303
	4	25-13-402
	5	25-30-102
	6	27-1-717
	7	46-17-303
	8	46-19-102
	9	53-2-607
511	1	15-1-402
	2	Effective date
	3	Retroactive applicability
512	1	33-20-505
	2	Effective date
	3	Applicability
	4	Termination
513	1	53-21-193
	2	53-21-194
	3	53-21-102
	4	53-21-120
	5	53-21-127
	6	53-21-128
	7	53-21-129
	8	53-21-138
	9	Codification instruction
	10	Severability
	11	Effective date
514	1	Sec. 17, Ch. 293, L. 2001
	2	Effective date
	3	Applicability
515	1	15-53-129
	2	15-53-130
	3	15-53-131
	4	15-53-132
	5	Codification instruction
	6	Effective date
	7	Applicability
	8	Contingent termination
516	1	32-9-101
	2	32-9-102
	3	32-9-103
	4	32-9-104
	5	32-9-108
	6	32-9-109
	7	32-9-110
	8	32-9-111
	9	32-9-115
	10	32-9-116
	11	32-9-117
	12	32-9-118
	13	32-9-121
	14	32-9-122
	15	32-9-123
	16	32-9-124
	17	32-9-125
	18	32-9-126
	19	32-9-130
	20	32-9-131
	21	32-9-132
	22	32-9-133
	23	Codification instruction
	24	Effective date
517	1	10-3-1217
	2	Effective date
518	1	Sec. 26, Ch. 13, Special L. August 2002 20-9-631 (Sec. 245, Ch. 574, L. 2001)
	2	Sec. 27, Ch. 13, Special L. August 2002 20-9-632 (Sec. 246, Ch. 574, L. 2001)
	3	Codification instruction — direction to code commissioner 20-9-630 (Sec. 244, Ch. 574, L. 2001)
	4	Effective date
519	1	15-30-111
	2	Effective date
	3	Retroactive applicability
520	1	Art. IV, sec. 8, Mont. Const
	2	Effective date
	3	Submission to electorate
521	1	15-1-501
	2	15-31-121
	3	15-31-322
	4	15-31-323
	5	15-31-324
	6	15-31-326
	7	Applicability
522	1	15-36-331 Replaced by sec. 18, Ch. 522 (coordination section)
	2	15-36-332
	3	7-1-2111
	4	15-1-501
	5	15-36-304
	6	15-36-314
	7	15-36-315
	8	15-38-113
	9	15-38-202
	10	17-7-502
	11	75-10-743
	12	76-15-904
	13	82-11-135
	14	85-2-905
	15	90-2-1104
	16	Repealer
	17	Codification instruction
	18	Coordination instruction
	19	Saving clause
	20	Effective date
	21	Retroactive applicability
523	1	7-5-2301
	2	Effective date
524	1	15-6-225
	2	15-32-104
	3	15-32-109
	4	15-32-402
	5	Coordination instruction
	6	Effective date
	7	Retroactive applicability
525	1	7-15-4293
	2	Effective date
	3	Termination
526	1	7-5-4301
527	1	69-14-620
	2	61-8-347
	3	69-14-562
	4	69-14-610
	5	Codification instruction
	6	Effective date
528	1	50-50-102
	2	50-50-103
	3	50-50-202
	4	50-50-205
	5	50-50-205
	6	50-50-301
	7	Effective dates
	8	Termination
529	1	2-9-212
	2	2-18-703
	3	Transition

	4	Coordination instruction
	5	Effective date
	6	Retroactive applicability
530	1	Attorney general to analyze state delisting options and possible litigation scenarios for recovery of damages and costs associated with wolf reintroduction
	2	Effective date
531	1	15-67-101
	2	15-67-102
	3	15-67-201
	4	15-67-202
	5	15-67-203
	6	15-67-204
	7	15-67-205
	8	15-67-206
	9	15-67-207
	10	15-67-208
	11	15-67-209
	12	15-67-103
	13	15-67-104
	14	53-6-1101(1)
	15	Appropriation Replaced by sec. 18(3), Ch. 531 (coordination section)
	16	Codification instruction
	17	Contingent voidness
	18	Coordination instruction
	19	Severability
	20	Effective date
	21	Retroactive applicability
532	1	15-60-101
	2	15-60-210
	3	Appropriation Voided and replaced by sec. 4, Ch. 532 (contingent appropriation)
	4	Contingent appropriation
	5	Coordination
	6	Contingent voidness
	7	Effective date
533	1	61-3-415
	2	17-7-502
	3	61-11-105
	4	61-11-503
	5	61-11-509
	6	61-11-510
	7	Codification instruction
	8	Effective dates
534	1	10-3-801
	2	15-1-122
	3	23-2-517 Voided by sec. 47(3)(b), Ch. 592 (coordination section)
	4	23-2-615 Voided by sec. 3, Ch. 591 (coordination section)
	5	23-2-616 Voided by sec. 47(3)(b), Ch. 592 (coordination section)
	6	23-2-803 Voided by sec. 47(3)(b), Ch. 592 (coordination section)
	7	87-1-601
	8	87-2-202
	9	Codification instruction
	10	Effective dates
535	1	15-70-522
	2	Effective date
536	1	87-5-705
	2	87-5-706
	3	87-5-707
	4	87-5-708
	5	87-5-709
	6	87-5-701
	7	87-5-702
	8	87-5-704
	9	87-5-712
	10	87-5-716
	11	Codification instruction
	12	Effective date
537	1	2-15-213 (renum. 2-15-3330)
	2	Instruction to code commissioner
	3	Effective date
	4	Termination
538	1	60-1-210
	2	60-2-242
	3	Codification instruction
539	1	90-3-1001
	2	90-3-1002
	3	90-3-1003
	4	Effective date
540	1	61-8-303
	2	Effective date
541	1	15-60-102
	2	15-60-211
	3	Appropriation
	4	Codification instruction
	5	Effective date
542	1	22-3-1003
	2	22-3-1004
	3	Transfer of title
	4	Effective date
543	1	76-4-121
	2	Effective date
544	1	Short title
	2	15-68-101
	3	15-68-102
	4	15-68-103
	5	15-68-106
	6	15-68-107
	7	15-68-110
	8	15-68-201
	9	15-68-202
	10	15-68-206
	11	15-68-207
	12	15-68-208
	13	15-68-209
	14	15-68-210
	15	15-68-211
	16	15-68-212
	17	15-68-506
	18	15-68-401
	19	15-68-402
	20	15-68-405
	21	15-68-410
	22	15-68-411
	23	15-68-501
	24	15-68-502
	25	15-68-505
	26	15-68-510
	27	15-68-512
	28	15-68-513
	29	15-68-514
	30	15-68-516
	31	15-68-517
	32	15-68-520
	33	15-68-525
	34	15-68-801
	35	15-68-805
	36	15-68-808
	37	15-68-811
	38	15-68-815
	39	15-68-820

	40	15-30-183
	41	13-37-218 Voided by sec. 5, Ch. 462 (coordination section)
	42	15-30-101
	43	15-30-103
	44	15-30-112
	45	15-30-121
	46	15-30-122
	47	15-30-124
	48	15-30-142
	49	16-11-111
	50	16-11-114
	51	16-11-119
	52	16-11-201
	53	16-11-202
	54	16-11-206
	55	Transition
	56	Notification to tribal governments
	57	Codification instruction
	58	Coordination instruction
	59	Saving clause
	60	Severability
	61	Effective dates
	62	Applicability
545	1	15-30-111
	2	Effective date
	3	Applicability
546	1	5-1-115
	2	5-1-101 Voided by sec. 11(1), Ch. 546 (coordination section)
	3	5-1-102 Voided by sec. 11(1), Ch. 546 (coordination section)
	4	5-1-106 Voided by sec. 11(1), Ch. 546 (coordination section)
	5	5-1-108 Voided by sec. 11(1), Ch. 546 (coordination section)
	6	5-1-109 Voided by sec. 11(1), Ch. 546 (coordination section)
	7	5-1-111 Voided by sec. 11(1), Ch. 546 (coordination section)
	8	Sec. 1, Ch. 4, L. 2003 Voided by sec. 11(1), Ch. 546 (coordination section)
	9	Repealer Voided by sec. 11(1), Ch. 546 (coordination section)
	10	Codification instruction
	11	Coordination instruction — contingent repealer
	12	Applicability
547	1	17-7-138
	2	Effective date
	3	Applicability
548	1	K-12 public school renewal commission
	2	Appropriation
	3	Effective date
549	1	70-22-105
	2	70-22-109
	3	76-3-201
	4	76-3-404
550	1	20-9-326
	2	20-9-306
	3	20-9-306
	4	20-9-366
	5	20-9-370
	6	20-9-371
	7	20-9-501
	8	20-9-542
	9	20-10-101
	10	20-10-141
	11	Sec. 25, Ch. 13, Special L. August 2002 20-9-630 (Sec. 244, Ch. 574, L. 2001)
	12	Sec. 26, Ch. 13, Special L. August 2002 20-9-631 (Sec. 245, Ch. 574, L. 2001)
	13	Repealer
	14	Extension of school election deadlines
	15	Restrictions on retirement fund for fiscal year 2004
	16	Codification instruction
	17	Effective dates — applicability
	18	Retroactive applicability
	19	Termination
551	1	53-6-1001
	2	53-6-1002
	3	53-6-1003
	4	53-6-1010
	5	53-6-1011
	6	53-6-1012
	7	53-6-1013
	8	Loan for startup costs
	9	Codification instruction
	10	Severability
	11	Contingent voidness
	12	Effective date
	13	Termination
552	1	2-18-301
	2	2-18-303
	3	2-18-312
	4	2-18-313
	5	2-18-315
	6	2-18-703
	7	Appropriation
	8	Effective date
553	1	87-1-321
	2	87-1-322
	3	87-1-323
	4	87-1-324
	5	87-1-325
	6	87-1-201
	7	87-1-301
	8	87-2-104
	9	87-2-501
	10	87-2-513
	11	Codification instruction
	12	Notification to tribal governments
	13	Effective date
554	1	53-21-127
	2	53-21-128
	3	53-21-414
555	1	41-3-102
	2	41-3-202
	3	41-3-301
	4	41-3-302
	5	41-3-423
	6	41-3-424
	7	Codification instruction
556	1	61-2-302
	2	61-5-107
	3	61-5-205
	4	61-5-206
	5	61-5-208 Replaced by sec. 15(8), Ch. 556 (coordination section)
	6	61-5-212
	7	61-7-103
	8	61-8-402

	9	61-8-409
	10	61-8-734
	11	61-11-203
	12	61-11-204
	13	61-13-104
	14	61-5-219
	15	Coordination instruction
	16	Effective date
557	1	13-21-101
	2	13-21-102
	3	13-21-103
	4	13-21-210
	5	13-21-211
	6	13-21-212
	7	13-21-213
	8	13-2-124
	9	13-13-270
	10	13-2-212 (renum. 13-21-201)
	11	13-2-214 (renum. 13-21-202)
	12	13-2-215 (renum. 13-21-203)
	13	13-13-211 Voided by sec. 93(2)(a), Ch. 414 (coordination section)
	14	13-13-212 Replaced by sec. 25, Ch. 557 (coordination section)
	15	13-13-213
	16	13-13-214 Voided by sec. 93(2)(b), Ch. 414 (coordination section)
	17	13-13-229
	18	13-13-271 (renum. 13-21-204)
	19	13-13-272 (renum. 13-21-205)
	20	13-13-273 (renum. 13-21-206)
	21	13-13-277 (renum. 13-21-207)
	22	13-13-278 (renum. 13-21-104)
	23	Repealer
	24	Codification instruction
	25	Coordination instruction
558	1	61-5-111
	2	61-5-114
	3	61-5-121
	4	Effective date
559	1	2-15-2302
	2	46-23-103
	3	46-23-104
	4	46-23-109
	5	46-23-201
	6	46-23-202
	7	46-23-215
	8	46-23-216
	9	46-23-218
	10	46-23-1025
	11	46-24-212
	12	Repealer
	13	Saving clause
	14	Severability
	15	Transition
	16	Interim report
	17	Effective dates
560	1	10-3-1301
	2	10-3-1302
	3	10-3-1303
	4	10-3-1304
	5	10-3-1305
	6	10-3-1306
	7	10-3-1307
	8	10-3-1308
	9	10-3-1309
	10	10-3-1310
	11	Codification instruction
	12	Severability
	13	Effective date
561	1	7-1-111
	2	7-21-3322
	3	7-32-4304
	4	53-21-138
	5	Effective date
	6	Retroactive applicability
562	1	17-5-1608
	2	17-5-2001
	3	23-2-508 Voided by sec. 83(1)(a), Ch. 477 (coordination section)
	4	23-2-611 Voided by sec. 83(1)(a), Ch. 477 (coordination section)
	5	23-2-811 Voided by sec. 83(1)(a), Ch. 477 (coordination section)
	6	61-3-103
	7	61-3-203 Voided by sec. 83(1)(a), Ch. 477 (coordination section)
	8	61-3-204
	9	61-3-550 Replaced by sec. 12(2), Ch. 562 (coordination section)
	10	Sec. 5, Ch. 394, L. 2001
	11	Sec. 9, Ch. 394, L. 2001 Voided by sec. 12(1), Ch. 562 (coordination section)
	12	Coordination instruction
	13	Effective date
	14	Retroactive applicability
	15	Termination
563	1	76-3-201
	2	76-3-207
	3	Effective date
564	1	18-2-409
	2	Effective date — applicability
565	1	5-5-202
	2	5-5-223
	3	5-5-230
	4	35-19-104
	5	69-8-102
	6	69-8-103
	7	69-8-104
	8	69-8-201
	9	69-8-203
	10	69-8-204
	11	69-8-208
	12	69-8-210 Voided by sec. 7, Ch. 509 (coordination section)
	13	69-8-211
	14	69-8-301
	15	69-8-402
	16	69-8-403
	17	69-8-408
	18	69-8-409
	19	69-8-503
	20	Repealer
	21	Codification instruction
	22	Saving clause
	23	Severability
	24	Effective date
566	1	15-30-604
	2	15-62-103
	3	15-62-201
	4	15-62-203
	5	15-62-206
	6	15-62-207
	7	20-25-901
	8	20-25-902
567	1	39-11-101
	2	39-11-102
	3	39-11-103
	4	39-11-201

	5	39-11-202
	6	39-11-203
	7	39-11-204
	8	Codification instruction
	9	Effective date — applicability
	10	Termination
568	1	2-15-141
	2	2-15-142
	3	2-15-143
	4	Codification instruction
	5	Notification to tribal governments
569	1	22-2-601
	2	Notification to tribal governments
	3	Effective date
570	1	69-3-308
	2	69-3-302
	3	69-3-303
	4	Codification instruction
	5	Effective date
571	1	7-4-2636
	2	7-4-2637
	3	7-4-2631
	4	Codification instruction
	5	Effective date
572	1	5-7-102
	2	5-7-103
	3	5-7-105
	4	5-7-208
	5	5-7-112
	6	Notification to tribal governments
	7	Coordination
	8	Codification instruction
	9	Saving clause
	10	Effective date
	11	Retroactive applicability
573	1	40-5-225
	2	Effective date
574	1	85-2-302
	2	85-2-308
	3	Notification to tribal governments
575	1	53-1-402
	2	53-1-602
	3	53-20-102
	4	53-1-210
	5	Transition
	6	Repealer
	7	Codification instruction
	8	Effective date
576	1	53-1-610
	2	53-1-611
	3	53-1-612
	4	17-2-108
	5	53-6-101
	6	Codification instruction
	7	Effective date
577	1	15-1-101
	2	15-6-201
	3	15-6-207
	4	Repealer
	5	Sec. 31, Ch. 285, L. 1999
578	1	Study of independent contractor exemption
	2	Effective date
579	1	7-32-2222
	2	7-32-2245
	3	7-32-2224
	4	Codification instruction
	5	Effective date
580	1	75-10-250
	2	Codification instruction
	3	Effective date
581	1	75-7-111
	2	75-7-112
	3	75-7-113
	4	75-7-116
	5	75-7-117
	6	75-7-121
582	1	7-21-3701
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	3	7-21-3703
	4	7-21-3704
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	7	15-31-134
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	9	7-21-3715
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	2	3-5-604
	3	3-5-901
	4	3-5-902
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	5	Approval of funds — completion of appropriation
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588	1	39-71-2352
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	3	Effective date
589	1	30-14-1601
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	5	30-14-1605
	6	30-14-1606
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590	1	53-20-171
	2	15-30-187
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591	1	23-2-614
	2	23-2-615 Replaced by sec. 3, Ch. 591 (coordination section)
	3	Coordination instruction
	4	Effective date
592	1	61-1-515
	2	15-1-122
	3	15-16-202
	4	23-2-502
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	26	23-2-817
	27	61-1-129
	28	61-3-303 Replaced by sec. 47(2)(a), Ch. 592 (coordination section)
	29	61-3-311 Replaced by sec. 47(2)(b), Ch. 592 (coordination section)
	30	61-3-312
	31	61-3-313
	32	61-3-317
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	34	61-3-332
	35	61-3-333
	36	61-3-463
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	2	Effective date
594	1	15-70-101
	2	Effective date
595	1	46-14-101
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596	1	77-1-815
	2	70-16-302
	3	77-1-106
	4	77-1-801
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	10	Coordination instruction
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	2	15-1-501
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	4	17-5-2001
	5	15-1-141
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	10	39-51-2402
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	11	76-3-504
	12	76-3-505
	13	76-4-122
	14	76-4-127
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	2	23-1-105
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	4	53-21-1006
	5	53-21-1007
	6	53-21-1010
	7	53-21-1011
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	10	19-3-108
	11	53-1-602
	12	53-6-101
	13	53-21-104
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	3	39-71-2322
	4	39-71-2327
	5	Effective date
	6	Applicability
604	1	87-2-730
	2	81-2-120
	3	87-1-216
	4	87-2-701
	5	Codification instruction
	6	Effective date
605	1	16-4-109
	2	Effective Date
	3	Applicability
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	4	15-6-201
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	6	Coordination instruction
	7	Effective date
	8	Termination
609	1	15-32-404
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	3	17-5-1527
	4	Repealer
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610	1	61-3-550
	2	Fund transfer
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612	1	Short title
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	5	Program definition
	6	Personal services funding — 2007 biennium
	7	Approved original operating budget
	8	Contingent voidness
	9	Statewide FTE reduction
	10	Contingent voidness
	11	Totals not appropriations
	12	Effective date
	13	Appropriations
	14	Rates

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C.A.	Sec.	MCA
37	1	Art. III, sec. 7, Mont. Const.
	2	Art. XIV, sec. 9, Mont. Const.
	3	Submission to electorate
38	1	Art. III, sec. 4, Mont. Const.
	2	Art. III, sec. 7, Mont. Const.
	3	Submission to electorate

Initiative Referendum

IR 117 rejected House Bill 474 (Ch. 577, L. 2001), which was passed by the 57th Legislature during the 2001 regular legislative session.

Please refer to the 2001 Laws of Montana (Session Laws) to see where Ch. 577 was codified.

Initiative

Init.	Sec.	MCA
146	1	17-6-602
	2	17-6-606
	3	17-6-610
	4	53-4-1011
	5	Codification instruction
	6	Severability
	7	Effective date

SESSION LAWS

Enacted by the

FIFTY-SEVENTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
August 5, 2002, through August 10, 2002

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

OFFICERS AND MEMBERS OF THE MONTANA SENATE 2002

50 Members

31 Republicans 19 Democrats

OFFICERS

President ..... Tom Beck

President Pro Tempore ..... Walt McNutt

Majority Floor Leader ..... Fred Thomas

Minority Floor Leader ..... Steve Doherty

Minority Whips ..... Linda Nelson, Jon Tester

Secretary of the Senate ..... Rosana Skelton

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Beck, Tom	792 Yellowstone Trl, Deer Lodge MT 59722-8704	28	R
Berry, Dorothy	852 Ponderosa Dr, Hamilton MT 59840-9121	30	R
Bishop, Al	3020 Leeann Blvd, Billings MT 59102-0442	09	R
Bohlinger, John	2233 Remington Sq, Billings MT 59102-2489	07	R
Butcher, Edward B. 'Ed'	PO Box 89, Winifred MT 59489-0089	47	R
Christiaens, B.F. 'Chris'	PO Box 2871, Great Falls MT 59403-2871	23	D
Cobb, John	PO Box 388, Augusta MT 59410-0388	25	R
Cocchiarella, Vicki	535 Livingston Ave, Missoula MT 59801-8003	32	D
Cole, Mack	PO Box 286, Hysham MT 59038-0286	04	R
Crismore, William S. 'Bill'	237 Airfield Rd, Libby MT 59923-8600	41	R
DePratu, Bob	PO Box 1217, Whitefish MT 59937-1217	40	R
Doherty, Steve	1531 3rd Ave SW, Great Falls MT 59404-2715	24	D
Ekegren, E.P. 'Pete'	PO Box 862, Choteau MT 59422-0862	44	R
Ellingson, Jon	430 Ryman St, Missoula MT 59802-4249	33	D
Elliott, Jim	100 Trout Creek Rd, Trout Creek MT 59874-9609	36	D
Ellis Jr., Alvin A.	HC 50 Box 4840, Red Lodge MT 59068-9724	12	R
Franklin, Eve	2707 Dawn Dr, Great Falls MT 59404-3633	21	D
Glaser, Wm. E 'Bill'	1402 Indian Creek Rd, Huntley MT 59037	08	R
Grimes, Duane	4 Hole In The Wall, Clancy MT 59634-9516	20	R
Grosfield, Lorents	285 Grosfield Ln, Big Timber MT 59011-7724	13	R
Halligan, Mike	PO Box 9121, Missoula MT 59807-9121	34	D
Hargrove, Don	PO Box 1, Belgrade MT 59714-0001	16	R
Harrington, Dan W.	1201 N Excelsior Ave, Butte MT 59701-8505	19	D
Holden, Ric	164 Road 253, Glendive MT 59330-9438	01	R
Jergeson, Greg	PO Box 1568, Chinook MT 59523-1568	46	D
Johnson, Royal C.	2915 Illinois St, Billings MT 59102-0814	05	R
Keenan, Bob	PO Box 697, Bigfork MT 59911-0697	38	R
Kitzenberg, Sam	130 Bonnie St Apt 1, Glasgow MT 59230-2101	48	R
Mahlum, Dale	10955 US Highway 93 N, Missoula MT 59808-9227	35	R
McCarthy, Bea	1906 Ogden St, Anaconda MT 59711-1706	29	D
McNutt, Walter L.	110 12th Ave SW, Sidney MT 59270-3614	50	R
Miller, Ken	PO Box 186, Laurel MT 59044-0186	11	R
Mohl, Arnie A.	3303 US Highway 2 E, Kalispell MT 59901-6680	39	R
Nelson, Linda J.	469 Griffin Rd, Medicine Lake MT 59247-9708	49	D
O'Neil, Jerry	985 Walsh Rd, Columbia Falls MT 59912-9044	42	R
Pease, Gerald	PO Box 556, Lodge Grass MT 59050-0556	03	D
Roush, Glenn A.	PO Box 185, Cut Bank MT 59427-0185	43	D
Ryan, Don	2101 7th Ave S, Great Falls MT 59405-2821	22	D

Shea, Debbie	100 Moon Ln, Butte MT 59701-3975	18	D
Sprague, Mike	174 Erickson Ct S, Billings MT 59105-2347	06	R
Stapleton, Corey	3614 Crater Lake Ave, Billings MT 59102-7732	10	R
Stonington, Emily	15042 Kelly Canyon Rd, Bozeman MT 59715-9625	15	D
Tash, Bill	240 Vista Dr, Dillon MT 59725-3111	17	R
Taylor, Mike	PO Box 152, Proctor MT 59929-0152	37	R
Tester, Jon	709 Son Ln, Big Sandy MT 59520-8443	45	D
Thomas, Fred	3566 Holly Ln, Stevensville MT 59870-6634	31	R
Toole, Ken	PO Box 1462, Helena MT 59624-1462	27	D
Waterman, Mignon	530 Hazelgreen Ct, Helena MT 59601-5410	26	D
Wells, Jack	150 Coulee Dr, Bozeman MT 59715-7717	14	R
Zook, Tom	HC 40, Miles City MT 59301-9806	02	R

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES 2002

100 Members

57 Republicans 1 Independent 42 Democrats

OFFICERS

Speaker ..... Dan McGee
Speaker Pro Tempore ..... Doug Mood
Majority Floor Leader ..... Roy Brown
Majority Whip ..... Cindy Younkin
Minority Floor Leader ..... Kim Gillan
Minority Whip ..... George Golie
Chief Clerk of the House ..... Marilyn Miller

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Andersen, Joan	RR 1 Box 1012, Fromberg MT 59029-9701	23	R
Bales, Keith	HC 39 Box 33, Otter MT 59062-9703	01	R
Balyeat, Joe	6909 Rising Eagle Rd, Bozeman MT 59715-8621	32	R
Barrett, Debby	17600 MT Highway 324, Dillon MT 59725-9657	34	R
Bitney, Rod	PO Box 10501, Kalispell MT 59904-0501	77	R
Bixby, Norma	PO Box 1165, Lame Deer MT 59043-1165	05	D
Bookout-Reinicke, Sylvia	PO Box 327, Alberton MT 59820-0327	71	R
Branae, Gary	415 Yellowstone Ave, Billings MT 59101-1730	17	D
Brown, Dee L.	PO Box 444, Hungry Horse MT 59919-0444	83	R
Brown, Roy	PO Box 22273, Billings MT 59104-2273	14	R
Brueggeman, John	321 Lakeview Dr, Polson MT 59860-9317	74	R
Buzzas, Rosalie 'Rosie'	233 University Ave, Missoula MT 59801-4351	65	D
Callahan, T.M. 'Tim'	3409 5th Ave S, Great Falls MT 59405-3543	43	D
Carney, Eileen	PO Box 1193, Libby MT 59923-1193	82	D
Clancy, Gilda	PO Box 6696, Helena MT 59604-6696	51	R
Clark, Edith J.	PO Box 34, Sweetgrass MT 59484-0034	88	R
Clark, Paul	20 Fox Ln, Trout Creek MT 59874-9510	72	D
Curtiss, Aubyn	PO Box 216, Fortine MT 59918-0216	81	R
Cyr, Larry	1260 W Alu minum St, Butte MT 59701-2102	37	D
Dale, Rick	PO Box 262, Twin Bridges MT 59754-0262	39	R
Davies, Bob	871 Bozeman Trail Rd, Bozeman MT 59715-6674	27	R
Dell, Tom	617 Pinehurst Rd, Billings MT 59105-3550	19	D
Devlin, Ronald R.	PO Box 186, Terry MT 59349-0186	03	R
Eggers, Bill	PO Box 1000, Crow Agency MT 59022-1000	06	D
Erickson, Ron	3250 Pattee Canyon Rd, Missoula MT 59803-1703	64	D
Esp, John	PO Box 1024, Big Timber MT 59011-1024	25	R
Everett, George	1344 Helena Flats Rd, Kalispell MT 59901-6548	84	R
Facey, Tom	418 Plymouth St, Missoula MT 59801-4133	67	D
Fisher, Stanley M.	76 Golf Terrace Dr, Bigfork MT 59911-6252	75	R
Forrester, Gary L.	2527 Gardiner St, Billings MT 59101-6702	16	D
Fritz, Nancy Rice	1817 Daniel Dr, Missoula MT 59802-4926	69	D
Fuchs, Daniel C.	2031 Clubhouse Way #3, Billings MT 59105-3428	15	R
Gallik, Dave	120 E Lyndale Ave, Helena MT 59601-2911	52	D
Gallus, Steve	2319 Harvard Ave, Butte MT 59701-3854	35	D
Galvin-Halcro, Kathleen	101 Riverview Dr E, Great Falls MT 59404-1547	48	D
Gillan, Kim	750 Judicial Ave, Billings MT 59105-2130	11	D

Golie, George	316 20th Ave S, Great Falls MT 59405-4131	44	D
Gutsche, Gail	1530 Cooper St, Missoula MT 59802-2220	66	D
Haines, Dick	5935 St Francis Dr, Missoula MT 59803-2945	63	R
Harris, Christopher	519 N Black Ave, Bozeman MT 59715-3612	30	D
Hedges, Donald L.	70 Singletree Rd, Antelope MT 59211	97	R
Himmelberger, Dennis	PO Box 22272, Billings MT 59104-2272	18	R
Holden, Linda L.	170 Dupuyer Cut off, Valier MT 59486-5256	86	R
Hurdle, Joan	PO Box 1991, Billings MT 59103-1991	13	D
Jackson, Verdell	555 Wagner Ln, Kalispell MT 59901-8079	79	R
Jacobson, Hal	4813 US Highway 12 W, Helena MT 59601-9694	54	D
Jayne, Joey	299 Lumpry Rd, Arlee MT 59821-9747	73	D
Jent, Larry	506 E Babcock St, Bozeman MT 59715-4714	29	D
Juneau, Carol C.	128 9th Ave SE, Browning MT 59417	85	D
Kasten, Dave	HC 77 Box A-14, Brockway MT 59214-9701	99	R
Kaufmann, Christine	PO Box 1566, Helena MT 59624-1566	53	D
Keane, Jim	2131 Wall St, Butte MT 59701-5527	36	D
Keating, Tom	2003 Willowbrook Way, Billings 59102-2627	10	R
Laible, Rick	529 Moose Hollow Rd, Victor MT 59875-9303	59	R
Laslovich, Jesse	112 Mountain View St, Anaconda MT 59711-1616	57	D
Laszloffy, Jeff	3165 Highway 212 S, Laurel MT 59044-8911	22	R
Lawson, Bob	PO Box 686, Whitefish MT 59937-0686	80	R
Lee, Michelle	213 W Geyser St, Livingston MT 59047-3412	26	D
Lehman, Larry R.	PO Box 184, Power MT 59468-0184	87	R
Lenhart, Ralph L.	PO Box 1225, Glendive MT 59330-1225	02	D
Lewis, Dave	5871 Collins Rd, Helena MT 59602-9584	55	R
Lindeen, Monica J.	1626 Heath St, Huntley MT 59037-9137	07	D
Mangan, Jeff	PO Box 1196, Great Falls MT 59403-1196	45	D
Masolo, Gay Ann	20 Buck Dr, Townsend MT 59644-9651	40	R
Matthews, Gary	1708 Main St, Miles City MT 59301-3652	04	D
McCann, Matt	PO Box 1093, Harlem MT 59526-1093	92	D
McGee, Daniel W. 'Dan'	1925 Pinyon Dr, Laurel MT 59044-9381	21	R
McKenney, Joe	1140 18th Ave SW, Great Falls MT 59404-3426	49	R
Mood, Doug	PO Box 42, Seeley Lake MT 59868-0042	58	R
Musgrove, John L.	810 8th St, Havre MT 59501-4127	91	D
Newman, Brad	514 N Henry Ave, Butte MT 59701-8720	38	D
Noennig, Mark E.	3441 Powderhorn Cir, Billings MT 59102-0332	09	R
Olson, Alan	18 Halfbreed Creek Rd, Roundup MT 59072-6524	08	R
Pattison, Jeff	123 Cain Rd, Glasgow MT 59230	95	R
Peterson, Jim	RR 1 Box 2, Buffalo MT 59418-9501	94	R
Peterson, Ken	424 48th St W, Billings MT 59106-2306	20	R
Raser, Holly	4304 Spurgin Rd, Missoula MT 59804-4520	70	D
Rice, Diane	PO Box 216, Harrison MT 59735-0216	33	R
Ripley, Rick	8920 MT Highway 200, Wolf Creek MT 59648-8639	50	R
Rome, Allen	748 Dana Ln, Garrison MT 59731-9737	56	R
Schmidt, Trudi	4029 6th Ave S, Great Falls MT 59405-3746	42	D
Schrumpf, Clarice	1546 Hawthorne Ln, Billings MT 59105-1802	12	R
Shockley, Jim	PO Box 608, Victor MT 59875-0608	61	R
Sinrud, John	284 Frontier Dr, Bozeman MT 59718-7975	31	R
Sliter, Elaine	PO Box 118, Somers MT 59932-0118	76	R
Smith, Frank J.	PO Box 729, Poplar MT 59255-0729	98	D
Somerville, Roger	PO Box 1104, Kalispell MT 59903-1104	78	R
Steinbeisser, Donald	RR 1 Box 3400, Sidney MT 59270-9620	100	R
Story Jr., Robert R.	133 Valley Creek Rd, Park City MT 59063-8040	24	R
Thomas, Bill	HC 81 Box 7, Hobson MT 59452-9701	93	R
Tramelli, Brett	204 Smelter Ave NW, Great Falls MT 59404-1852	46	D
Tropila, Joseph 'Joe'	209 2nd St NW, Great Falls MT 59404-1301	47	D
Waddill, Butch	PO Box 1357, Florence MT 59833-1357	62	I
Waitschies, Karl A.	PO Box A-18, Peerless MT 59253	96	R
Walters, Allan	416 Grantsdale Rd, Hamilton MT 59840-3335	60	R
Wanzenried, David E.	903 Sky Dr, Missoula MT 59804-3121	68	D
Whitaker, James G.	4020 5th Ave S, Great Falls MT 59405-3640	41	R
Witt, John E.	2555 Russell Rd, Carter MT 59420-8230	89	R
Wolery, Merlin	HC 75 Box 70, Rudyard MT 59540-9707	90	R
Younkin, Cindy	1115 N Spruce Dr, Bozeman MT 59715-5948	28	R

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8	*(House Bill No. 16; D. Brown)* MAXIMIZING INTEREST EARNED BY THE GENERAL FUND BY LIMITING INTERENTITY LOANS IN FUNDS OR ACCOUNTING ENTITIES THAT ARE OWED MONEY BY THE FEDERAL GOVERNMENT OR OTHER THIRD PARTIES; REQUIRING THE BORROWING AGENCY TO BILL THE FEDERAL GOVERNMENT OR OTHER THIRD PARTY AND TO CERTIFY THE BILLING TO THE AGENCY THAT APPROVED THE LOAN; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	3076

9 *(House Bill No. 5; Lewis)* REVISING TRANSFERS FROM THE STATE GENERAL FUND TO THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT; REVISING CERTAIN TRANSFERS OF FUNDS TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-1-122 AND 15-35-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 3078

10 *(House Bill No. 7; Lewis)* REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY CHANGING THE FUND DESIGNATION FOR THE GUARANTEE FUND FROM A SUBFUND OF THE GENERAL FUND TO A STATE SPECIAL REVENUE FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 20-9-342, 20-9-343, AND 20-9-622, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 3082

11 *(House Bill No. 8; Lewis)* SWITCHING $198,575 OF FUNDING FOR CULTURAL AND AESTHETIC GRANTS FROM THE GENERAL FUND TO THE LODGING FACILITY USE TAX; AMENDING SECTION 15-65-121, MCA, AND SECTION 2, CHAPTER 434, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3086

12 *(House Bill No. 10; Balyeat)* REVISING CERTAIN ALLOCATIONS OF REVENUE FROM THE COAL SEVERANCE TAX, OIL AND NATURAL GAS PRODUCTION TAXES, AND METALLIFEROUS MINES LICENSE TAX TO INCREASE THE PORTION ALLOCATED TO THE STATE GENERAL FUND; REVISING ALLOCATIONS FOR CERTAIN CAPITAL PROJECTS; AMENDING SECTIONS 15-35-108, 15-36-324, AND 15-37-117, MCA, SECTION 2, CHAPTER 557, LAWS OF 1999, AND SECTION 2, CHAPTER 573, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND TERMINATION DATES. 3090

13 *(House Bill No. 18; Story)* REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY GENERALLY REVISING AND CLARIFYING THE LAWS RELATING TO REVENUE COLLECTION AND ALLOCATION FOR STATE GOVERNMENT AND LOCAL GOVERNMENTS; PROVIDING THAT THE TITLING FEE FOR MANUFACTURED HOMES BE DEPOSITED IN THE STATE GENERAL FUND; CLARIFYING THE ENTITLEMENT SHARE OF LOCAL GOVERNMENTS; PROVIDING A PENALTY AND INTEREST FEE FOR LATE PAYMENT OF LIVESTOCK PER CAPITA FEES; ALLOWING A NEGOTIATED FEE FOR COLLECTION OF LIVESTOCK PER CAPITA FEES; ELIMINATING THE ALLOCATION OF COAL SEVERANCE TAXES FOR COUNTY LAND PLANNING; PROVIDING FOR DEPOSIT OF GAMING LAW VIOLATION PENALTIES IN THE STATE GENERAL FUND; ELIMINATING THE STATUTORY APPROPRIATION OF GAMING VIOLATION PENALTIES; CLARIFYING THE COLLECTION AND ALLOCATION OF FEES BY THE CLERK OF THE DISTRICT COURT; PROVIDING THAT THE MARRIAGE LICENSE RECORDING FEE BE DEPOSITED IN THE STATE GENERAL FUND; ELIMINATING THE COUNTY ADMINISTRATIVE FEE FOR PUBLIC ASSISTANCE PROGRAMS; PROVIDING FOR THE DEPOSIT OF THE PENALTY FEE FOR FAILURE TO APPLY FOR A TRANSFER OF INTEREST IN A MOTOR VEHICLE IN THE STATE GENERAL FUND; PROVIDING THAT TRAILERS AND SEMITRAILERS REGISTERED THROUGH A PROPORTIONAL REGISTRATION AGREEMENT ARE NOT SUBJECT TO THE NORMAL REGISTRATION FEE; PROVIDING FOR THE DEPOSIT OF LATE MOTOR VEHICLE TRANSFER PENALTIES IN THE

STATE GENERAL FUND; CLARIFYING THE USE AND DISTRIBUTION OF THE LOCAL OPTION VEHICLE TAX OR FEE; PROVIDING THAT SINGLE MOVEMENT PERMIT FEES FOR VEHICLES BE DEPOSITED IN THE GENERAL FUND; CLARIFYING THE DISPOSITION OF FINES AND FORFEITURES FOR HIGHWAY OFFENSES; PROVIDING THAT UNIFORM PROVISIONS ON PENALTY AND INTEREST APPLY TO LATE HAIL FEE PAYMENTS; ELIMINATING THE TERMINATION DATE FOR THE SPLIT OF THE LOCAL OPTION VEHICLE TAX BETWEEN THE CITIES AND COUNTIES; PROVIDING AN APPROPRIATION FOR REIMBURSING THE CITY OF BOZEMAN FOR ACCRUED GAMING REVENUE; CORRECTING THE COUNTYWIDE SCHOOL RETIREMENT AND TRANSPORTATION BLOCK GRANTS; AMENDING SECTIONS 15-1-111, 15-1-112, 15-1-116, 15-1-121, 15-24-921, 15-24-925, 15-35-108, 15-65-121, 17-7-502, 23-5-123, 23-5-136, 25-1-201, 46-23-1031, 50-15-301, 53-2-207, 61-3-201, 61-3-317, 61-3-321, 61-3-537, 61-3-562, 61-4-310, 61-10-148, 61-12-701, AND 80-2-230, MCA, AND SECTIONS 244, 245, 246, 248, 249, 250, AND 257, CHAPTER 574, LAWS OF 2001; REPEALING SECTIONS 61-4-311 AND 90-1-108, MCA, AND SECTION 4, CHAPTER 749, LAWS OF 1991, SECTION 1, CHAPTER 217, LAWS OF 1993, AND SECTIONS 2 AND 3, CHAPTER 217, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES. 3108

14 *(House Bill No. 21; Balyeat)* MAXIMIZING GENERAL FUND REVENUE BY ENHANCING COLLECTION OF STATE REIMBURSEMENT FOR INDIRECT COSTS ASSOCIATED WITH FEDERAL OR PRIVATE CONTRACTS AND GRANTS; REQUIRING FULL RECOVERY OF INDIRECT COSTS FROM FEDERAL AND PRIVATE GRANTS; PROVIDING THAT AN AGENCY MAY NOT WAIVE REIMBURSEMENT FOR INDIRECT COSTS; PROVIDING AN EXCEPTION FOR UNITS OF THE UNIVERSITY SYSTEM AND INTRAAGENCY OR INTERAGENCY GRANTS AND CONTRACTS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO PROVIDE ASSISTANCE TO AGENCIES; AMENDING SECTION 17-3-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3140

15 *(Senate Bill No. 6; Cobb)* LIMITING THE TRANSFER AUTHORITY OF TANF FUNDS FOR THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT TO AN ALLOCATION OF $700,000; AMENDING SECTION 2, CHAPTER 502, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3141

16 *(Senate Bill No. 19; Doherty)* REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY TRANSFERRING $4 MILLION OF THE EXCESS FUNDS FROM CLAIMS OCCURRING BEFORE JULY 1, 1990, TO THE GENERAL FUND FOR FISCAL YEAR 2003 TO BE APPROPRIATED TO THE UNIVERSITY SYSTEM AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND TO BE TRANSFERRED TO THE STATE LIBRARY EQUIPMENT ACCOUNT AND TO THE SCHOOL FLEXIBILITY FUND; PROVIDING FOR A STUDY OF THE STRUCTURE OF THE STATE FUND TO BE FUNDED BY THE STATE FUND; AMENDING SECTION 39-71-2352, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 3141

17 *(Senate Bill No. 26; Christiaens)* REDUCING THE SHORTFALL IN GENERAL FUND REVENUE BY TRANSFERRING PORTIONS OF THE BALANCE OF THE INTERIM UNIVERSAL ACCESS ACCOUNT TO THE GENERAL FUND AND TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; CLARIFYING THAT FUNDS MUST BE AVAILABLE FOR REIMBURSEMENT FROM THE INTERIM

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18 *(Senate Bill No. 27; Stapleton)* REDUCING THE SHORTFALL IN GENERAL FUND REVENUE BY TRANSFERRING FUNDS FROM THE ACCOUNT FOR TELECOMMUNICATIONS SERVICES FOR PERSONS WITH DISABILITIES IN THE STATE SPECIAL REVENUE FUND TO THE GENERAL FUND; PROVIDING THAT THE TRANSFERRED FUNDS ARE TO BE USED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO BE CONSISTENT WITH THE PURPOSES OF THE EXISTING PROGRAM; AMENDING SECTIONS 53-19-306 AND 53-19-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3144

19 *(Senate Bill No. 30; Glaser)* REDUCING THE SHORTFALL IN GENERAL FUND REVENUE BY REQUIRING THE SEMIANNUAL PAYMENT OF METALLIFEROUS MINES LICENSE TAXES BASED UPON CURRENT YEAR PRODUCTION; AMENDING SECTIONS 15-37-102, 15-37-103, 15-37-104, 15-37-105, 15-37-106, 15-37-108, AND 15-37-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 3145

20 *(House Bill No. 9; Fisher)* REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY REDUCING THE TRANSFER OF $500,000 FROM THE RESOURCE INDEMNITY TRUST FUND FOR WEED MANAGEMENT TO $300,000; TRANSFERRING $1 MILLION FROM THE RESOURCE INDEMNITY TRUST FUND TO THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; TRANSFERRING $1,000 FROM THE ORPHAN SHARE FUND TO THE GENERAL FUND AND TRANSFERRING AN ADDITIONAL $999,000 FROM THE ORPHAN SHARE FUND TO THE GENERAL FUND IF FUNDS ARE AVAILABLE; REVISING THE ALLOCATION OF RESOURCE INDEMNITY TRUST FUND INTEREST; AMENDING SECTIONS 15-38-202, 75-10-743, AND 80-7-823, MCA, SECTION 2, CHAPTER 108, LAWS OF 1997, SECTIONS 1 AND 2, CHAPTER 232, LAWS OF 2001, AND SECTION 5, CHAPTER 573, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3149

21 *(Senate Bill No. 1; Cobb)* REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY REVISING THE LAWS RELATING TO THE DISTRIBUTION OF MONEY FROM ALCOHOL TAXES FOR PURPOSES OF FUNDING TREATMENT FOR ALCOHOLISM, CHEMICAL DEPENDENCY, AND RELATED ILLNESSES; REVISING RESTRICTIONS ON ADMINISTRATION OF PROCEEDS DERIVED FROM ALCOHOL TAXES; AMENDING SECTION 53-24-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. 3161

22 *(Senate Bill No. 17; Christiaens)* REVISING SEX OFFENDER LAWS TO CONFORM TO FEDERAL LAW; REVISING THE DEFINITIONS OF "SEXUAL OFFENSE" AND "VIOLENT OFFENSE"; REVISING THE CONDITIONS FOR REGISTRATION BASED UPON DURATION OF TIME IN A COUNTY; PROVIDING THAT AN OFFENDER CONVICTED OF SEXUAL INTERCOURSE WITHOUT CONSENT AGAINST A VICTIM UNDER 12 YEARS OF AGE IS SUBJECT TO MANDATORY LIFETIME REGISTRATION; REMOVING SEXUALLY VIOLENT PREDATORS FROM THE CATEGORY OF OFFENDERS WHO MAY RECEIVE A RISK LEVEL CLASSIFICATION REDUCTION; AMENDING SECTIONS 46-12-204, 46-18-202, 46-18-256, 46-23-502, 46-23-504, 46-23-506, AND 46-23-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 3163

23 *(House Bill No. 2; Lewis)* AMENDING THE GENERAL APPROPRIATIONS ACT OF 2001; AMENDING CHAPTER 572, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 3168

24 *(Senate Bill No. 15; Cobb)* REDUCING THE IMPACT ON THE GENERAL FUND OF THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; TEMPORARILY REDUCING THE INDIVIDUAL INCOME TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT TO 30 PERCENT; TEMPORARILY REDUCING THE CORPORATE TAX CREDIT FOR CHARITABLE CONTRIBUTIONS TO A QUALIFIED ENDOWMENT TO 13.3 PERCENT; TEMPORARILY REDUCING THE AMOUNT OF THE MAXIMUM CREDIT THAT CAN BE CLAIMED TO $6,600; TEMPORARILY INCREASING THE TAX CREDITS FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT TO OFFSET THE TEMPORARY DECREASES TO THE CREDITS; AMENDING SECTIONS 15-30-166, 15-30-167, 15-31-161, AND 15-31-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND TERMINATION DATES. 3262

HOUSE JOINT RESOLUTION

HJR Page

1 *(Devlin)* ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED GENERAL FUND REVENUE FOR THE 2002-03 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET; ACCEPTING THE JUNE 30, 2002, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AND REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE FIGURES CONTAINED IN THE RESOLUTION AS THE OFFICIAL REVENUE TOTALS FOR FISCAL YEAR 2002 AND THE OFFICIAL REVENUE ESTIMATES FOR FISCAL YEAR 2003. 3269

SENATE RESOLUTIONS

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1 *(Grosfield)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT, MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE, OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE 3272

2 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JULY 29, 2002, TO THE SENATE 3272

3 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JULY 29, 2002, TO THE SENATE 3273

4 *(Hargrove)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JULY 29, 2002, TO THE SENATE 3273

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY; PROVIDING FOR THE OPERATION OF THE SPECIAL SESSION OF THE 57TH LEGISLATURE CONVENING AUGUST 5, 2002, AND FOR OTHER RELATED LEGISLATIVE PURPOSES; PROVIDING EXPLICITLY FOR REVERSION OF EXCESS FUNDING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations. The following amounts are appropriated from the general fund for the fiscal year ending June 30, 2003, for costs of the special legislative session of August 2002:

LEGISLATIVE BRANCH (1104)	
1. Senate (25)	$162,777
2. House of Representatives (26)	288,711
3. Legislative Services Division (22)	46,178

Section 2. Reversion. Money appropriated in [section 1] that is not expended or obligated at the end of the fiscal year ending June 30, 2003, reverts to the general fund.

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 13, 2002

CHAPTER NO. 2

[HB 3]

AN ACT REDUCING THE STATE GENERAL FUND SHORTFALL IN REVENUE BY IMPLEMENTING PAY AND BENEFIT ADJUSTMENTS FOR STATE EMPLOYEES FOR THE FISCAL YEAR ENDING JUNE 30, 2003; AMENDING SECTION 8, CHAPTER 553, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8, Chapter 553, Laws of 2001, is amended to read:

"Section 8. Appropriations. (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in [sections 1 through 6]:

	Fiscal Year 2002		Fiscal Year 2003	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	145,571	29,596	~~388,359~~ *310,687*	78,107
Consumer Counsel		9,829		25,902
Judiciary	93,728	10,564	~~253,634~~ *202,907*	28,560

University System	3,491,176	3,051,506	~~8,759,051~~	7,655,963
			7,007,241	
OBPP	4,302,871	6,718,472	~~11,606,426~~	~~18,059,051~~
			9,176,095	*18,320,702*
OBPP-Teacher Pay Plan	41,836		~~107,216~~	
			85,773	

(2) The following money is appropriated for the biennium to the office of budget and program planning to be distributed to other agencies when personnel vacancies do not occur, retirement costs exceed agencies resources, or other contingencies arise:

	Fiscal Year 2002	
	General Fund	Other Funds
Personal Services Contingency	~~1,300,000~~	3,000,000
	800,000	

(3) The following money is appropriated for the biennium to the legislative branch for use when personnel vacancies do not occur, retirement costs exceed branch resources, or other contingencies arise:

	Fiscal Year 2002
	General Fund
Personal Services Contingency	200,000

(4) The following money is appropriated for the biennium to the legislative branch to reduce the discrepancy between actual branch salaries and statutory market salaries:

	Fiscal Year 2002	
	General Fund	Other Funds
Statutory Market Salary Adjustment	400,000	34,500"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved August 13, 2002

CHAPTER NO. 3

[HB 4]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY TEMPORARILY ELIMINATING THE REVENUE DEDICATED TO THE SCHOOL TECHNOLOGY FUND; AMENDING SECTIONS 20-9-343, 20-9-534, AND 20-9-620, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and grants for school technology purchases; and

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and school technology purchases.

(3) ~~The~~ *From July 1, 2001, through June 30, 2003, the* following money must be paid into a subfund of the state general fund for the public schools of the state as indicated:

(a) ~~(i) subject to subsection (3)(a)(ii),~~ interest and income money described in 20-9-341 and 20-9-342; and

~~(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;~~

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.

(4) Beginning July 1, 2003, the following money must be paid into a subfund of the state general fund for the public schools of the state as indicated:

(a) (i) subject to subsection (4)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

Section 2. Section 20-9-534, MCA, is amended to read:

"20-9-534. School technology purchases. By September 1, the superintendent of public instruction shall allocate the annual amount for grants for school technology purchases to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343~~(3)(a)(ii)~~ *for the purposes of 20-9-533* in the prior fiscal year. The grants for school technology purchases are statutorily appropriated, as provided in 17-7-502."

Section 3. Section 20-9-620, MCA, is amended to read:

"20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-343~~(3)(a)(ii)~~*(4)(a)(ii) and available on or after July 1, 2003*, 77-1-607, and 77-1-613, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

Section 4. Coordination instruction. If House Bill No. 4 and House Bill No. 7 are both passed and approved and if both include a section amending 20-9-343, then 20-9-343 must read as follows:

"**20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and grants for school technology purchases; and

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and school technology purchases.

(3) ~~The~~ *From July 1, 2001, through June 30, 2003, the* following money must be paid into ~~a subfund of the state general~~ *the dedicated school revenue* fund for the public schools of the state as indicated:

(a) ~~(i) subject to subsection (3)(a)(ii),~~ interest and income money described in 20-9-341 and 20-9-342; and

~~(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;~~

(b) investment income earned by investing interest and income money described in *20-9-331, 20-9-333,* 20-9-341, and 20-9-342.

(4) Beginning July 1, 2003, the following money must be paid into the dedicated school revenue fund for the public schools of the state as indicated:

(a) (i) subject to subsection (4)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-331, 20-9-333, 20-9-341, and 20-9-342."

Section 5. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school fiscal years beginning July 1, 2001.

Ap proved Au gust 13, 2002

CHAPTER NO. 4

[HB 6]

AN ACT RELATING TO THE USE OF STATE-OWNED MOTOR VEHICLES FOR OFFICIAL BUSINESS AND REIMBURSEMENT FOR PRIVATE MOTOR VEHICLE USE BY STATE OFFICERS OR EMPLOYEES; ESTABLISHING MOTOR VEHICLE MILEAGE REIMBURSEMENT FOR OTHER AUTHORIZED TRAVEL; AMENDING SECTION 2-18-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-503, MCA, is amended to read:

"2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own ~~automobiles~~ *motor vehicles* in the performance of official duties are entitled to collect mileage for the distance actually traveled by ~~automobile~~ *motor vehicle* and no more unless otherwise specifically provided by law.

(2) *(a)* When ~~the individual~~ *a state officer or employee, including a legislator on legislative business,* is authorized to ~~operate a privately owned vehicle even though~~ *travel by motor vehicle,* ~~a government-owned or leased vehicle is available, a rate of 3 cents less per mile than the mileage rate allowed by the United States internal revenue service for the current year must be paid~~ *and chooses to use a privately owned motor vehicle even though a government-owned or leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 52% of the low mileage rate allowed by the United States internal revenue service for the current year*.

~~(3)~~*(b)* When a privately owned *motor* vehicle is used because a government-owned or leased *motor* vehicle is not available or because the use is in the best interest of the governmental entity~~,~~ *and a notice of unavailability of a government-owned or leased motor vehicle or a specific exemption is attached to the travel claim, then* a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, while traveling between their residence and Helena, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds~~,~~ when using their own airplanes in the performance of official duties~~,~~ are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for ~~automobile~~ *motor vehicle* travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 13, 2002

CHAPTER NO. 5

[HB 11]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY REVISING THE AMOUNT OF FEDERAL MINERAL LEASING FUNDS AVAILABLE FOR DISTRIBUTION TO COUNTIES IN FISCAL YEAR 2003; AMENDING SECTION 17-3-240, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-240, MCA, is amended to read:

"17-3-240. Federal mineral leasing funds. (1) All money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund and must be distributed as provided in subsections (2) and (3).

(2) At the conclusion of fiscal year 2002, the state treasurer shall distribute all money received in fiscal year 2002 in excess of $21,756,000 pursuant to subsection (3). At the conclusion of fiscal year 2003, the state treasurer shall distribute all money received in fiscal year 2003 in excess of ~~$20,474,000~~ *$21,671,000* pursuant to subsection (3). At the conclusion of fiscal year 2004, the state treasurer shall distribute ~~12.5%~~ *12.5%* of all money received pursuant to subsection (3). At the conclusion of fiscal year 2005 ~~and each fiscal year thereafter~~ *and each fiscal year thereafter*, the state treasurer shall distribute ~~25%~~ *25%* of all money received pursuant to subsection (3).

(3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the distributions in subsection (2) to the mineral impact account established in 17-3-241. The distribution to the eligible counties must be allocated based on the proportion that the total amount of revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 13, 2002

CHAPTER NO. 6

[HB 12]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY IMPOSING A HIRING FREEZE ON STATE GOVERNMENT DURING FISCAL YEAR 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the savings from wages and some overhead costs through the implementation of a freeze on hiring will assist with the budget emergency.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fiscal year 2003 hiring freeze — exemption. (1) Except as provided in subsections (2) and (3), an agency of state government, as defined in 2-18-601, may not hire any employee after [the effective date of this act].

(2) An agency may hire an employee if that agency's approving authority, as defined in 17-7-102, approves the hiring in writing and transmits the approval to the governor's office of budget and program planning for input into the statewide accounting, budgeting, and human resources system. An approving authority may approve the hiring of an employee to protect the public health, safety, and welfare of the citizens of the state and to avoid significant disruptions to critical state services. The governor's office of budget and program planning, in conjunction with the state personnel division of the department of administration, shall, within 30 days of [the effective date of this act], develop general criteria that are to be used by the governor for executive branch agencies and that may be used by other approving authorities to determine which vacant positions may be exempted from the hiring freeze.

(3) This sec tion does not ap ply to the Montana uni ver sity sys tem.

Sec tion 2. Effec tive date. [This act] is effec tive on pas sage and ap proval.

Sec tion 3. Ter mi na tion. [This act] ter mi nates June 30, 2003.

Ap proved Au gust 13, 2002

CHAPTER NO. 7

[HB 13]

AN ACT TRANSFERRING $400,000 FROM THE STATE DEBT COLLECTION INTERNAL SERVICE FUND TO THE STATE GENERAL FUND; AMENDING SECTION 17-4-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-4-106, MCA, is amended to read:

"17-4-106. Agency owed debt to receive all money collected — exception. (1) All money collected by the department on debts transferred to the department by the various agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owed. A county shall apply a delinquent personal property tax collection by the department to the payment of the taxpayer's most delinquent personal property taxes or portion of the taxes.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the department. ~~Funds~~ *Except as provided in subsection (3), funds* deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year must be used to reduce the designated percentage of the collected proceeds charged to the various agencies.

(3) The amount of $400,000 is transferred from the internal service fund referred to in subsection (2) to the general fund prior to June 30, 2003."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 13, 2002

CHAPTER NO. 8

[HB 16]

AN ACT MAXIMIZING INTEREST EARNED BY THE GENERAL FUND BY LIMITING INTERENTITY LOANS IN FUNDS OR ACCOUNTING ENTITIES THAT ARE OWED MONEY BY THE FEDERAL GOVERNMENT OR OTHER THIRD PARTIES; REQUIRING THE BORROWING AGENCY TO BILL THE FEDERAL GOVERNMENT OR OTHER THIRD PARTY AND TO CERTIFY THE BILLING TO THE AGENCY THAT APPROVED THE LOAN; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interentity loans. (1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) Subject to 17-2-105, when the expenditure of an appropriation from a fund designated in 17-2-102(1) through (3) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(4) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4) of this section, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(4) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity

within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(4)(a)(iv) and (4)(b) through (4)(f) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(4) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1) through (3) may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) of this section, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(4).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The

department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization.

(9) A loan may not be authorized under this section to any fund or accounting entity that is owed federal or other third-party funds unless the requesting agency certifies to the agency approving the loan that it has and will continue to bill the federal government or other third party for the requesting agency's share of costs incurred in the fund or accounting entity on the earliest date allowable under federal or other third-party regulations applicable to the program. The requesting agency shall recertify its timely billing status to the agency that approved the loan at least monthly during the term of the loan. If at any time the requesting agency fails to recertify the timely billing, the agency that approved the loan shall cancel the loan and return the money to its original source."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 13, 2002

CHAPTER NO. 9

[HB 5]

AN ACT REVISING TRANSFERS FROM THE STATE GENERAL FUND TO THE DEPARTMENT OF TRANSPORTATION STATE SPECIAL REVENUE NONRESTRICTED ACCOUNT; REVISING CERTAIN TRANSFERS OF FUNDS TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-1-122 AND 15-35-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, $36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) $2,873,853 in fiscal year 2002;~~

~~(b)~~*(a)* ~~$2,916,961~~ *$75,000* in fiscal year 2003;

~~(c)~~*(b)* $2,960,715 in fiscal year 2004; and

~~(d)~~*(c)* in each succeeding fiscal year, the amount in subsection ~~(2)(c)~~ *(2)(b)*, increased by 1.5% in each succeeding fiscal year.

(3) For fiscal year 2002 and for each succeeding fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) $2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) $1 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to Title 61, chapter 3, part 3. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) $1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) $1.50 for each light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321;

(c) to the department of fish, wildlife, and parks:

(i) $2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) $5 for each snowmobile registered under 23-2-616, with $2.50 to be used for enforcing the purposes of 23-2-601 through 23-2-644 and $2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) $1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) $5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, $3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, $10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h); ~~and~~

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement~~.~~*; and*

(f) 25 cents a year for each vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, $5,742,983 in lieu of the amount

deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, beginning with fiscal year 2002, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000. Transfer amounts in each succeeding fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 2. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified communities;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement;

(iv) $350,000 to the office of economic development for business recruitment and retention; and

(v) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) ~~Beginning~~ *For the fiscal year beginning* July 1, 2001, there is transferred ~~annually~~ from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. *For the fiscal year beginning July 1, 2002, there is transferred from the interest income referred to in subsection (7)(b) $3.165 million to the research and commercialization state special revenue account created in 90-3-1002. Beginning July 1, 2003, there is transferred annually from the interest income referred to in subsection (7)(b) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002.* (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to

another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to transfers in fiscal years beginning July 1, 2001.

Ap proved Au gust 16, 2002

CHAPTER NO. 10

[HB 7]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY CHANGING THE FUND DESIGNATION FOR THE GUARANTEE FUND FROM A SUBFUND OF THE GENERAL FUND TO A STATE SPECIAL REVENUE FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 20-9-342, 20-9-343, AND 20-9-622, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312;

10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; *20-9-622;* 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 69-8-702; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 2. Section 20-9-342, MCA, is amended to read:

"20-9-342. Deposit of interest and income money by state board of land commissioners. The state board of land commissioners shall annually deposit the interest and income money for each calendar year into ~~a subfund of the state general~~ *the* ~~fund~~ *guarantee account, provided for in 20-9-622,* for state equalization aid by the last business day of February following the calendar year in which the money was received."

Section 3. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and grants for school technology purchases; and

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and school technology purchases.

(3) The following money must be paid into ~~a subfund of the state general~~ *the* ~~fund~~ *guarantee account, provided for in 20-9-622,* for the public schools of the state as indicated:

(a) (i) subject to subsection (3)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year ~~to the school technology account in the state special revenue fund~~, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

Section 4. Section 20-9-622, MCA, is amended to read:

"20-9-622. ~~Guarantee account~~ *Guarantee account.* (1) There is a ~~guarantee account~~ *guarantee account* in a subfund of the state ~~general~~ *special revenue* fund. The ~~guarantee account~~ *guarantee account* is intended to*:*

(a) stabilize the long-term growth of the permanent fund*;* and

(b) ~~to~~ maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the ~~guarantee account~~ *guarantee account*. Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, the ~~guarantee account must be distributed~~ *guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution* to school districts through ~~the basic and per-ANB entitlements~~ *school equalization aid as provided in 20-9-343*.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department *of natural resources and conservation* shall annually transfer from the ~~guarantee account~~ *guarantee account* to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is outstanding in the prior year.

(3) The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533."

Section 5. Coordination instruction. (1) If [this act] and House Bill No. 4 are both passed and approved and both bills contain a section amending 20-9-343, then the coordination instruction in House Bill No. 4 is void and section 20-9-343 must read as follows:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and grants for school technology purchases; and

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and school technology purchases.

(3) ~~The~~ *From July 1, 2001, through June 30, 2003, the* following money must be paid into ~~a subfund of the state general fund~~ *the guarantee account provided for in 20-9-622* for the public schools of the state as indicated:

(a) ~~(i) subject to subsection (3)(a)(ii),~~ interest and income money described in 20-9-341 and 20-9-342; and

~~(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year to the school technology account in the state special revenue fund, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;~~

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.

(4) Beginning July 1, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) (i) subject to subsection (4)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342."

(2) If [this act] is passed and approved but House Bill No. 4 is not passed and approved, then section 20-9-534, must read as follows:

"20-9-534. School technology purchases. By September 1, the superintendent of public instruction shall allocate the annual amount for grants for school technology purchases to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in ~~20-9-343(3)(a)(ii)~~ *20-9-343(4)(a)(ii)* in the prior fiscal year. The grants for school technology purchases are statutorily appropriated, as provided in 17-7-502."

(3) If [this act] is passed and approved but House Bill No. 4 is not passed and approved, then section 20-9-620 must read as follows:

"20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in ~~20-9-343(3)(a)(ii)~~ *20-9-343(4)(a)(ii)*, 77-1-607, and 77-1-613, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

Section 6. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the fiscal year beginning July 1, 2001.

Ap proved Au gust 16, 2002

CHAPTER NO. 11

[HB 8]

AN ACT SWITCHING $198,575 OF FUNDING FOR CULTURAL AND AESTHETIC GRANTS FROM THE GENERAL FUND TO THE LODGING FACILITY USE TAX; AMENDING SECTION 15-65-121, MCA, AND SECTION 2, CHAPTER 434, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, Chapter 434, Laws of 2001, is amended to read:

"**Section 2. Appropriation of general fund, *lodging facility use tax,* and cultural and aesthetic grant funds.** (1) *(a)* There is appropriated $300,000 of general fund money in fiscal year 2002~~and $223,575 of general fund money in fiscal year 2003~~ to the Montana arts council for the projects approved in this section. The general fund appropriation is a continuing appropriation for the biennium.

(b) There is appropriated in fiscal year 2003 to the Montana arts council for the projects approved in this section $198,575 of the lodging facility use tax money that had been appropriated to the department of commerce under 15-65-121(1)(d).

(2) The following projects are approved and amounts are appropriated to the Montana arts council for the biennium ending June 30, 2003, from the cultural and aesthetic projects account first and the general fund last:

(a) Category 1 - Special Projects $4,500 or Less:

Grantee	Amount
Montana Storytelling Roundup	$4,500
Council for the Arts, Lincoln	2,500
Miles City Preservation Commission	4,000
Montana Oral History Association	4,000
All Nations Pishkun Association	3,000
Swan Ecosystem Center	2,800

(b) Category 2 - Special Projects:

Montana Committee for the Humanities	32,000
VIAS, Inc.	22,000
Glacier Orchestra & Chorale	22,000
MCT, Missoula Children's Theatre	10,000
KUFM-TV	11,000
Bozeman Symphony	10,000
Hockaday Museum of Art	15,000

Miles Community College	6,000
Valley County Coalition	12,000
Montana Repertory Theatre	20,000
Missoula Symphony Association	5,000
Montana Arts	20,000
Montana Historical Society	20,000
Montana Performing Arts Consortium	20,000
Rocky Mountain Ballet Theater	7,000
Lewistown Art Center	8,000
Museum of the Rockies	10,000
Southwest Montana Arts Council	10,000
Montana Alliance for Arts Education	10,000
VSA of Montana	7,000
Madison Valley Cultural Corp.	4,000
Artslink, College of Arts & Architecture, MSU	5,000
Mineral Museum	5,000
(c) Category 3 - Operational Support:	
Western Heritage Center	14,000
Montana Art Gallery Directors Association	25,000
Writer's Voice (Billings YMCA)	25,000
Custer County Art Center	22,000
Carbon County Historical Society	16,000
Art Museum of Missoula	20,000
Shakespeare in the Parks	18,000
Billings Symphony Society	20,000
Alberta Bair Theater	18,000
Montana Dance Arts Association	5,000
Great Falls Symphony Association	12,000
Butte Center for the Performing Arts	20,000
Fort Peck Community College	15,000
Schoolhouse History and Art Center	20,000
Young Audiences of Western Montana	10,000
Holter Museum of Art	10,000
Montana Agricultural Center & Museum	12,000
Archie Bray Foundation	15,000
Butte Symphony Association	15,000
Growth Thru Art Inc.	20,000
Vigilante Theatre Company	18,000
Helena Symphony Association	12,000

Big Horn Arts & Crafts Assoc./Jailhouse Gallery	10,000
Montana Association of Symphony Orchestras	15,000
Montana Transport Company	12,000
Yellowstone Art Museum	20,000
Whitefish Theatre Company	10,000
Montana Ballet Company	10,000
Livingston Depot Foundation	15,000
Yellowstone Ballet Company	6,000
Artist Group, The	1,600
(d) Category 4 - Capital Expenditures:	
Cascade County Historical Society	20,000
Billings Preservation Society	20,000
Butte-Silver Bow Public Archives	20,000
Belt Public Library	16,500
Arlee Historical Society	1,655
Fort Peck Fine Arts Council	16,000
Daly Mansion	20,000
Paris Gibson Square	5,000
Liberty Village Arts Center	2,775
Tobacco Valley Improvement Assoc. Board of Art	18,000
Bitterroot Community Band	6,000
Great Falls Civic Center	6,800"

Section 2. Section 15-65-121 , MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society,

to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce, *except as provided in [section 1]*; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2007—sec. 3, Ch. 469, L. 2001.)

15-65-121. (Effective July 1, 2007) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the

department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 16, 2002

CHAPTER NO. 12

[HB 10]

AN ACT REVISING CERTAIN ALLOCATIONS OF REVENUE FROM THE COAL SEVERANCE TAX, OIL AND NATURAL GAS PRODUCTION TAXES, AND METALLIFEROUS MINES LICENSE TAX TO INCREASE THE PORTION ALLOCATED TO THE STATE GENERAL FUND; REVISING ALLOCATIONS FOR CERTAIN CAPITAL PROJECTS; AMENDING SECTIONS 15-35-108, 15-36-324, AND 15-37-117, MCA, SECTION 2, CHAPTER 557, LAWS OF 1999, AND SECTION 2, CHAPTER 573, LAWS OF

2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) *For the fiscal year ending June 30, 2003, the amount of 10% and for fiscal years beginning on or after July 1, 2003, the amount of 12%* ~~Twelve percent~~ of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) ~~The~~ *For the fiscal year ending June 30, 2003, the amount of 6.01% and for fiscal years beginning on or after July 1, 2003, the* amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) ~~The~~ *For fiscal years beginning on or after July 1, 2003, the* amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) ~~The~~ *For fiscal years beginning on or after July 1, 2003, the* amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) *For the fiscal year beginning July 1, 2001,* $1.25 million*, for the fiscal year beginning July 1, 2002, $925,000, and for fiscal years beginning on or after July 1, 2003, $1.25 million* for the growth through agriculture program provided for in Title 90, chapter 9;

~~(iii) to the department of commerce:~~

~~(A) $125,000 for a small business development center;~~

~~(B) $50,000 for a small business innovative research program;~~

~~(C) $425,000 for certified communities;~~

~~(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and~~

~~(E) $300,000 for export trade enhancement;~~

~~(iv) $350,000 to the office of economic development for business recruitment and retention; and~~

(iii) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) except for the fiscal year beginning July 1, 2002, $425,000 for certified communities;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement;

(iv) $175,000 to the office of economic development for business recruitment and retention; and

~~(v)~~*(v)* $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 2. Section 15-36-324, MCA, is amended to read:

"15-36-324. (Temporary) Distribution of taxes — rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (10)(b)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

~~(ii)~~*(iii) for the fiscal years beginning on or after July 1, 2003,* 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

~~(iii)~~*(iv) for the fiscal years beginning on or after July 1, 2003,* 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (11)(c)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

~~(ii)~~*(iii) for the fiscal years beginning on or after July 1, 2003,* 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

~~(iii)~~*(iv) for the fiscal years beginning on or after July 1, 2003,* 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) a total of $400,000, including the proceeds from subsections (9)(c)(i) and (10)(b)(i), to the coal bed methane protection account established in 76-15-904;

(ii) for the fiscal year ending June 30, 2003, all of the remaining proceeds to the state general fund;

~~(ii)~~*(iii) for the fiscal years beginning on or after July 1, 2003,* 50% of the remaining proceeds to the reclamation and development grants special revenue account established in 90-2-1104; and

~~(iii)~~*(iv) for the fiscal years beginning on or after July 1, 2003,* 50% of the remaining proceeds to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred

from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for

the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502. (Terminates June 30, 2011—sec. 10, Ch. 531, L. 2001.)

15-36-324. (Effective July 1, 2011) Distribution of taxes — rules. (1) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (9).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred

to the county and school taxing units for distribution as provided in subsection (12).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on qualifying production occurring during the first 12 months of production must be distributed as provided in subsection (10).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(b) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on the first 10 barrels of stripper oil production wells must be distributed as provided in subsection (10).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1999 wells and post-1999 wells must be distributed as provided in subsection (10).

(6) Except as provided in subsections (7) and (8), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (11).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (12).

(7) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from wells occurring during the first 12 months of production must be distributed as provided in subsection (10).

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(b), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(10) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3), (4)(a), (5)(a), (5)(c), (7), and (8), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established by 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(11) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as follows:

(i) 50% to the resource indemnity trust fund of the nonexpendable trust fund type;

(ii) 25% to the reclamation and development grants special revenue account established in 90-2-1104; and

(iii) 25% to the orphan share account established in 75-10-743.

(12) (a) By the dates referred to in subsection (13), the department shall, except as provided in subsection (12)(b), calculate and distribute oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) to each eligible county in proportion to the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

(c) Except as provided in subsection (12)(d), the county treasurer shall distribute the money received under subsection (12)(b) to the taxing units that

levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(d) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (12)(c), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (12)(d)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(e) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (12)(e)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(f) The county treasurer shall distribute oil and natural gas production taxes received under subsection (12)(a) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The allocation to the county in subsection (12)(f) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(h) The money distributed in subsection (12)(f) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(i) The oil and natural gas production taxes distributed under subsection (12)(c) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the department.

(j) The oil and natural gas production taxes distributed under subsection (12)(f) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the department.

(k) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (12)(i) and (12)(j) is for the exclusive use and benefit of the county and school taxing units.

(13) The department shall remit the amounts to be distributed in subsection (12) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(14) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes.

(15) (a) In the event that the board revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board for its expenses.

(b) Before the department adopts a rule pursuant to subsection (15)(a), it shall present the proposed rule to the appropriate administrative rule review committee.

(16) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 3. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, *for the fiscal year ending June 30, 2003, 65% and for the fiscal years beginning on or after July 1, 2003,* 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund created in 82-4-312, 8.5% of total collections each year;

(d) to the reclamation and development grants program state special revenue account, *for the fiscal years beginning on or after July 1, 2003,* 7% of total collections each year; and

(e) on or before June 1, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local

government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 24% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502."

Section 4. Section 2, Chapter 557, Laws of 1999, is amended to read:

"Section 2. Capital projects appropriations. (1) Except as provided in subsection (4)(c), the following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP		Other Funding Sources
DEPARTMENT OF ADMINISTRATION			
Health and Safety Projects, Statewide	$730,000	$ 250,000	Auxiliary
Hazardous Material Remediation, Statewide	300,000		
Roof Replacements or Repairs, Statewide	521,000		
Facility Assessments, Statewide	100,000	50,000	State Special Revenue
		100,000	Federal Special Revenue
		50,000	Auxiliary
Capital Renovation		1,000,000	Capitol Land Grant Revenue
Renovate Haynes Gallery Area, Historical Society		1,000,000	Donations
DEPARTMENT OF CORRECTIONS			
Expand Women's Prison, MWP		6,475,000	Federal Special Revenue
Missoula Regional Correctional Facility Supplemental		526,497	Federal Special Revenue
Construct Reception Unit, MSP		5,500,000	Federal Special Revenue
		170,000	General Fund
DEPARTMENT OF FISH, WILDLIFE AND PARKS			
Bluewater Hatchery Renovations		200,000	State Special Revenue

Con struct Fort Peck Fish Hatch ery		14,640,000	Fed eral Special Rev e nue
DE PART MENT OF MIL I TARY AF FAIRS			
Con struct New Ar mory, Kalispell		3,900,000	Fed eral Special Rev e nue
Con struct New Ar mory, Bozeman		4,600,000	Fed eral Special Rev e nue
MONTANA UNI V ER SITY SYS TEM			
Sprin kle Li brary, UM-Missoula	~~657,000~~		
	602,000		
Ven ti late and Up date Fine Arts Build ing, UM-Missoula	450,000		
Boiler Up grade and Ven ti la tion, UM-Tech	530,000	120,000	Auxiliary
Main tain HVAC Sys tems, MSU-Bill ings and COT-Bill ings	500,000		
Re place Steam Dis tri bu tion Pip ing, UM-Dillon	800,000	400,000	Auxiliary
Up grade Boiler Con trols, UM-Missoula	125,000	100,000	Auxiliary
Roof Re place ments or Re pairs, Uni versity Sys tem	1,591,000		
Main tain Main Hall Ex te rior, UM-Dillon	225,000		
Ren o vate Cow an Hall, MSU-North ern	511,000		
Ad di tion to Paxson Gal lery, UM-Missoula		2,500,000	Higher Ed u ca tion Funds, Fed eral, Do na tions, Grants, Plant Funds
Ap plied Tech nol ogy Cen ter Fea si bil ity Study, MSU-North ern	50,000		
Con struct Non den omi na tional Cha pel, UM-Tech		1,500,000	Do nations
For estry/Jour nal ism Ad di tion, UM-Missoula		10,000,000	Fed eral, Do na tions, Grants, Plant Funds
Na tive Amer i can Study Cen ter, UM-Missoula		3,500,000	Higher Ed u ca tion Funds, Fed eral, Do na tions, Grants, Plant Funds
Life Sci ences Build ing, UM-Missoula		23,000,000	Fed eral, State, Do na tions, Grants, Plant Funds
Ru ral Tech nol ogy Ed u ca tion Cen ter, UM-Dillon		350,000	Higher Ed u ca tion Funds, Fed eral, Do na tions, Grants, Plant Funds
DE PART MENT OF NAT U RAL RE SOURCES AND CON SER VA TION			
Lin coln Unit Of fice/Quar ters and Clearwater Egress	125,000		
DE PART MENT OF PUB LIC HEALTH AND HU MAN SER VICES			
Sprin kle MMHNCC, Lewistown	~~300,000~~		
	195,000		
Con struct Spe cial Care Unit,			
Montana Vet erans' Home		1,179,374	State Spe cial Rev e nue
Im prove East ern Montana Vet erans' Home		290,250	State Spe cial Rev e nue
Im prove Montana Vet erans' Home		187,530	State Spe cial Rev e nue
DE PART MENT OF TRANS POR TA TION			
Con struct Equip ment Stor age Build ings and Roof Re place ment at Hel ena Head quar ters, State wide		2,100,000	High ways State Spe cial Revenue
Con struct Core Drilling Build ing, Hel ena		1,000,000	High ways State Spe cial Revenue

(2) In the event one or both of the national guard armories located in Bozeman and Whitefish, Montana, and approved in House Bill No. 14 for

replacement are sold prior to construction of the new Bozeman and Kalispell armories, the proceeds of the sale that were deposited to the general fund are appropriated for replacement construction up to a maximum of $4,000,000 and the bond authority in House Bill No. 14 is reduced by a like amount.

(3) The department of public health and human services is seeking federal funds for use in the construction of the special care unit, Montana veterans' home. If federal funds become available for this purpose, the department shall reimburse funds from the state special revenue account used to build the new unit. The total amount approved for the project from all sources is $1,179,374.

(4) (a) The 56th legislature authorizes four department of corrections' capital construction projects in the 2001 biennium. Funding for the projects is contained in House Bill No. 14 and subsection (1) of this section. The total project cost and the authorized funding for each project are as follows:

(i) $9,375,000 for the women's prison expansion in Billings, funded by $2,900,000 of general obligation bond proceeds authorized in House Bill No. 14 and by $6,475,000 of federal funds appropriated in subsection (1) of this section;

(ii) $2,225,000 for completing the Pine Hills youth correctional facility in Miles City, funded from general obligation bond proceeds authorized in House Bill No. 14;

(iii) $5,670,000 to construct a reception unit at Montana state prison in Deer Lodge, funded by $170,000 of general fund money and by $5,500,000 of federal funds appropriated in subsection (1) of this section; and

(iv) $3,000,000 for security improvements and expanding the Wallace building at Montana state prison in Deer Lodge, funded from general obligation bond proceeds authorized in House Bill No. 14.

(b) The 56th legislature notes that approximately $8,714,600 of federal department of justice funds are anticipated to become available for capital construction projects for the department of corrections in the 2001 biennium. It is the intent of the 56th legislature that the federal funds be used to the maximum extent possible. It is further the intent of the 56th legislature that the priority for using these federal funds is:

(i) up to $6,475,000 for the women's prison expansion project, line-itemed in subsection (1);

(ii) up to $526,497 for the Missoula regional correctional facility supplemental; and

(iii) up to $5,500,000 for the construction of the reception unit at Montana state prison, line-itemed in subsection (1).

(c) (i) It is the intent of the legislature that the department of corrections may not accept federal funds for capital construction unless all conditions necessary to receive the federal dollars have been irrevocably met in advance of the expenditure of the federal funds.

(ii) It is further the intent of the legislature that federal spending authority for a capital construction project may be used only for the project identified in the law authorizing the project and may not be used for any other project.

(5) The appropriation for the Fort Peck fish hatchery in subsection (1) is contingent upon passage and approval of House Bill No. 20.

(6) The 56th legislature authorizes the construction of the rural technology education center at western Montana college of the university of Montana at a

total project cost of $4,520,000. Subsection (1) of this section contains $350,000 in other revenue authority for this project, and House Bill No. 14 contains $4,170,000 in general obligation bond authority for this project. In the event that other additional funds become available for this project during its construction, the general obligation bond authority in House Bill No. 14 must be reduced by a like amount and other revenue authority is increased by a like amount in subsection (1) of this section for the same purpose."

Section 5. Section 2, Chapter 573, Laws of 2001, is amended to read:

"Section 2. Capital projects appropriations. (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP		Other Funding Sources
DEPARTMENT OF ADMINISTRATION			
Life Safety Projects, Statewide	$400,000	$	
Hazardous Material Mitigation Fund	~~350,000~~		
	250,000		
Roof Replacements or Repairs, Statewide	~~499,000~~		
	399,000		
Project Litigation Fund	475,000		
Capitol Complex Land Acquisition		400,000	Capitol Land Grant Revenue
DEPARTMENT OF CORRECTIONS			
Construction of Central Reception Unit		1,000,000	Federal Special Revenue
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Administrative Facility Repair and Maintenance		764,000	State Special Revenue
DEPARTMENT OF JUSTICE			
Upgrade Foundations and Boiler, MLEA	200,000		
DEPARTMENT OF MILITARY AFFAIRS			
Construct New Dillon Armory		3,800,000	Federal Special Revenue
Construct New Kalispell Armory		3,700,000	Federal Special Revenue
MONTANA UNIVERSITIES AND COLLEGES			
Replace Primary Power Distribution System, UM-Dillon	162,750	59,375	Auxiliary
Roof Replacements or Repairs, University System	426,000		
Heating Plant Steam Distribution, Phase II, UM-Tech	438,750	236,250	Auxiliary
Chemistry Building Addition, UM-Missoula		3,200,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

All operating and maintenance expenses of the chemistry building addition are to be paid by the university of Montana-Missoula. Appropriation authority in excess of funds pledged for this project as of June 30, 2003, must be reverted.

Master Plan Campuses, University System	~~100,000~~		
	16,000	150,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds

This project will focus on maximizing use of existing buildings on the campuses.

Animal and Range Science Facility, MSU-Bozeman		5,000,000	Higher Education Funds, Federal, Donations, Grants, Nonstate Funds, Plant Funds
Gaines Hall Renovation/Addition Project Design, MSU-Bozeman		2,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Agricultural Experiment Station, MSU-Bozeman		1,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Develop Classroom/Lab Design, MSU-COT, Billings	50,000		
Multi Media Center, Yellow Bay, UM-Missoula		1,350,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

All construction, operation, and maintenance expenses of the Yellow Bay multimedia center are to be paid by the center.

Law Building Renovation/Expansion, UM-Missoula		5,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

All operating and maintenance expenses of the law building addition are to be paid by the university of Montana-Missoula.

School of Journalism Building, UM-Missoula		12,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds

Appropriation authority in excess of funds pledged for this project as of June 30, 2005, must be reverted. All operating and maintenance expenses of the school of journalism building are to be paid by the university of Montana-Missoula.

Construct Applied Technology Center, MSU-Northern		3,000,000	Federal, Donations, Grants, Nonstate Funds, Plant Funds
Install PBS Digital Conversion, MSU-Bozeman		3,059,455	Federal, Donations, Grants, Nonstate Funds, Plant Funds

The university system and the information services division of the department of administration will work together to develop network plans or procedures that provide for the highest degree of bandwidth and cost-sharing capability between the university system and the department that is within technical specifications agreed to by the parties and is mutually beneficial to them. This obligation to cooperate and coordinate for the purpose of seeking mutually beneficial network arrangements applies to the intercity transport services acquired by the university system or the department of administration to meet the needs of the public broadcast system, including the utilization and sharing of excess capacity bandwidth to help meet the telecommunication needs of all state agencies in a manner that is both cost-effective and compatible with the efficient operation of the public broadcast system.

Develop Design to Expand COT, UM-COT, Helena	125,000		
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Expand Unit Office, Libby	94,000		
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
Licensure Compliance, MMHNCC	524,000		

Montana Veterans' Home Improvements, Columbia Falls	165,875	State Special Revenue
Eastern Montana Veterans' Home Improvements, Glendive	177,800	State Special Revenue

The legislature consents to the construction of the good shepherd chapel at the Montana developmental center in Boulder with donated funds. The construction of the chapel is exempt from provisions of Title 18.

STATE BOARD OF EDUCATION			
Facility Improvements, Montana School for the Deaf and Blind	315,160		
DEPARTMENT OF TRANSPORTATION			
Construct Equipment Storage Buildings, Statewide		2,700,000	Highways State Special Revenue

(2) The Montana state university agricultural experiment station shall use these funds to construct and repair various experiment station buildings at the following locations: $1,250,000 for Huntley, $180,000 for Moccasin, $200,000 for Havre, $210,000 for Sidney, and $160,000 for Kalispell. The amount of $1 million for these projects will be funded from non-LRBP sources, and the amount of $1 million will be funded from CPF in House Bill No. 14.

(3) For purposes of obtaining cash for the construction litigation appropriation authority in subsection (1), the architecture and engineering division of the department of administration may transfer any excess LRBP money from an agency as long as the transfer does not move funds required to complete any authorized agency project.

(4) The following projects are appropriated from the LRBP funding to the department of administration, in addition to the projects listed in subsection (1), by the decrease in bond debt service paid from the LRBP in House Bill No. 14:

Agency/Project	LRBP	Other Funding Sources
DEPARTMENT OF ADMINISTRATION		
Life Safety Projects, Statewide	$300,000	
Hazardous Material Mitigation, Statewide	90,000	
Roof Replacements or Repairs, Statewide	150,000	
MONTANA UNIVERSITIES AND COLLEGES		
Code Compliance/Deferred Maintenance, All Campuses	550,000	
Develop Design to Expand COT, UM-COT, Helena	~~240,000~~ *40,000"*	

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2002.

Section 8. Termination. (1) [Section 1] terminates June 30, 2005.

(2) [Section 2] terminates June 30, 2011.

Approved August 16, 2002

CHAPTER NO. 13

[HB 18]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY GENERALLY REVISING AND CLARIFYING THE LAWS RELATING TO REVENUE COLLECTION AND ALLOCATION FOR STATE GOVERNMENT AND LOCAL GOVERNMENTS; PROVIDING THAT THE TITLING FEE FOR MANUFACTURED HOMES BE DEPOSITED IN THE STATE GENERAL FUND; CLARIFYING THE ENTITLEMENT SHARE OF LOCAL GOVERNMENTS; PROVIDING A PENALTY AND INTEREST FEE FOR LATE PAYMENT OF LIVESTOCK PER CAPITA FEES; ALLOWING A NEGOTIATED FEE FOR COLLECTION OF LIVESTOCK PER CAPITA FEES; ELIMINATING THE ALLOCATION OF COAL SEVERANCE TAXES FOR COUNTY LAND PLANNING; PROVIDING FOR DEPOSIT OF GAMING LAW VIOLATION PENALTIES IN THE STATE GENERAL FUND; ELIMINATING THE STATUTORY APPROPRIATION OF GAMING VIOLATION PENALTIES; CLARIFYING THE COLLECTION AND ALLOCATION OF FEES BY THE CLERK OF THE DISTRICT COURT; PROVIDING THAT THE MARRIAGE LICENSE RECORDING FEE BE DEPOSITED IN THE STATE GENERAL FUND; ELIMINATING THE COUNTY ADMINISTRATIVE FEE FOR PUBLIC ASSISTANCE PROGRAMS; PROVIDING FOR THE DEPOSIT OF THE PENALTY FEE FOR FAILURE TO APPLY FOR A TRANSFER OF INTEREST IN A MOTOR VEHICLE IN THE STATE GENERAL FUND; PROVIDING THAT TRAILERS AND SEMITRAILERS REGISTERED THROUGH A PROPORTIONAL REGISTRATION AGREEMENT ARE NOT SUBJECT TO THE NORMAL REGISTRATION FEE; PROVIDING FOR THE DEPOSIT OF LATE MOTOR VEHICLE TRANSFER PENALTIES IN THE STATE GENERAL FUND; CLARIFYING THE USE AND DISTRIBUTION OF THE LOCAL OPTION VEHICLE TAX OR FEE; PROVIDING THAT SINGLE MOVEMENT PERMIT FEES FOR VEHICLES BE DEPOSITED IN THE GENERAL FUND; CLARIFYING THE DISPOSITION OF FINES AND FORFEITURES FOR HIGHWAY OFFENSES; PROVIDING THAT UNIFORM PROVISIONS ON PENALTY AND INTEREST APPLY TO LATE HAIL FEE PAYMENTS; ELIMINATING THE TERMINATION DATE FOR THE SPLIT OF THE LOCAL OPTION VEHICLE TAX BETWEEN THE CITIES AND COUNTIES; PROVIDING AN APPROPRIATION FOR REIMBURSING THE CITY OF BOZEMAN FOR ACCRUED GAMING REVENUE; CORRECTING THE COUNTYWIDE SCHOOL RETIREMENT AND TRANSPORTATION BLOCK GRANTS; AMENDING SECTIONS 15-1-111, 15-1-112, 15-1-116, 15-1-121, 15-24-921, 15-24-925, 15-35-108, 15-65-121, 17-7-502, 23-5-123, 23-5-136, 25-1-201, 46-23-1031, 50-15-301, 53-2-207, 61-3-201, 61-3-317, 61-3-321, 61-3-537, 61-3-562, 61-4-310, 61-10-148, 61-12-701, AND 80-2-230, MCA, AND SECTIONS 244, 245, 246, 248, 249, 250, AND 257, CHAPTER 574, LAWS OF 2001; REPEALING SECTIONS 61-4-311 AND 90-1-108, MCA, AND SECTION 4, CHAPTER 749, LAWS OF 1991, SECTION 1, CHAPTER 217, LAWS OF 1993, AND SECTIONS 2 AND 3, CHAPTER 217, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-111, MCA, is amended to read:

"15-1-111. (Temporary) Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation. (1) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for tax year 1989;

(b) the number of mills levied in the jurisdiction for tax year 1990;

(c) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

(d) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, prior to 1994, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145, prior to 1994. The department shall total the amounts for all taxing jurisdictions within the county.

(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.

(b) For tax year 1993 through tax year 1998, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(c) (i) For tax year 1999 through tax year 2008, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, progressively reduced by 10% of the 1991 amount each year, in accordance with the following schedule:

Tax Year	Percentage of 1991 Remittance Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(ii) The amount remitted must be adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of

the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) *(a)* For the purposes of this section and subject to subsection (7), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, and miscellaneous taxing district ~~and the state of Montana~~.

(b) The term does not include county or state school equalization levies provided for in 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439.

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions or that is annexed to or is consolidated with another taxing jurisdiction is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b). (Repealed effective July 1, 2008—secs. 66(2), 68(2), Ch. 422, L. 1997.)"

Section 2. Section 15-1-112, MCA, is amended to read:

"15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions. (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998 for all other reimbursements in this section, the department ~~of revenue~~ shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.

(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property described in 15-6-138, for the

particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.

(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement amount is zero.

(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.

(3) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments, incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community college districts, miscellaneous districts, and

special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, ~~and~~ 20-9-360*, and 20-25-439*.

(c) Each tax increment financing district must receive the benefit of the state mill on the incremental taxable value of the district.

(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.

(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an

amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year 1998, according to the following schedule:

Tax Year	Percentage of 1998 Reimbursement Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(b) The reimbursement amount for each tax year must be the basis for reducing the amount remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the following year.

(14) The county treasurer shall use the funds from the reduced payment to the state for the levy imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must be distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

(15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(16) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January of 1996 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions."

Section 3. Section 15-1-116, MCA, is amended to read:

"15-1-116. Manufactured home considered as improvement to real property — requirements. (1) A manufactured home will be considered for tax purposes an improvement to real property if:

(a) the running gear is removed; and

(b) the manufactured home is attached to a permanent foundation on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, with the permission of the landowner.

(2) To eliminate the certificate of ownership of a manufactured home, an owner may file a statement of intent on a form furnished by the department of justice.

(3) The statement of intent must include:

(a) the serial number of the manufactured home;

(b) the legal description of the real property to which the manufactured home has been permanently attached;

(c) a description of any security interests in the manufactured home; and

(d) approval from all lienholders of the intent to eliminate the title.

(4) The owner shall present the statement of intent to the county treasurer of the county in which the manufactured home is located and shall surrender the certificate of ownership. Upon receipt of a titling fee of $5, the county treasurer shall issue the owner a duplicate receipt for the surrendered certificate and forward a copy of the statement of intent, the original receipt, and the surrendered certificate to the department of justice. The county treasurer may not issue the receipt unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall~~:~~

~~(a) deposit $1.50 of the titling fee in the county general fund; and~~

~~(b)~~ remit ~~$3.50 of~~ the titling fee to the department for deposit in the state general fund.

(5) Upon the recording of the statement of intent and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home.

(6) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement."

Section 4. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

~~(iv)~~*(v)* 61-3-321;

~~(v)~~*(vi)* Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001~~, and 61-3-537~~; ~~and~~

~~(vi)~~*(vii)* Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of ownership fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-201;

(j) title and registration fees pursuant to 61-3-203;

(k) disabled veterans' flat license plate fees and purple heart license plate fees pursuant to 61-3-332;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. *For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.*

(3) (a) Beginning with fiscal year 2002 and in each succeeding fiscal year, the base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. For fiscal ~~years~~ *year* 2002 ~~and 2003~~, the growth rate is 3%. *For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments.* Beginning with calendar year 2004, by October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).

~~(i)~~*(ii)* The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(i)(A)~~ *(3)(a)(ii)(A)*.

~~(ii)~~*(iii)* The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(ii)(A)~~ *(3)(a)(iii)(A)*.

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(i)(B)~~ *(3)(a)(ii)(B)* and ~~(3)(a)(ii)(B)~~ *(3)(a)(iii)(B)*:

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(i)(A)~~ *(3)(a)(ii)(A)* and ~~(3)(a)(ii)(A)~~ *(3)(a)(iii)(A)*:

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the

revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. *For fiscal year 2002, a county may have a negative base year component.* For fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. *For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero.* The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.

(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - down town	$468,966
Deer Lodge	TIF Dis trict 1	3,148
Deer Lodge	TIF Dis trict 2	3,126
Flathead	Kalispell - Dis trict 1	758,359
Flathead	Kalispell - Dis trict 2	5,153
Flathead	Kalispell - Dis trict 3	41,368
Flathead	Whitefish Dis trict	164,660
Gallatin	Bozeman - down town	34,620
Lewis and Clark	Hel ena - # 2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - up town	283,801
Yellowstone	Billings	436,815

(c) The entitlement share for industrial tax increment financing districts is as follows:

(i) for fiscal years 2002 and 2003:

Missoula County	Airport Industrial	$4,812
Silver Bow	Ramsay Industrial	597,594;

(ii) for fiscal years 2004 and 2005:

Missoula	County Airport Industrial	$2,406
Silver Bow	Ramsay Industrial	298,797; and

(iii) $0 for all succeeding fiscal years.

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211."

Section 5. Section 15-24-921, MCA, is amended to read:

"15-24-921. Per capita fee to pay expenses of enforcing livestock laws. (1) In addition to appropriations made for those purposes, a per capita fee is authorized and directed to be imposed by the department on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as provided in 81-7-104.

(2) The per capita fee is due on November 30 of each year. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

~~(2)~~*(3)* As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, ostriches, rheas, and emus, and domestic ungulates."

Section 6. Section 15-24-925, MCA, is amended to read:

"15-24-925. Reimbursement to department — transmission of fees to state. (1) The department may withhold 2% of the money received under 15-24-921 as reimbursement for the collection of the fee on livestock~~.~~ *unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis.*

(2) The department shall designate the amount received from the fee imposed on sheep and the amount received from the fee imposed on all other livestock and shall specify the separate amounts in the report to the department of livestock. The money, when received by the department, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock."

Section 7. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of ~~8.36%~~ *7.75%* must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, ~~county land planning,~~ provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified communities;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement;

(iv) $350,000 to the office of economic development for business recruitment and retention; and

(v) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) $4.85 million to the research and commercialization state special revenue account created in 90-3-1002. (Terminates June 30, 2005—sec. 10(2), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of ~~8.36%~~ *7.75%* must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, ~~county land planning,~~ provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made

only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 8. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. *For the fiscal year ending June 30, 2003, the amount of $1.7 million must be deposited in the state general fund.* The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2007—sec. 3, Ch. 469, L. 2001.)

15-65-121. (Effective July 1, 2007) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 9. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-26-1503; 22-3-1004; ~~23-5-136;~~ 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 69-8-702; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other

obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

Section 10. Section 23-5-123, MCA, is amended to read:

"23-5-123. Disposal of money confiscated by reason of violation of gambling laws. All fines, penalties, forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 8 of this chapter or a rule of the department must be deposited ~~one-half~~ in the state general fund ~~and one-half in the general fund of the county in which the violation occurred~~."

Section 11. Section 23-5-136, MCA, is amended to read:

"23-5-136. Injunction and other remedies. (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 8 of this chapter or a rule or order of the department, the department may:

(a) upon clear and convincing evidence, issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123. ~~The local government portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.~~

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

Section 12. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $90; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, $160; for filing a petition for legal separation, $150; and for filing a petition for a contested amendment of a final parenting plan, $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for

the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) Except as provided in subsections (3), ~~and~~ (5), ~~through (7)~~ *and (6)*, fees collected by the clerk of district court must*:*

(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund*; and*

(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, $5 must be deposited in the children's trust fund account established in 52-7-102, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, $5 must be deposited in the children's trust fund account established in 52-7-102 and $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) ~~The~~ *Through June 30, 2003, the* clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q).

(6) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(7) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 13. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection (1)(b), a probationer or parolee shall pay a supervisory fee of no less than $120 a year and no more than $360 a year, prorated at no less than $10 a month for the number of months under supervision. The fee must be

collected by the clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part.

(b) The court or the board may reduce or waive the fee or suspend the monthly payment of the fee if it determines that the payment would cause the probationer or parolee a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the fees collected under the provisions of this section.

(b) *(i)* ~~District~~ *Prior to July 1, 2003, district* court clerks shall deduct from the total fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a).

(ii) After June 30, 2003, district court clerks shall deposit the fees into the state special revenue account established in subsection (2)(a) as specified by the supreme court administrator."

Section 14. Section 50-15-301, MCA, is amended to read:

"50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed ~~with him~~ during the preceding calendar month to the department. Reports ~~shall~~ *must* be on forms and contain information prescribed by the department. The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license. *Beginning July 1, 2003, the recording fee must be forwarded to the state for deposit in the state general fund.*"

Section 15. Section 53-2-207, MCA, is amended to read:

"53-2-207. Power of department in administering state and federal funds. In administering or supervising any state or federal funds appropriated or made available to the department for public assistance purposes, the department ~~has the authority to~~ *may*:

~~(1) require the county to pay an administrative fee to the state general fund for the purpose of reimbursing the department, in part, for the costs of administering and providing public assistance to county residents in need;~~

~~(2)~~*(1)* make use of all legal processes to enforce the standards prescribed for public assistance purposes by the department; and

~~(3)~~*(2)* require that each part of the public assistance laws be in effect in all counties of the state."

Section 16. Section 61-3-201, MCA, is amended to read:

"61-3-201. Transfer of interest — cancellation of erroneous certificate of ownership or registration. (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall ~~write his signature with pen and ink upon~~ *sign* the certificate of ownership issued for the vehicle in the appropriate space provided, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee of the department, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of

ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The county treasurer shall collect the penalty at the time of registration *and forward the penalty fee to the department of revenue for deposit in the state general fund*. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required by the department, together with a verified or certified statement of the transfer of interest. The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels ~~as may be required in such cases~~ must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration~~;~~. ~~however~~ *However*, in lieu of the statement required in subsection (3), the department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to the certificates.

(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered under this chapter and not exceeding a combined value of $15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of

the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a).

(6) ~~Nothing in subsection~~ *Subsection* (5) ~~prevents~~ *does not prevent* a secured party from assigning ~~his~~ *the secured party's* interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of ~~his~~ *the secured party's* security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment *must be* made ~~upon~~ *in* its records.

(7) The certificate of ownership is valid until canceled by the department upon a transfer of any interest shown in the certificate, and annual renewal is not needed.

(8) (a) Upon its determination that a certificate of ownership or a registration receipt contains an error or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney, the department may cancel the certificate of ownership or receipt and, in the case of an error, issue a replacement for the erroneous certificate or receipt if the owner has returned the certificate or receipt to be canceled. If the owner fails to return to the department the certificate of ownership, the registration receipt, or the license plate, the department shall direct a peace officer or department employee to secure and return the certificate, receipt, or license plate to the department.

(b) Any person who fails to return a certificate of ownership or a registration receipt that contains an error or that has been canceled by the department ~~due to~~ *because of* an insufficient funds check, as provided in subsection (8)(a), after receiving actual notice of the department's demand for the return of the certificate or receipt, as required by subsection (8)(a), is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500."

Section 17. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided in this section, the new owner of a transferred motor vehicle has a grace period of 20 calendar days from the date of purchase to make application and pay the registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day

period, provided that at all times during that period, a vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department, reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section. Failure to make application within the time provided in this section subjects the purchaser to a penalty of $10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. *The penalty must be deposited in the state general fund.*"

Section 18. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles — certain vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, $13.75;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, $8.25;

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) over 2,850 pounds, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9;

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75;

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25;

(j) trailers and semitrailers in excess of 6,000 pounds, *other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement,* $16.25;

(k) travel trailers, $11.75; and

(l) recreational vehicles, $3.50.

(2) If a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(3) An additional fee of $5 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in ~~subsection (6)(b) and~~ 61-3-562 *and subsection (6)(b) of this section*, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(8) A person qualifying under 61-3-332(10)(d) is exempt from the fees required under this section.

(9) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund."

Section 19. Section 61-3-537, MCA, is amended to read:

"61-3-537. (Temporary) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to the registration fee imposed under 61-3-560 through 61-3-562 at a rate of up to 0.7% of the value determined under 61-3-503 or a local flat fee, in addition to the fee imposed under 61-3-560 through 61-3-562.

(2) A local vehicle tax or flat fee is payable at the same time and in the same manner as the fee imposed under 61-3-560 through 61-3-562. The ~~first priority of the local vehicle tax or flat fee is for district court funding, and the~~ tax or fee is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax or flat fee if the imposition, revision, or revocation of the tax or fee is approved by the electorate of the county. The imposition, revision, or revocation of the tax or fee is effective on January 1 following its approval by the electorate. The county governing body by resolution may provide for the distribution of the local vehicle tax or flat fee. (Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)

61-3-537. (Effective July 1, 2005) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to the registration fee imposed under 61-3-560 through 61-3-562 at a rate of up to 0.7% of the value determined under 61-3-503, in addition to the fee imposed under 61-3-560 through 61-3-562.

(2) A local vehicle tax or flat fee is payable at the same time and in the same manner as the fee imposed under 61-3-560 through 61-3-562 ~~and is distributed in the same manner as provided in 61-3-509, based on the registration address of the owner of the motor vehicle~~.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax if the imposition, revision, or revocation of the tax is approved by the electorate of the county. The imposition, revision, or revocation of the tax is effective on January 1 following its approval by the electorate."

Section 20. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of vehicle ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-561, may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b);

(iii) the former county motor vehicle computer fees under 61-3-511;

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;

(vi) if applicable, the amateur radio operator license plate fee under 61-3-422;

(vii) if applicable, the annual scholarship donation fee under 61-3-465; and

(viii) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section*, other than the local option vehicle tax or flat fee,* for the purposes of 61-3-321(3) and 61-10-201. *The county treasurer shall retain the local option vehicle tax or flat fee.*

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303. (Subsection (1)(b) terminates on occurrence of contingency—sec. 24, Ch. 191, L. 2001.)"

Section 21. Section 61-4-310, MCA, is amended to read:

"61-4-310. Single movement permit — fee — limitation — county treasurer to issue. (1) (a) A vehicle, subject to license under this title, or a mobile home may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit for the vehicle in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title upon application presented to the county treasurer in a form provided by the department, upon exhibiting to the county treasurer proof of ownership and evidence that the personal property taxes on the vehicle, if any are due, have been paid, and upon payment of a fee of $5. *The fee must be forwarded to the department of revenue for deposit in the state general fund.* The permit is not in lieu of fees and permits required under 61-4-301 and 61-4-302.

(b) For purposes of this section, a mobile home is considered unladen when all items are removed except the equipment originally installed by the manufacturer and the personal effects of the owners.

(2) The permit is for the transit of the vehicle or mobile home only, and the vehicle or mobile home may not at the time of the transit be used for the transportation of any persons, except the driver, or any property for compensation or otherwise and is for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle being driven or towed to a motor vehicle wrecking facility or a motor vehicle graveyard for disposal is exempt from the provisions of this section. The definitions in 75-10-501 apply to this subsection."

Section 22. Section 61-10-148, MCA, is amended to read:

"61-10-148. Disposition of fines and forfeited bonds. (1) Except as provided in 61-12-701 and subsection (2) of this section, all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the department of revenue, as provided in 15-1-504, for deposit in the state general fund. This subsection does not apply to fines and forfeited bonds paid to justices' courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under the provisions of 60-2-128 and 60-2-203, all money collected as fines and forfeited bonds must be ~~distributed to the county treasurer for deposit in the county road~~ *deposited in the state general* fund."

Section 23. Section 61-12-701, MCA, is amended to read:

"61-12-701. Disposition of fines and forfeitures. ~~Except as provided in 61-10-148(2), all~~ *All* fines and forfeitures collected in any court, except a justice's court, for violation of the laws and regulations relating to the use of state highways and the operation of vehicles on state highways, if the apprehension or arrest was by a highway patrol officer, must be paid to the department of

revenue for credit to the state general fund or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund, except for that portion of the fines otherwise allocated by law, which must be paid into the appropriate accounts in the state special revenue fund."

Section 24. Section 80-2-230, MCA, is amended to read:

"80-2-230. Collection of fees — release of lien. (1) The department of revenue shall collect all fees imposed under this part. The department of revenue shall deposit the money with the state treasurer. The department of revenue shall use due diligence in making the collections of the fees provided in this part.

(2) All insurance fees, whether imposed against land or in the form of special assessments secured by crop liens, are payable in full and not in semiannual payments on or before November 30 of each year in which the fees are imposed.

(3) When the amount due on any hail insurance secured by a crop lien is paid, the department of revenue shall promptly endorse on the lien on file in the office of the county clerk and recorder the amount paid with the date of payment. The endorsement is considered a satisfaction and release of the lien.

(4) The penalty and interest provisions of 15-1-216 apply to late payments of fees imposed under this part."

Section 25. Section 244, Chapter 574, Laws of 2001, is amended to read:

"Section 244. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate a portion of the block grant amount into each district's fiscal year 2002 budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the ~~biennial~~ *fiscal year 2003* appropriation provided in [section 248(1)] is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. ~~If the appropriation for block grants is greater than or less than the amount received by schools from~~

~~the sources enumerated in subsection (1), the office of public instruction shall prorate the amount appropriated based upon the fiscal year 2001 revenue.~~

(4) The average ~~amount~~ of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% *in fiscal year 2004 and* in each succeeding fiscal year."

Section 26. Section 245, Chapter 574, Laws of 2001, is amended to read:

"Section 245. Countywide school retirement block grants. (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school retirement in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Elementary Payment	FY2002 High School Payment	FY2003 Elementary Payment	FY2003 High School Payment
Beaverhead	$86,692	$50,789	~~$87,351~~ *$55,503*	~~$51,175~~ *$41,981*
Big Horn	62,668	36,963	~~63,144~~ *95,018*	~~37,244~~ *33,837*
Blaine	61,160	10,193	~~61,624~~ *46,318*	~~10,271~~ *81,109*
Broadwater	0	92,686	0	~~93,390~~ *34,949*
Carbon	43,451	82,110	~~43,782~~ *72.602*	~~82,734~~ *58,957*
Carter	9,751	5,453	~~9,825~~ *8,478*	~~5,495~~ *6,155*
Cascade	349,056	192,848	~~351,709~~ *282,266*	~~194,314~~ *142,282*
Chouteau	75,384	41,034	~~75,957~~ *58,455*	~~41,346~~ *29,474*
Custer	78,925	36,930	~~79,525~~ *57,608*	~~37,211~~ *32,128*
Daniels	0	37,994	0	~~38,283~~ *36,083*
Dawson	85,568	38,722	~~86,219~~ *64,693*	~~39,016~~ *24,827*
Deer Lodge	39,980	17,059	~~40,284~~ *34,455*	~~17,189~~ *16,807*
Fallon	0	0	0	~~0~~ *30,444*
Fergus	119,028	78,809	~~119,932~~ *90,464*	~~79,408~~ *55,527*
Flathead	558,861	296,410	~~563,108~~ *530,274*	~~298,662~~ *268,731*
Gallatin	383,035	181,743	~~385,946~~ *537,244*	~~183,125~~ *107,717*
Garfield	12,337	10,170	~~12,431~~ *12,100*	~~10,247~~ *4,620*
Glacier	79,924	34,016	~~80,532~~ *106,815*	~~34,275~~ *10,494*
Golden Valley	0	16,716	0	~~16,843~~ *14,492*
Granite	14,074	48,026	~~14,180~~ *12,523*	~~48,391~~ *30,727*
Hill	142,867	82,538	~~143,953~~ *59,593*	~~83,165~~ *35,211*
Jefferson	116,679	59,523	~~117,565~~ *143,901*	~~59,976~~ *59,690*
Judith Basin	6,149	21,359	~~6,196~~ *4,744*	~~21,521~~ *30,198*
Lake	173,584	139,990	~~174,903~~ *156,485*	~~141,054~~ *103,365*
Lewis & Clark	344,112	211,726	~~346,728~~ *370,958*	~~213,335~~ *173,847*
Liberty	20,144	16,786	~~20,297~~ *3,067*	~~16,914~~ *31,953*
Lincoln	73,001	98,835	~~73,556~~ *61,499*	~~99,586~~ *87,710*
Madison	0	103,163	~~0~~ *4,891*	~~103,947~~ *19,788*
Mccone	23,214	15,824	~~23,390~~ *21,778*	~~15,945~~ *14,004*
Meagher	13,654	10,678	~~13,758~~ *9,250*	~~10,759~~ *9,492*
Mineral	0	32,206	0	~~32,451~~ *33,292*
Missoula	487,129	362,756	~~490,832~~ *587,637*	~~365,513~~ *357,669*
Musselshell	30,675	21,577	~~30,908~~ *48,959*	~~21,741~~ *41,250*
Park	154,192	81,696	~~155,364~~ *135,256*	~~82,317~~ *78,135*
Petroleum	0	16,897	0	~~17,026~~ *9,510*

Phillips	10,502	95,084	~~10,582~~ *103,747*	~~95,806~~ *54,728*
Pondera	79,805	60,307	~~80,411~~ *18,821*	~~60,765~~ *47,629*
Pow der River	18,815	15,011	~~18,958~~ *0*	~~15,125~~ *0*
Powell	69,695	22,666	~~70,225~~ *71,420*	~~22,838~~ *30,458*
Prairie	0	26,791	0	~~26,995~~ *21,945*
Ravalli	85,333	169,769	~~85,981~~ *2,062*	~~171,059~~ *40,316*
Richland	83,671	30,302	~~84,307~~ *15,500*	~~30,533~~ *26,650*
Roosevelt	71,090	60,329	~~71,630~~ *96,278*	~~60,787~~ *61,038*
Rosebud	359,662	286,411	~~362,395~~ *475,055*	~~288,588~~ *126,246*
Sanders	203,863	127,694	~~205,413~~ *197,286*	~~128,665~~ *14,442*
Sheridan	0	46,231	0	~~46,583~~ *47,628*
Sil ver Bow	249,821	141,541	~~251,719~~ *193,304*	~~142,617~~ *119,358*
Stillwater	91,487	75,926	~~92,182~~ *91,185*	~~76,503~~ *51,769*
Sweet Grass	36,996	36,327	~~37,277~~ *24,214*	~~36,603~~ *12,316*
Teton	57,760	41,547	~~58,199~~ *45,217*	~~41,863~~ *40,769*
Toole	43,323	51,399	~~43,652~~ *36,109*	~~51,790~~ *73,362*
Treasure	0	18,947	0	~~19,091~~ *16,243*
Valley	15,824	90,532	~~15,944~~ *10,558*	~~91,220~~ *143,204*
Wheatland	20,946	12,103	~~21,105~~ *15,031*	~~12,195~~ *12,109*
Wibaux	0	14,585	0	~~14,696~~ *25,103*
Yellowstone	1,125,488	643,136	~~1,134,042~~ *1,070,887*	~~648,024~~ *612,203*
Total	6,269,374	4,650,865	~~6,317,022~~ *6,139,506*	~~4,686,212~~ *3,723,973*

(2) The average ~~amount~~ of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% *in fiscal year 2004 and* in each succeeding fiscal year."

Section 27. Section 246, Chapter 574, Laws of 2001, is amended to read:

"Section 246. Countywide school transportation block grants. (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Payment	FY2003 Payment
Beaverhead	$29,924	~~$30,151~~ *$26,197*
Big Horn	43,635	~~43,966~~ *52,920*
Blaine	3,727	~~3,756~~ *13,384*
Broadwater	14,935	~~15,048~~ *21,769*
Carbon	23,493	~~23,671~~ *23,040*
Carter	8,675	~~8,741~~ *6,457*
Cascade	84,382	~~85,024~~ *5,760*
Chouteau	33,063	~~33,314~~ *26,028*
Custer	7,069	~~7,123~~ *6,272*
Daniels	16,771	~~16,899~~ *12,993*
Dawson	21,356	~~21,518~~ *14,001*
Deer Lodge	14,392	~~14,502~~ *14,482*
Fallon	20,447	~~20,603~~ *25,422*
Fergus	58,765	~~59,211~~ *30,799*
Flathead	89,846	~~90,529~~ *77,223*
Gallatin	81,262	~~81,879~~ *90,930*

Garfield	17,284	~~17,415~~ *7,135*
Glacier	37,740	~~38,027~~ *34,300*
Golden Valley	3,547	~~3,574~~ *3,591*
Granite	8,153	~~8,215~~ *6,726*
Hill	46,409	~~46,762~~ *17,070*
Jefferson	36,329	~~36,605~~ *34,792*
Judith Basin	16,878	~~17,007~~ *20,322*
Lake	69,756	~~70,286~~ *52,163*
Lewis & Clark	58,287	~~58,730~~ *69,557*
Liberty	15,874	~~15,995~~ *12,731*
Lincoln	50,388	~~50,771~~ *0*
Madison	21,263	~~21,424~~ *14,174*
Mccone	12,498	~~12,593~~ *11,856*
Meagher	4,237	~~4,269~~ *6,366*
Mineral	7,478	~~7,534~~ *9,038*
Missoula	93,969	~~94,683~~ *94,480*
Musselshell	12,945	~~13,043~~ *20,627*
Park	31,904	~~32,147~~ *32,394*
Petroleum	9,854	~~9,929~~ *6,086*
Phillips	31,080	~~31,316~~ *43,852*
Pondera	22,599	~~22,771~~ *18,308*
Pow der River	21,304	~~21,465~~ *0*
Powell	16,622	~~16,748~~ *14,581*
Prairie	8,544	~~8,609~~ *4,809*
Ravalli	60,579	~~61,040~~ *24,889*
Richland	32,995	~~33,246~~ *30,868*
Roosevelt	25,740	~~25,935~~ *40,216*
Rosebud	97,820	~~98,564~~ *89,433*
Sanders	71,581	~~72,125~~ *173,489*
Sheridan	12,946	~~13,045~~ *17,460*
Silver Bow	21,872	~~22,038~~ *18,381*
Stillwater	27,358	~~27,566~~ *15,344*
Sweet Grass	14,996	~~15,110~~ *6,340*
Teton	28,202	~~28,416~~ *20,759*
Toole	17,208	~~17,339~~ *15,592*
Treasure	5,446	~~5,487~~ *5,073*
Valley	26,677	~~26,880~~ *36,436*
Wheatland	9,142	~~9,212~~ *6,386*
Wibaux	6,198	~~6,246~~ *8,816*
Yellowstone	149,314	~~150,448~~ *145,322*
Total	1,814,759	~~1,828,551~~ *1,637,437*

(2) The average ~~amount~~ of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% *in fiscal year 2004 and* in each succeeding fiscal year."

Section 28. Section 248, Chapter 574, Laws of 2001, is amended to read:

"Section 248. Appropriations. (1) There is appropriated from the general fund to the office of public instruction ~~$114,394,755~~ *$52,407,206* for the

~~biennium~~ *fiscal year* ending June 30, 2003, for the purpose of school district block grants as provided in [section 244].

(2) There is appropriated from the general fund to the office of public instruction $10,920,239 for fiscal year 2002 and ~~$11,003,234~~ *$9,863,479* for fiscal year 2003 for the purpose of countywide school retirement block grants as provided in [section 245].

(3) There is appropriated from the general fund to the office of public instruction $1,814,759 for fiscal year 2002 and ~~$1,828,551~~ *$1,637,437* for fiscal year 2003 for the purpose of countywide school transportation block grants as provided in [section 246].

(4) ~~If Senate Bill No. 176 is passed and approved, then there~~ *There* is appropriated from the general fund to the supreme court for fiscal year 2003 *$18,389,345* ~~the amount deducted from the entitlement share payment in [section 1(2)] plus an additional 6%. The amount appropriated is up to $25 million~~ to be used for ~~the purpose of implementing~~ *district court operations as directed in* Senate Bill No. 176, *enacted as Chapter 585, Laws of 2001.*"

Section 29. Section 249, Chapter 574, Laws of 2001, is amended to read:

"Section 249. Inclusion of appropriations in budget. The governor shall include ~~the appropriation in [section 248(1)]~~ *$107,395,032* in the *biennial* present law base budget prepared for the 58th legislative session for continued funding of the school district budget items funded by that appropriation."

Section 30. Section 250, Chapter 574, Laws of 2001, is amended to read:

"Section 250. Reservation of funds. The amount of ~~$7,447,018~~ *$12,210,205* must be reserved for countywide retirement and countywide transportation in fiscal year 2004, and the amount of ~~$4,812,299~~ *$12,303,002* must be reserved for countywide retirement and countywide transportation in fiscal year 2005."

Section 31. Section 257, Chapter 574, Laws of 2001, is amended to read:

"Section 257. Retroactive applicability. (1) [Section 253(2)] applies retroactively, within the meaning of 1-2-109, to July 1, 2000.

(2) [Section 143] applies retroactively, within the meaning of 1-2-109, to April 1, ~~2000~~ *2001*."

Section 32. Appropriation. There is appropriated $220,000 from the state general fund to the department of revenue for providing a reimbursement to the city of Bozeman for accrued gaming revenue.

Section 33. Lodging facility use tax — intent. The $1.7 million in lodging facility use tax allocated to the general fund in 15-65-121 is intended to be transferred to the general fund from money held in a reserve account in the department of commerce.

Section 34. Repealer. Sections 61-4-311 and 90-1-108, MCA, and section 4, Chapter 749, Laws of 1991, section 1, Chapter 217, Laws of 1993, and sections 2 and 3, Chapter 217, Laws of 1995, are repealed.

Section 35. Effective date. [This act] is effective on passage and approval.

Section 36. Retroactive applicability. (1) [Section 31] applies retroactively, within the meaning of 1-2-109, to April 1, 2001.

(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001.

(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002.

Ap proved Au gust 16, 2002

CHAPTER NO. 14

[HB 21]

AN ACT MAXIMIZING GENERAL FUND REVENUE BY ENHANCING COLLECTION OF STATE REIMBURSEMENT FOR INDIRECT COSTS ASSOCIATED WITH FEDERAL OR PRIVATE CONTRACTS AND GRANTS; REQUIRING FULL RECOVERY OF INDIRECT COSTS FROM FEDERAL AND PRIVATE GRANTS; PROVIDING THAT AN AGENCY MAY NOT WAIVE REIMBURSEMENT FOR INDIRECT COSTS; PROVIDING AN EXCEPTION FOR UNITS OF THE UNIVERSITY SYSTEM AND INTRAAGENCY OR INTERAGENCY GRANTS AND CONTRACTS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO PROVIDE ASSISTANCE TO AGENCIES; AMENDING SECTION 17-3-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-111, MCA, is amended to read:

"17-3-111. Indirect cost rates — allocation. (1) Grantee agencies shall, in accordance with federal regulations and guidelines *and with private grant rules, as appropriate*, negotiate indirect cost ~~rates and endeavor, to the fullest extent possible, to~~ *reimbursement amounts and methodologies and* recover indirect costs of federal assistance programs *and private assistance programs*.

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and receive written approval from its approving authority prior to accepting the funds.

(3) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intraagency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(4) The department shall provide technical assistance to an agency on how to build indirect costs into a grant.

~~(2)~~*(5)* Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the general fund. *All other indirect costs, except those costs recovered by a unit of the university system, must be deposited in the fund from which the indirect costs were originally paid.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 16, 2002

CHAPTER NO. 15

[SB 6]

AN ACT LIMITING THE TRANSFER AUTHORITY OF TANF FUNDS FOR THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT TO AN ALLOCATION OF $700,000; AMENDING SECTION 2, CHAPTER 502, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, Chapter 502, Laws of 2001, is amended to read:

"**Section 2. Fund ~~transfer~~ *allocation*.** The department of public health and human services shall ~~transfer $3,415,928~~ *allocate $700,000* of the TANF block grant received as federal special revenue to the affordable housing revolving loan account provided for in 90-6-133."

Section 2. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 20, 2002

CHAPTER NO. 16

[SB 19]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY TRANSFERRING $4 MILLION OF THE EXCESS FUNDS FROM CLAIMS OCCURRING BEFORE JULY 1, 1990, TO THE GENERAL FUND FOR FISCAL YEAR 2003 TO BE APPROPRIATED TO THE UNIVERSITY SYSTEM AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND TO BE TRANSFERRED TO THE STATE LIBRARY EQUIPMENT ACCOUNT AND TO THE SCHOOL FLEXIBILITY FUND; PROVIDING FOR A STUDY OF THE STRUCTURE OF THE STATE FUND TO BE FUNDED BY THE STATE FUND; AMENDING SECTION 39-71-2352, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit — authorizing transfer of money ~~between accounts~~ for payment of claims. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid;

(b) the cost of administering the claims; and

(c) an additional amount equal to 10% of the total of the amounts in subsections (4)(a) and (4)(b).

(5) ~~By October 1 of each year following the first full fiscal year after termination of the old fund liability tax, any~~ *Based on audited financial statements adjusted for unrealized gains and losses for the fiscal year ending June 30, 2002,* funds in excess of the adequate funding amount established in subsection (4) must be ~~returned to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990. The total amount of funds returned to the account under this section may not exceed $63.8 million~~ *transferred as follows:*

(a) Prior to June 30, 2003:

(i) the amount of $1.9 million must be transferred to the general fund to be transferred to the state library equipment account and appropriated to the university system and the department of public health and human services; and

(ii) the amount of $2.1 million must be transferred to the school flexibility fund, provided for in 20-9-543.

(b) In the fiscal year ending June 30, 2003, the remaining amount, and in subsequent fiscal years, an amount of funds in excess of the adequate funding amount established in subsection (4) must be transferred to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990. The total amount of funds transferred under this subsection may not exceed $63.8 million.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount ~~returned to the account in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990, must be transferred back to the account established in 39-71-2321~~ *necessary* to pay claims for injuries resulting from accidents that occurred before July 1, 1990, *must be transferred from the general fund to the account provided for in 39-71-2321.*

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries

resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."

Section 2. Study of state fund structure. (1) There is a committee to study the structure of the state fund. The members of the committee consists of:

(a) three members of the house of representatives appointed by the speaker of the house;

(b) three members of the senate appointed by the president of the senate;

(c) a representative of employee groups appointed by the governor;

(d) a representative of the office of the state auditor appointed by the state auditor;

(e) a representative of plan 1 insurers appointed by the governor; and

(f) a representative of plan 2 insurers appointed by the governor.

(2) The committee is attached to the state fund for funding and administrative purposes. The legislative members of the committee are entitled to a salary as provided in 5-2-302(3). The other members of the committee serve for no salary. All members of the committee are entitled to reimbursement for travel, meals, and lodging as provided in Title 2, chapter 18, part 5. The payment of members' claims for salary, travel, meals, and lodging are the responsibility of the state fund.

(3) The state fund shall present the recommendations of the committee to the 58th legislature.

Section 3. Effective date — retroactive applicability. [This act] is effective on passage and approval, and [section 1] applies retroactively, within the meaning of 1-2-109, to excess funds that have been transferred or are available to be transferred for the fiscal year ending June 30, 2002.

Ap proved Au gust 20, 2002

CHAPTER NO. 17

[SB 26]

AN ACT REDUCING THE SHORTFALL IN GENERAL FUND REVENUE BY TRANSFERRING PORTIONS OF THE BALANCE OF THE INTERIM UNIVERSAL ACCESS ACCOUNT TO THE GENERAL FUND AND TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; CLARIFYING THAT FUNDS MUST BE AVAILABLE FOR REIMBURSEMENT FROM THE INTERIM UNIVERSAL ACCESS ACCOUNT; AMENDING SECTIONS 69-3-859 AND 69-3-861, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-859, MCA, is amended to read:

"69-3-859. Interim universal access program — services provided at discounts — reimbursements. (1) Telecommunications carriers shall provide advanced services to eligible users at specified discounts. The amount of the discount must be reimbursed to the provider from *available funds in* the interim universal access account established in 69-3-861.

(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest access point for the requested service. However, the cost to the eligible user may not exceed $100 a month.

(3) If funds from the interim universal access account are not sufficient to fully reimburse for discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced proportionally.

(4) Even if best cost rates available to any business customer increase by more than 5%, the amount payable by an eligible user may not increase by more than 5% during the period from April 22, 1997, to January 1, 2000.

(5) Subject to restrictions in federal law, if interstate universal access services are established by the federal communications commission, federal funding for universal access services must be used to reduce state funding for intrastate services."

Section 2. Section 69-3-861, MCA, is amended to read:

"69-3-861. Interim universal access program — account. An interim universal access account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to the surcharge that was in effect during the fiscal year ending June 30, 1999, must be paid to the state treasurer for deposit in the account. After payment of refunds, the balance of the account ~~must be used for the purposes described in 69-3-859~~ *on [the effective date of this act] must be transferred as follows:*

(1) 90% to the state special revenue fund to the credit of the department of public health and human services for the use of the department in providing social services; and

(2) 10% to the general fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 20, 2002

CHAPTER NO. 18

[SB 27]

AN ACT REDUCING THE SHORTFALL IN GENERAL FUND REVENUE BY TRANSFERRING FUNDS FROM THE ACCOUNT FOR TELECOMMUNICATIONS SERVICES FOR PERSONS WITH DISABILITIES IN THE STATE SPECIAL REVENUE FUND TO THE GENERAL FUND; PROVIDING THAT THE TRANSFERRED FUNDS ARE TO BE USED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO BE CONSISTENT WITH THE PURPOSES OF THE EXISTING PROGRAM; AMENDING SECTIONS 53-19-306 AND 53-19-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-19-306, MCA, is amended to read:

"53-19-306. Program established — purpose. (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons with disabilities and to assist appropriate facilities in obtaining hearing screening equipment that determines if infants

have a hearing impairment. *The legislature may allocate funds to the Montana school for the deaf and blind to be used for the purposes established in subsection (2).*

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons with disabilities;

(b) provide a telecommunications relay service system to connect persons with disabilities with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101; and

(c) determine if infants are hearing-impaired as early as possible in order to reduce long-term costs in providing assistance."

Section 2. Section 53-19-310, MCA, is amended to read:

"53-19-310. Fund for telecommunications services for persons with disabilities. (1) There is an account for telecommunications services for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309;

(b) all charges billed and collected pursuant to 53-19-311; and

(c) all fees received pursuant to 53-19-307.

(2) ~~The~~ *Unless allocated to the Montana school for the deaf and blind, the* money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account."

Section 3. Fund transfer. There is transferred $56,995 from the account for telecommunications services for persons with disabilities in the state special revenue fund to the general fund to be used by the Montana school for the deaf and blind to be consistent with the purposes provided for in 53-19-310.

Section 4. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 20, 2002

CHAPTER NO. 19

[SB 30]

AN ACT REDUCING THE SHORTFALL IN GENERAL FUND REVENUE BY REQUIRING THE SEMIANNUAL PAYMENT OF METALLIFEROUS MINES LICENSE TAXES BASED UPON CURRENT YEAR PRODUCTION; AMENDING SECTIONS 15-37-102, 15-37-103, 15-37-104, 15-37-105, 15-37-106, 15-37-108, AND 15-37-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-37-102, MCA, is amended to read:

"15-37-102. Gross value of metal mine yield — computation — *definitions.* *As used in this part, the following definitions apply:*

(1) ~~The "annual reporting date", as used in this part, means the last day of the calendar year. The "annual gross~~ *"Gross* value of product"~~, as used in this part,~~ means the receipts received, as defined in 15-23-801, from all merchantable metals or concentrate containing metals or precious and semiprecious gems and stones extracted or produced ~~each calendar year~~ *each reporting period* from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from the mine or mining property or from tailings resulting from the smelting, reduction, or treatment of the ores*; and*

(2) "reporting period" means:

(a) for periods beginning prior to January 1, 2003, the calendar year; and

(b) for periods beginning on or after January 1, 2003, the 6-month period ending June 30 or December 31, as applicable."

Section 2. Section 15-37-103, MCA, is amended to read:

"15-37-103. Rate of tax. (1) The ~~annual~~ license tax to be paid by a person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced ~~shall be~~ *is* an amount computed on the gross value of product ~~which may have been~~ derived by the person from mining business, work, or operation within this state during the ~~calendar year immediately~~ preceding *reporting period*.

(2) Concentrate shipped to a smelter, mill, or reduction work is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.81% of the increment

(3) Gold, silver, or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery is taxed at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	0%
more than $250,000	1.6% of the increment"

Section 3. Section 15-37-104, MCA, is amended to read:

"15-37-104. Mine operator's statement of gross value — reports and sampling. (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals~~,~~ *or* precious or semiprecious gems or stones are produced ~~must~~ *shall*, not later than ~~March 31 following the end of each calendar year~~ *the date for payment of the tax under 15-37-105*, when engaged in or carrying on any mining business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by the person during the ~~calendar year immediately preceding~~ *reporting period*. If good cause is shown, the department may grant a reasonable extension of the time for filing statements. The statement~~shall~~ *must*

be in the form prescribed by the department ~~of revenue~~ and ~~shall~~ *must* show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which the ore or concentrate has been shipped or sold during the period covered by the statement and other information as the department may require;

(e) the gross yield of the ores, concentrates, mineral products, or deposits in constituents of commercial value, such as the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of the ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the annual gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property."

Section 4. Section 15-37-105, MCA, is amended to read:

"15-37-105. Computation and payment of tax. (1) The tax due under this part is computed according to 15-37-103. ~~and~~ *For the reporting period defined in 15-37-102(2)(a), the tax* is due and payable on or before March 31 of each year. *For the reporting periods defined in 15-37-102(2)(b), the tax is due at the end of the reporting period, and for the reporting period ending June 30, the tax is payable by August 15, and for the reporting period ending December 31, the tax is payable by March 31.* ~~for~~ *The tax is imposed on* the products produced in the ~~preceding calendar year~~ *reporting period*.

(2) The tax due under this part becomes delinquent as of*:*

(a) midnight on March 31 ~~of the year immediately following the production year~~ *for the reporting period defined in 15-37-102(2)(a) or for each reporting period ending December 31 under 15-37-102(2)(b); and*

(b) midnight on August 15 for each reporting period ending June 30 under 15-37-102(2)(b).

(3) If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest as provided in 15-1-216.

~~(2)~~*(4)* If any person has sold or otherwise disposed of any of the mine's products at a price substantially below the true market price of the product at the time and place of sale or disposal, then the department shall compute the gross value of the portion of the mine's product sold or disposed of substantially below the market price. The gross value must be based upon the quotations of the price of the mine's product in New York City at the time the portion of the product was sold or otherwise disposed of as evidenced by some established

authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the ~~year~~ *reporting period* covered by the statement. If there is no quotation covering any particular product, then the department shall fix the value of the gross product or portion of the gross product that was sold or otherwise disposed of at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem to be equitable."

Section 5. Section 15-37-106, MCA, is amended to read:

"15-37-106. Procedure in case of failure to file statements. If ~~any~~ *a* person ~~shall fail, refuse, or neglect~~ *fails, refuses, or neglects* to make and file the required ~~annual~~ statement of gross yield for a ~~production year~~ *reporting period* on or before ~~March 31 of the year immediately following the production year~~ *the date the tax becomes delinquent under 15-37-105*, the department ~~of revenue~~ shall, immediately after the time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information ~~which~~ *that* the department may be able to obtain the total gross value of product of the person from the business during the ~~calendar year immediately preceding the year in~~ *reporting period for* which the license tax is to be paid. The department shall make and file a statement showing the amount of the gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by the person. ~~and~~ *The department* shall ~~immediately~~, *as soon as possible*, give notice to the person in the same manner as though the statement had been filed within time. The department shall proceed to collect the license tax, along with the same penalty and interest as provided for other delinquencies."

Section 6. Section 15-37-108, MCA, is amended to read:

"15-37-108. Delinquent taxes — penalty and interest. All license taxes assessed under the provisions of this part become delinquent if not paid on or before midnight of ~~March 31 of the year immediately following the production year~~ *the date established in 15-37-105(2)*. The department shall add to the amount of delinquent metalliferous mines tax penalty and interest as provided in 15-1-216. The department may waive a late payment penalty as provided in 15-1-206."

Section 7. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund created in 82-4-312, 8.5% of total collections each year;

(d) to the reclamation and development grants program state special revenue account, 7% of total collections each year; and

(e) ~~on or before June 1~~ *within 60 days of the date the tax is payable pursuant to 15-37-105*, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs,

under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 24% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502."

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to metalliferous mines license taxes for periods beginning on or after January 1, 2003.

Ap proved Au gust 20, 2002

CHAPTER NO. 20

[HB 9]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY REDUCING THE TRANSFER OF $500,000 FROM THE RESOURCE INDEMNITY TRUST FUND FOR WEED MANAGEMENT TO $300,000; TRANSFERRING $1 MILLION FROM THE RESOURCE INDEMNITY TRUST FUND TO THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; TRANSFERRING $1,000 FROM THE ORPHAN SHARE FUND TO THE GENERAL FUND AND TRANSFERRING AN ADDITIONAL $999,000 FROM THE ORPHAN SHARE FUND TO THE GENERAL FUND IF FUNDS ARE AVAILABLE; REVISING THE ALLOCATION OF RESOURCE INDEMNITY TRUST FUND INTEREST; AMENDING SECTIONS 15-38-202, 75-10-743, AND 80-7-823, MCA, SECTION 2, CHAPTER 108, LAWS OF 1997, SECTIONS 1 AND 2, CHAPTER 232, LAWS OF 2001, AND SECTION 5, CHAPTER 573, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer to reclamation and development grants account. There is transferred to the reclamation and development grants account, as provided in 90-2-1104, in the fiscal year ending June 30, 2003, $1 million from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds $100 million.

Section 2. Section 2, Chapter 108, Laws of 1997, is amended to read:

"Section 2. Approved grant projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation reclamation and development grants program report to the 55th legislature for the 1999 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Balco Disposal Facility, Plug and Abandonment and Site Restoration	$600,000
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF	
Reliance Refinery Soils and Sludge Cleanup #1	~~300,000~~ *115,548*
~~NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF~~	
~~Reliance Refinery Soils and Sludge Cleanup #2~~	~~282,300~~
ENVIRONMENTAL QUALITY - ABANDONED, DEPARTMENT OF	
Nancy Lee Mine Complex Reclamation	286,914
ENVIRONMENTAL QUALITY - ABANDONED, DEPARTMENT OF	
Nellie Grant Mine Reclamation Project	288,040
POWELL COUNTY	
Charter Oak Mine and Mill Reclamation	300,000
MILE HIGH CONSERVATION DISTRICT	
Highland Mill Reclamation	258,070
BUTTE-SILVER BOW LOCAL GOVERNMENT*	
Upper Clark Fork Basin: Superfund Technical Assistance	91,532
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1996 "A" Orphaned Well Plug and Abandonment and Site Restoration	164,222
CARBON COUNTY	
Dry Hydrant Demonstration Project	157,579

TOOLE COUNTY*

North Toole County Reclamation Project 40,000

MONTANA BOARD OF OIL AND GAS CONSERVATION*

1996 "B" Orphaned Well Plug and Abandonment and Site Restoration 0

The board of oil and gas conservation is authorized to expend remaining funds from grants to the board in this subsection (2) and remaining funds from grants previously awarded to the board to pay for the proper plugging of additional abandoned oil and gas wells. This may include funding the seven priority wells identified in the 1996 "B" orphaned well plug and abandonment project. In determining which wells to plug, abandoned wells that represent the greatest threat to the environment and public health and safety should be given priority over all others.

BUTTE-SILVER BOW LOCAL GOVERNMENT

Butte Mine Subsidence Reclamation 81,250

ROSEBUD CONSERVATION DISTRICT

Hydrologic & Geologic Feasibility — Coal Mine Pits as Water Impounds 150,000

DEER LODGE VALLEY CONSERVATION DISTRICT

Development of Acid- and Heavy Metal-Tolerant Cultivars 100,000

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1999 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality."

Section 3. Section 1, Chapter 232, Laws of 2001, is amended to read:

"Section 1. Appropriations for reclamation and development grants. (1) The amount of ~~$4,100,000~~ *$3,800,000* is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4]."

Section 4. Section 2, Chapter 232, Laws of 2001, is amended to read:

"Section 2. Approved grant projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities

and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 57th legislature for the 2003 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
BOARD OF OIL AND GAS CONSERVATION*	$300,000
2001 Eastern District Orphaned Well Plug & Abandonment & Site Restoration	
BOARD OF OIL AND GAS CONSERVATION*	300,000
2001 Northern District Orphaned Well Plug & Abandonment & Site Restoration	
DEPARTMENT OF ENVIRONMENTAL QUALITY	300,000
Development of Trust Fund to Ensure Long-Term Water Treatment at Zortman-Landusky	
POWELL COUNTY*	300,000
Ontario Wet Tailings Reclamation	
CITY OF LEWISTOWN*	297,740
Reclamation of Brewery Flats on Big Spring Creek	
DEPARTMENT OF ENVIRONMENTAL QUALITY*	291,191
CMC Pony Mill Site Reclamation Project (completion phase)	
BROADWATER CONSERVATION DISTRICT*	145,380
Big Belt Mine Reclamation Projects	
CITY OF DEER LODGE*	140,000
Former Chicago Milwaukee Railroad Passenger Fueling Area, Deer Lodge, Montana	
BUTTE-SILVER BOW COUNTY	49,272
Upper Clark Fork Basin; Superfund Technical Assistance	
BOARD OF OIL AND GAS CONSERVATION	250,000
2001 Southern District Orphaned Well Plug & Abandonment & Site Restoration	
CUSTER COUNTY CONSERVATION DISTRICT*	299,977
Yellowstone River Resource Conservation Project	
CASCADE COUNTY / WEED AND MOSQUITO MANAGEMENT	218,466
Fort Shaw Weed Shop Soil Contamination Remediation	
DEPARTMENT OF ENVIRONMENTAL QUALITY*	300,000
Organic Soil Amendments	
DEPARTMENT OF ENVIRONMENTAL QUALITY*	300,000
Zortman Mine - Ruby Gulch Tailings Removal	

The state grant is subject to receipt of federal funds to complete tailings removal and stream channel restoration above, within, and below the Zortman townsite.

DEPARTMENT OF ENVIRONMENTAL QUALITY	250,000
Coal Bed Methane Gas EIS	
GLACIER COUNTY*	150,000
2000 Glacier County Plugging & Abandonment	
PONDERA COUNTY*	100,000
Pondera County Oil & Gas Well Plug & Abandonment Project	
LIBERTY COUNTY*	50,000
Abandonment Aid Program for Small Independent Operators in Liberty, Hill, Blaine, & Chouteau Counties	
~~DEPARTMENT OF ENVIRONMENTAL QUALITY*~~	~~300,000~~
~~Gregory Mine Reclamation Project~~	
SHERIDAN COUNTY CONSERVATION DISTRICT	299,950
Protecting Natural Resources by Reclaiming Oilfield Brine Contaminated Soils	
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	272,500
DNRC Environmental Hazard Sites on State Land	
FLATHEAD COUNTY	167,821
Assessment of Aggregate Resources for Long-Term Planning in Flathead & Missoula Counties	

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2003 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality."

Section 5. Section 5, Chapter 573, Laws of 2001, is amended to read:

"Section 5. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Fishing Access Site Maintenance, Statewide	$ 275,000	State Special Revenue
Fishing Access Site Protection, Statewide	600,000	State Special Revenue
	100,000	Federal Special Revenue
Hatchery Maintenance, Statewide	575,000	State Special Revenue
Future Fisheries	~~2,010,000~~	State Special Revenue
	1,860,000	
Valier Boat Ramp	150,000	Federal Special Revenue
Wildlife Habitat Maintenance	750,000	State Special Revenue
Waterfowl Stamp Program	342,950	State Special Revenue

If Senate Bill No. 238 is not passed and approved, the amount listed in state special revenue for this item is reduced by $112,950.

Upland Game Bird Program	1,200,000	State Special Revenue

Cultural and Historic Parks	1,060,000	State Special Revenue
	150,000	Federal Special Revenue
Motorboat Recreation	1,039,650	State Special Revenue

If House Bill No. 132 is not passed and approved, the amount listed in state special revenue for this item is reduced by $285,000.

	505,000	Federal Special Revenue
Federal WB	745,000	Federal Special Revenue
State Park Roads	400,000	State Special Revenue
Capitol Complex Grounds Improvements	150,000	Capitol Land Grant Revenue
Federal Trails Grants	1,900,000	Federal Special Revenue
OHV Trails Grants	425,000	State Special Revenue
LWCF Grants	2,250,000	Federal Special Revenue

(2) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Federal Spending Authority	$1,500,000	Federal Special Revenue

(3) The following money is appropriated to the university of Montana in the indicated amounts for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
Grant Projects, All Campuses	$1,500,000	Federal, Donations, Grants
ADA Code/Deferred Maintenance, All Campuses	1,000,000	Federal, Donations, Grants

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Maintenance, Repair, and Small Projects, Statewide	$2,300,000	Highways State Special Revenue"

Section 6. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. Thereafter, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities

related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) *for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $1.2 million and for fiscal years beginning on or after July 1, 2005,* $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905; and

(v) *for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, $350,000 and for fiscal years beginning on or after July 1, 2005,* $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) ~~Thirty percent~~ *For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 25.5% and for fiscal years beginning on or after July 1, 2005, 30%* of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) ~~Twenty-six percent~~ *For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 22% and for fiscal years beginning on or after July 1, 2005, 26%* of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) ~~Thirty-five percent~~ *For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 45% and for fiscal years beginning on or after July 1, 2005, 35%* of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) ~~Nine percent~~ *For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 7.5% and for fiscal years beginning on or after July 1, 2005, 9%* of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates July 1, 2009—sec. 9, Ch. 529, L. 1999.)

15-38-202. (Effective July 1, 2009) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. Thereafter, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.

(ii) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates June 30, 2014—sec. 5, Ch. 497, L. 1999.)

15-38-202. (Effective July 1, 2014) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. Thereafter, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(ii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and

(iii) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 7. Section 75-10-743, MCA, is amended to read:

"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

(b) all penalties assessed pursuant to 75-10-750(12);

(c) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(d) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(e) unencumbered funds remaining in the abandoned mines state special revenue account;

(f) interest income on the account;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be

made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

75-10-743. (Temporary — effective July 1, 2002) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed

pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) unencumbered funds remaining in the abandoned mines state special revenue account;

(e) interest income on the account;

(f) funds received from settlements pursuant to 75-10-719(7); and

(g) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) *(a) On [the effective date of this act], $1,000 is transferred from the orphan share fund to the general fund. If sufficient money remains in the orphan share fund on June 29, 2003, $999,000 must be transferred to the general fund.*

(b) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be deposited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)"

Section 8. Section 80-7-823, MCA, is amended to read:

"80-7-823. Transfer of funds. ~~(1)~~*(1)* There is transferred $100,000 annually from the highway nonrestricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in 80-7-705.

~~(2) There is a one-time transfer in fiscal year 2003 of up to $500,000 from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds $100 million for the purposes provided in 80-7-705.~~

(2) There is a one-time transfer in fiscal year 2003 of up to $300,000 from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds $100 million for the purposes provided in 80-7-705."

Section 9. Effective date. [This act] is effective on passage and approval.

Ap proved Au gust 21, 2002

CHAPTER NO. 21

[SB 1]

AN ACT REDUCING THE GENERAL FUND SHORTFALL IN REVENUE BY REVISING THE LAWS RELATING TO THE DISTRIBUTION OF MONEY FROM ALCOHOL TAXES FOR PURPOSES OF FUNDING TREATMENT FOR ALCOHOLISM, CHEMICAL DEPENDENCY, AND RELATED ILLNESSES; REVISING RESTRICTIONS ON ADMINISTRATION OF PROCEEDS DERIVED FROM ALCOHOL TAXES; AMENDING SECTION 53-24-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-108, MCA, is amended to read:

"53-24-108. Use of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 and allocated to the department to be used *as matching funds for the Montana medicaid program and to be used* in state-approved private or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, which for the purposes of this section includes chemical dependency, may be distributed in any of the following ways:

(a) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services;

(b) as grants to state-approved private or public alcoholism programs; or

(c) as matching funds for the Montana medicaid program administered by the department that are used for *the treatment of* alcoholism ~~and~~, chemical dependency ~~programs~~*, and related illnesses*.

(2) *(a)* ~~After providing funding pursuant to 53-24-206(3)(b) of at least $1 million a year, services~~ *Services* provided by funding under this chapter may include treatment and rehabilitation for persons with co-occurring mental illness and chemical dependency~~, but the total amount expended may not exceed $1.3 million in each biennium~~.

(b) The department shall distribute at least $1 million to state-approved chemical dependency programs during fiscal year 2003. During fiscal year 2003, the department may use other sources of funding to meet its obligations under this subsection (2)(b). At least $730,000 of funds distributed under this subsection (2)(b) must be derived from revenue generated by 16-1-404, 16-1-406, and 16-1-411 and must be distributed to counties, as provided in 53-24-206(3)(b), for the private or public programs approved pursuant to 53-24-208. The remaining balance may consist of a combination of funds generated by taxation on alcoholic beverages and other funds available to the department.

(3) A person operating a state-approved alcoholism program may not be required to provide matching funds as a condition of receiving a grant under subsection (1).

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) A person receiving funding under this section to support operation of a state-approved alcoholism program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess must be reported to the grantor.

(c) The excess must be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the department must be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the following year as provided in 53-24-206(3)(b). ~~(Subsection (2) terminates July 1, 2003—sec. 6, Ch. 470, L. 2001.)~~ *(Subsection (2) terminates July 1, 2003—sec. 6, Ch. 470, L. 2001.)*"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Termination. [This act] terminates July 1, 2003.

Ap proved Au gust 21, 2002

CHAPTER NO. 22

[SB 17]

AN ACT REVISING SEX OFFENDER LAWS TO CONFORM TO FEDERAL LAW; REVISING THE DEFINITIONS OF "SEXUAL OFFENSE" AND "VIOLENT OFFENSE"; REVISING THE CONDITIONS FOR REGISTRATION BASED UPON DURATION OF TIME IN A COUNTY; PROVIDING THAT AN OFFENDER CONVICTED OF SEXUAL INTERCOURSE WITHOUT CONSENT AGAINST A VICTIM UNDER 12 YEARS OF AGE IS SUBJECT TO MANDATORY LIFETIME REGISTRATION; REMOVING SEXUALLY VIOLENT PREDATORS FROM THE CATEGORY OF OFFENDERS WHO MAY RECEIVE A RISK LEVEL CLASSIFICATION REDUCTION; AMENDING SECTIONS 46-12-204, 46-18-202, 46-18-256, 46-23-502, 46-23-504, 46-23-506, AND 46-23-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-12-204, MCA, is amended to read:

"46-12-204. Plea alternatives. (1) A defendant may plead guilty, not guilty, or, with the consent of the court and the prosecutor, nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) The court may not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse determination of any specified

pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

(4) The court may not accept a plea of nolo contendere in a case involving a sexual offense, as defined in 46-23-502, *except an offense under 45-5-301 through 45-5-303*."

Section 2. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) An offender convicted of a sexual offense, as defined in 46-23-502, *except an offense under 45-5-301 through 45-5-303*, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program."

Section 3. Section 46-18-256, MCA, is amended to read:

"46-18-256. Sexually transmitted disease testing — test procedure. (1) Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, *except an offense under 45-5-301 through 45-5-303*, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines established by the centers for disease control, U.S. department of health and human services, to detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-1502, finding a youth to be a delinquent youth or a youth in need of intervention.

(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

Section 4. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of *45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303,* 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age and the offender is 3 or more years older than the victim), *45-5-603(1)(b),* or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a).

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense),

45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, ~~45-5-301 (if the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303,~~ 45-5-401, ~~45-5-603(1)(b),~~ or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 5. Section 46-23-504, MCA, is amended to read:

"46-23-504. Persons required to register — procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more ~~if the offender was sentenced in another state~~ *or for an aggregate period exceeding 30 days in a calendar year*.

(2) Registration under subsection (1)(a) must be with the probation office having supervision over the offender. Registration under subsection (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever person an offender registers with under subsection (1)(c) shall notify the other person of the registration.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the offender's fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice.

(4) The department of justice shall mail a registration verification form each 90 days to an offender designated as a level 3 offender under 46-23-509 and each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509. The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

Section 6. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life,

except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing; or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3).

(3) Except as provided in subsection (5), at any time after 10 years of registration, the offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) *a violation of* 45-5-503 if*:*

(i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; *or*

(ii) at the time the offense occurred, the victim was under 12 years of age;

(b) *a violation of* 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Section 7. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations — rulemaking authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender

evaluators of the risk of a repeat offense and the threat that an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 ~~or level 3~~ offender may petition the sentencing court to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part, the department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement."

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to convictions on or after [the effective date of this act].

Ap proved Au gust 21, 2002

CHAPTER NO. 23

[HB 2]

AN ACT AMENDING THE GENERAL APPROPRIATIONS ACT OF 2001; AMENDING CHAPTER 572, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Chapter 572, Laws of 2001, is amended to read:

"**Section 1. Short title.** [This act] may be cited as "The General Appropriations Act of 2001".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying

~~this bill~~ *Chapter 572, Laws of 2001,* showing first level expenditures and *changes in [this act] to* funding for the 2003 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated as "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2005 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide budgeting and accounting system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide budgeting and accounting system, and is identified as a major subdivision of an agency ordinally numbered with an arabic numeral.

Section 6. Personal services funding — 2005 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2005 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2005 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Personal services line item. Funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may not be expended under any other category except for contract services (expenditure account 62102) or for the early return to work program. Any transfer of funds from personal services to contract services is to be used to directly substitute for use of personal services. Any transfer for either contract services or for the early return to work program must be reported in writing to the legislative finance committee. The provisions of this section do not apply to the Montana university system *or to the disability services division in the department of public health and human services for the purposes of adjusting the disabled population between institution and residential settings*.

Section 8. Vacancy savings analysis. The legislature is concerned about the use of the concept of vacancy savings in establishing funding for personal services. It is the intent of the legislature that an analysis of vacancy savings be completed prior to the 2003 legislative session to include the consideration of alternative options for funding of personal services at an appropriate level. The legislative finance committee is requested to include this analysis as part of the House Bill No. 613 personal services study if House Bill No. 613 is passed and approved or to include the analysis in the committee work plan for the

legislative fiscal division. The legislative finance committee is encouraged to work cooperatively with the governor's budget director in completing this analysis.

Section 9. FTE reduction. The number of FTE has been reduced for all positions in the executive branch (excluding the university system) that have been identified by the legislature as vacant for over 7 months and that are not seasonal, already filled, or newly classified . The reduction is inclusive in the number of FTE shown in the agency and program tables in the legislative fiscal analyst narrative accompanying this bill. The eliminated positions are not to be funded in the present law base budget submitted by the governor for the 2005 biennium. The Legislative Fiscal Division Fiscal Report shall include a table listing the position numbers of the FTE that are eliminated. The number of FTE eliminated by agency is as follows:

Department of Transportation	49.27
Department of Revenue	2.03
Department of Administration	4.84
Department of Public Health and Human Services	9.26
Department of Fish, Wildlife, and Parks	5.02
Department of Environmental Quality	7.75
Department of Livestock	1.00
Department of Natural Resources and Conservation	9.27
Department of Agriculture	1.00
Department of Commerce	2.00
Department of Justice	4.00
Department of Public Service Regulation	0.50
Department of Corrections	0.65
Department of Labor and Industry	7.25
Office of Public Instruction	1.00

Section 10. Goals, benchmarks, and objectives. Each department, the Montana university system, and, when appropriate, each division of each department shall place their respective specific and measurable goals, benchmarks, and objectives for each year of the 2003 biennium on their respective internet websites or, when appropriate, on the state's internet website. On July 1, 2001, and again on July 1, 2002, each department and the Montana university system shall report progress on the appropriate website in meeting the goals, benchmarks, and objectives and what changes, if any, were made to ensure that those goals, benchmarks, and objectives are attained. *On October 1, 2002, each department and the Montana university system shall report to the legislative finance committee and on their respective websites their revised goals, benchmarks, and objectives to reflect specific actions taken and changes made to implement the reductions in expenditures ordered by the governor under the authority of 17-7-140 on June 28, 2002, and all budget reduction actions taken by the legislature in the August 2002 Special Session. Revised performance measures must:*

(1) include a specific list of what programs, services, or procedures are being revised, reduced, or eliminated from current levels of operation because of budget reductions and the reasons for the change;

(2) clearly state which programs or services are the highest priority and should be maintained and why they are the highest priority;

(3) clearly state which programs or services are the least critical and why they are a lower priority;

(4) clearly state the criteria used to prioritize programs in view of budget reductions; and

(5) clearly state the specific management actions taken to implement these budget reductions and program or service revisions.

Section 11. Report from governor's office on energy management efforts. The governor's office, in cooperation with the commissioner of higher education, shall provide a report to the 58th legislature that details the efforts of state agencies to address energy costs. The report must include but is not limited to energy management activities of the department of environmental quality, the department of administration, and the Montana university system. The report should enumerate data, activities, and recommendations in the following areas:

(1) projected savings and other benefits from the state building energy conservation program, including building commissioning projects;

(2) potential changes to the conservation program that would encourage agency participation;

(3) other energy conservation efforts of state agencies;

(4) changes needed to encourage state agencies to conserve energy that do not require expending money on energy conservation projects;

(5) other energy conservation options and funding proposals;

(6) progress on the utility bill monitoring pilot project and potential benefits coming from the project;

(7) state government efforts to more efficiently purchase natural gas and electricity, including any plans to include more state facilities under the natural gas term contract and efforts to aggregate state agency electricity demand; and

(8) other recommendations to the legislature that would improve state government energy management efforts.

Section 12. Accruals analysis — 2005 biennium. The legislative fiscal division shall include an analysis of accruals for budget base year fiscal year 2002 and shall include a summary table and narrative in the Legislative Fiscal Division 2005 Biennium Budget Analysis that provides a listing by agency of total accruals and the amount that is recommended to be removed from the base budget.

Section 13. Energy costs reserve. A total of $3.2 million must be set aside in the general fund for contingencies related to cost increases in electricity and natural gas expenditures by state government significantly above the amounts appropriated for this purpose in [this act] or to support litigation to secure affordable electricity or natural gas. The amount is classified as unreserved, designated general fund balance.

Section 14. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 15. Effective date. [This act] is effective July 1, 2001.

Section 16. Appropriations. The following money is appropriated for the respective fiscal years:

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND TRANSPORTATION											
LEGISLATIVE BRANCH (1104)											
1. Legislative Services (20)											
4,255,755	905,353	0	0	0	5,161,108	4,558,287	430,738	0	0	0	4,989,025
2. Legislative Committees and Activities (21) (Biennial)											
673,484	77,285	0	0	0	750,769	0	0	0	0	0	0
a. Health Care Access (Biennial/OTO)											
29,403	0	0	0	0	29,403	0	0	0	0	0	0
b. Northwest River Governance (Biennial/OTO)											
10,000	0	0	0	0	10,000	0	0	0	0	0	0
3. Fiscal Analysis and Review (27)											
1,041,785	0	0	0	0	1,041,785	1,086,461	0	0	0	0	1,086,461
a. Legislative Finance Committee Interim Studies (Restricted/Biennial)											
19,000	0	0	0	0	19,000	0	0	0	0	0	0
4. Audit and Examination (28)											
1,788,171	1,386,879	0	0	0	3,175,050	~~1,824,681~~ *1,670,096*	1,321,923	0	0	0	~~3,149,603~~ *2,992,017*
Total											
7,817,598	2,369,517	0	0	0	10,187,115	~~7,473,429~~ *7,314,845*	1,752,660	0	0	0	~~9,226,089~~ *9,067,505*

Item 4 includes a reduction in fiscal year 2003 of $16,197 in general fund money and represents the equivalent of 2% of office supplies expenditures funded with general fund money in fiscal year 2002. The agency may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 4 includes a reduction of $66,667 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4 includes a reduction of $74,722 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the legislative branch. The legislative branch may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
CONSUMER COUNSEL (1112)											
1. Administration Program (01)											
0	1,006,011	0	0	0	1,006,011	0	1,008,068	0	0	0	1,008,068
a. Caseload Contingency Fund (Restricted)											
0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
Total											
0	1,206,011	0	0	0	1,206,011	0	1,208,068	0	0	0	1,208,068
JUDICIARY (2110)											
1. Supreme Court Operations (01)											
2,955,903	1,150,000	363,725	0	0	4,469,628	~~3,973,254~~ *3,864,709*	1,075,000	363,725	0	0	~~4,411,979~~ *4,303,434*
a. Legislative Audit (Restricted/Biennial)											
26,757	0	0	0	0	26,757	0	0	0	0	0	0
b. Court-Appointed Special Advocate Program (Biennial)											
82,182	0	100,000	0	0	182,182	82,182	0	0	0	0	82,182
2. Boards and Commissions (02)											
244,559	0	0	0	0	244,559	274,901	0	0	0	0	274,901
3. Law Library (03)											
773,001	0	0	0	0	773,001	716,471	0	0	0	0	716,471
4. District Court Operations (04)											
4,853,964	0	0	0	0	4,853,964	4,877,311	0	0	0	0	4,877,311
a. SB 282 — Asbestos Court											
190,157	0	0	0	0	190,157	186,157	0	0	0	0	186,157
b. District Court Judges for Ravalli and Cascade Counties											
0	0	0	0	0	0	~~129,000~~ *273,259*	0	0	0	0	~~129,000~~ *273,259*

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. *Startup Costs for New Judgeships (OTO)*											
0	*0*	*0*	*0*	*0*	*0*	*7,895*	*0*	*0*	*0*	*0*	*7,895*
e *d.* State Assumption of District Courts (Restricted/Biennial)											
800,500	0	0	0	0	800,500	0	0	0	0	0	0
5. Water Courts Supervision (05)											
0	669,691	0	0	0	669,691	0	618,959	0	0	0	618,959
6. Clerk of Court (06)											
288,479	0	0	0	0	288,479	337,855	0	0	0	0	337,855
a. Equipment (OTO)											
3,500	0	0	0	0	3,500	0	0	0	0	0	0
Total											
10,218,003	1,819,691	463,735	0	0	12,501,429	~~9,637,181~~ *9,630,725*	1,753,959	353,735	0	0	~~11,754,815~~ *11,738,407*

Item 1 includes a reduction in fiscal year 2003 of $12,178 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The agency may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $96,367 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the judiciary. The judiciary may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4a contains general fund money for an asbestos court. If federal funds are received for the purpose of funding a court to manage asbestos cases, the general fund appropriation in item 4a is reduced by a like amount.

Item 4b is contingent upon passage and approval of House Bill No. 214.

Item 4c *4d* is contingent upon passage and approval of House Bill No. 124.

MONTANA CHIROPRACTIC LEGAL PANEL (2115)

1. Legal Panel Operations (01)											
0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
0	15.000	0	0	0	15.000	0	15.000	0	0	0	15.000
GOVERNOR'S OFFICE (3101)											
1. Executive Office Program (01)											
1234.434	286.634	29.605	0	0	1,550.673	~~1,237.063~~ *1,174.551*	267.333	30.104	0	0	~~1,554.500~~ *1,491.761*
a. Legislative Audit (Restricted/Biennial)											
24.325	0	0	0	0	24.325	0	0	0	0	0	0
b. Extradition and Transportation of Prisoners											
177.734	0	0	0	0	177.734	178.936	0	0	0	0	178.936
c. Consensus Council Matching Funds for Grants (Biennial/OTO)											
75.000	0	0	0	0	75.000	~~75.000~~ *57.600*	0	0	0	0	~~75.000~~ *57.600*
d. Flathead Basin Commission — Flathead Valley Ground Water Quality Assessment (OTO)											
0	0	99.992	0	0	99.992	0	0	0	0	0	0
e. Office of Economic Development											
850.000	0	0	0	0	850.000	850.000	0	0	0	0	850.000
2. Mansion Maintenance Program (02)											
78.862	0	0	0	0	78.862	79.036	0	0	0	0	79.036
3. Air Transportation Program (03)											
175.409	16.000	0	0	0	191.409	176.700	16.000	0	0	0	192.700
4. Office of Budget and Program Planning (04)											
1,087.033	0	0	0	0	1,087.033	1,081.052	0	0	0	0	1,081.052
a. Legislative Audit (Restricted/Biennial)											
23.865	0	0	0	0	23.865	0	0	0	0	0	0
b. Video Projector and Computer (OTO)											

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
5.600	0	0	0	0	5.600	0	0	0	0	0	0
c. Energy Cost Contingency Account (Restricted/Biennial/OTO)											
0	868.151	387.633	0	0	1,255.784	0	0	0	0	0	0
5. Indian Affairs (05)											
112,204	0	0	0	0	112,204	112,583	0	0	0	0	112,583
a. Carryover Funds (Restricted)											
0	150,000	2,000,000	0	0	2,150,000	0	0	0	0	0	0
6. Lieutenant Governor (12)											
223,314	0	0	0	0	223,314	224,893	0	0	0	0	224,893
7. Citizens' Advocate Office (16)											
65,214	0	15,000	0	0	80,214	65,483	0	15,000	0	0	80,483
8. Mental Disabilities Board of Visitors (20)											
200,569	7,300	0	0	0	207,779	197,573	7,300	0	0	0	204,773
Total											
4,332,643	1,328,885	2,532,130	0	0	8,193,358	~~4,273,317~~ *4,178,038*	310,533	45,104	0	0	~~4,633,954~~ *4,533,722*

General fund money up to $51,000 for the 2003 biennium in item 1b not used for the extradition and transportation of prisoners may be used to purchase vans for county sheriffs and peace officers to transport prisoners.

The legislature recognizes that the cost for extradition and transportation of prisoners is dependent upon factors beyond the control of the agency and may exceed the appropriation provided. In that event, the agency will need to request a supplemental appropriation from the 2003 legislature to provide required extradition and transportation of prisoners.

Item 1 includes a reduction in fiscal year 2003 of $19,956 in general fund money and represents the equivalent of 2.6% of office supplies expenditures funded with general fund money in fiscal year 2002. The governor's office may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $42,777 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the governor's office. The governor's office may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 1b and the accompanying language are contingent upon passage and approval of Senate Bill No. 328.											
If Senate Bill No. 445 is not passed and approved, the appropriation in item 1e is void and the appropriation in item 4c is increased by $1,700,000 in general fund money in fiscal year 2002.											
Item 4c is a contingency biennial account to be managed by the office of budget and program planning to respond to contingencies related to cost increases in electricity and natural gas expenditures by state government significantly above the amounts appropriated in [this act]. Requests for use of this account must be analyzed by the office of budget and program planning and approved by the governor. Distribution of this money to state agencies must be proportional to the overall needs of state agencies relative to the total funds available. Approved expenditures must be reported to the legislative finance committee.											
Item 5a is contingent upon passage and approval of House Bill No. 21. Funds in item 5a for the 2003 biennium are limited to the unspent balance of the 2001 appropriation of up to $150,000 in state special revenue and $2 million in federal special revenue.											
COMMISSIONER OF POLITICAL PRACTICES (3202)											
1. Administration (01)											
345,738	0	0	0	0	345,738	~~345,987~~	0	0	0	0	~~345,987~~
						340,245					*340,245*
a. Legislative Audit (Restricted/Biennial)											
4,865	0	0	0	0	4,865	0	0	0	0	0	0
Total											
350,603	0	0	0	0	350,603	~~345,987~~	0	0	0	0	~~345,987~~
						340,245					*340,245*

Item 1 includes a reduction in general fund money of $571 in fiscal year 2002 and $571 in fiscal year 2003. This reduction is the equivalent of a 25% reduction in fiscal year 2000 base budget travel expenses.

Item 1 includes a reduction in fiscal year 2003 of $3,270 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002.

Item 1 includes a reduction of $3,469 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the office.

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
OFFICE OF THE STATE AUDITOR (3401)											
1. Central Management (01)											
0	$87,253	0	0	0	$87,253	0	$526,276	0	0	0	$526,276
a. Legislative Audit (Restricted/Biennial)											
0	4,358	0	0	0	4,358	0	0	0	0	0	0
2. Insurance Program (03)											
0	3,404,683	0	0	0	3,404,683	0	3,418,935	0	0	0	3,418,935
a. Legislative Audit (Restricted/Biennial)											
0	19,319	0	0	0	19,319	0	0	0	0	0	0
b. Contract Examinations (Restricted)											
0	107,234	0	0	0	107,234	0	82,234	0	0	0	82,234
c. SB 373 — Licensing Captive Insurers (Restricted)											
0	20,000	0	0	0	20,000	0	20,000	0	0	0	20,000
d. HB 542 — Surplus Lines Fees (Restricted)											
0	62,115	0	0	0	62,115	0	49,615	0	0	0	49,615
3. Securities (04)											
334,571	190,212	0	0	0	524,783	~~335,933~~ *370,609*	190,369	0	0	0	~~527,197~~ *560,978*
a. Legislative Audit (Restricted/Biennial)											
3,669	1,864	0	0	0	5,533	0	0	0	0	0	0
b. Contract Examinations (Restricted)											
0	12,000	0	0	0	12,000	0	12,000	0	0	0	12,000
Total											
338,240	3,338,528	0	0	0	3,677,188	~~335,933~~ *370,609*	3,268,329	0	0	0	~~3,605,262~~ *3,639,943*

Item 2c is contingent upon passage and approval of Senate Bill No. 373.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes a reduction of $9,149 in fiscal year 2002 and $9,181 in fiscal year 2003 of general fund money. The office may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 3 includes a reduction in general fund money of $2,890 in fiscal year 2002 and $2,890 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The office may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes a reduction in fiscal year 2003 of $1,153 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The office of the state auditor may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 3 includes a reduction of $3,369 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the office of the state auditor. The office of the state auditor may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 3 includes a reduction in fiscal year 2003 of $11,792 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01)												
	0	16,468,534	1,249,771	0	0	17,718,305	0	16,535,844	1,183,603	0	0	17,720,446
a. Legislative Audit (Restricted/Biennial)												
	0	109,461	0	0	0	109,461	0	0	0	0	0	0
b. General Operations One-Time Costs (OTO)												
	0	457,500	0	0	0	457,500	0	200,000	0	0	0	200,000
2. Construction Program (02) (Biennial)												
	0	71,531,203	296,588,388	0	0	368,119,591	0	74,292,575	305,871,704	0	0	380,164,279
a. Construction Program One-Time Costs (OTO)												
	0	53,000	120,000	0	0	173,000	0	0	0	0	0	0
3. Maintenance Program (03) (Biennial)												
	0	75,870,413	5,090,609	0	0	80,961,021	0	76,230,890	5,090,609	0	0	81,321,499
a. Maintenance Program One-Time Costs (OTO)												

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	167,100	0	0	0	167,700	0	0	0	0	0	0
4. Motor Carrier Services Division (22)											
0	4,971,167	0	0	0	4,971,167	0	4,994,990	0	0	0	4,994,990
a. Mobile Officer Vehicle Enforcement Computers (OTO)											
0	6,200	0	0	0	6,200	0	0	0	0	0	0
5. Aeronautics Program (40)											
0	753,611	112,500	0	0	866,111	0	767,054	86,500	0	0	853,554
a. Airport Development Grants (Biennial)											
0	750,000	0	0	0	750,000	0	0	0	0	0	0
b. Airport Pavement Preservation Grants (Biennial)											
0	350,000	0	0	0	350,000	0	0	0	0	0	0
c. Federal Airport Improvement Grants (Biennial)											
0	16,667	300,000	0	0	316,667	0	0	0	0	0	0
6. Transportation Planning Division (50)											
0	2,121,160	10,719,595	0	0	12,840,755	0	1,934,328	13,168,607	0	0	15,102,935
a. Software and Field Data Collection (Biennial OTO)											
0	60,000	240,000	0	0	300,000	0	0	0	0	0	0
b. Statewide Truck Activity Reporting System (OTO)											
0	173,212	573,068	0	0	746,280	0	115,323	381,544	0	0	496,867
c. Transportation of Seniors and Persons With Disabilities											
0	171,093	0	0	0	171,093	0	347,318	0	0	0	347,318
Total											
0	173,929,920	314,993,931	0	0	488,923,851	0	175,419,319	325,781,566	0	0	501,200,885

The department may adjust appropriations in the construction, maintenance, and transportation planning programs between state special and federal special revenue fund types if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program. All transfers between fund types must be fully explained and justified by budget documents submitted to the office of budget and program planning, and all fund transfers of more than $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

All federal special revenue appropriations in the department are biennial.

Item 2 includes a total of $63,690 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

All appropriations in the construction program are biennial.

All appropriations in the maintenance program are biennial.

Item 5 includes $4,000 of state special revenue in fiscal year 2002 and $4,000 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 430.

Item 5a includes $300,000 of state special revenue in fiscal year 2002 that is contingent upon passage and approval of Senate Bill No. 280.

All appropriations in the transportation planning program are biennial.

Item 6c is contingent upon passage and approval of Senate Bill No. 448.

DEPARTMENT OF REVENUE (5801)

1. Director's Office (01)

2,315,683	300	800	30,068	0	2,347,050	~~2,326,931~~ *2,085,026*	0	0	30,643	0	~~2,357,574~~ *2,115,669*

a. Legislative Audit (Restricted/Biennial)

131,353	0	0	0	0	131,353	0	0	0	0	0	0

~~b. SB 512 — Impose Electrical Energy Excess Revenue Tax (Restricted)~~

~~133,357~~	~~0~~	~~0~~	~~0~~	~~0~~	~~133,357~~	~~134,865~~	~~0~~	~~0~~	~~0~~	~~0~~	~~134,865~~

~~c. SB 512 — Legal and Litigation Expenses (Restricted Biennial)~~

~~150,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~150,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~

~~d. SB 512 — Personal Computers and Computer Equipment (Restricted OTO)~~

~~19,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~19,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~

2. Information Technology (02)

	Fiscal 2002					Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3,154,374	0	188,941	70,330	0	3,413,635	3,361,282	0	194,656	71,666	0	3,627,600
3. Resource Management (05)											
1,498,751	0	0	1,035,594	0	2,534,345	1,526,553	0	0	1,090,060	0	2,616,613
4. Customer Service and Information Practices (06)											
3,715,601	226,644	1,032,135	749,075	0	5,723,455	~~3,437,041~~	232,754	1,042,210	739,891	0	~~5,751,896~~
						3,919,599					*3,934,264*
a. Unclaimed Property Auditor (OTO)											
0	43,931	0	0	0	43,931	0	44,098	0	0	0	44,098
5. Compliance Valuation and Resolution (08)											
17,710,137	186,096	1,079,011	0	0	18,975,244	~~17,490,775~~	186,433	1,130,535	0	0	~~19,107,743~~
						18,461,899					*19,773,567*
a. Salary Upgrades for Auditors (Biennial)											
208,144	0	0	0	0	208,144	0	0	0	0	0	0
~~b. SB 512 — Impose Electrical Energy Excess Revenue Tax (Restricted)~~											
~~193,720~~	~~0~~	~~0~~	~~0~~	~~0~~	~~193,720~~	~~195,845~~	~~0~~	~~0~~	~~0~~	~~0~~	~~195,845~~
~~c. SB 512 — Personal Computers (Restricted OTO)~~											
~~6,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~6,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
Total											
~~28,236,619~~	459,171	2,300,087	1,935,051	0	~~32,931,634~~	~~27,963,282~~	463,285	2,367,397	1,931,260	0	~~32,726,224~~
27,754,447					*32,429,887*	*28,262,187*					*33,018,099*

Liquor division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profit and taxes to appropriate accounts are appropriated to the department in amounts not to exceed $64,200,950 in fiscal year 2002 and $67,857,880 in fiscal year 2003.

Item 1 includes a reduction of $2,200 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $276,423 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~Items 1b, 1c, 1d, 5b, and 5c are contingent upon passage and approval of Senate Bill No. 512.~~											
Items 1, 4, and 5 include increases totaling $813,784 in general fund money in fiscal year 2003 to fund 13.3 FTE compliance staff and to eliminate vacancy savings associated with 6 FTE existing compliance positions.											

Item 4 includes a reduction of $558,000 in general fund money in fiscal year 2002 and $558,000 in fiscal year 2003 and an increase in proprietary funds of $514,100 in fiscal year 2002 and $514,100 in fiscal year 2003. These reductions and increases are contingent upon passage and approval of House Bill No. 399.

Item 5 includes a reduction in general fund money of $15,066 in fiscal year 2002 and $15,066 in fiscal year 2003. This reduction is the equivalent of a 3% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 5 includes reductions of $54,934,392 of general fund money in fiscal year 2002 and of $54,934,392 of general fund money in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 6 includes a reduction in fiscal year 2003 of $40,685 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

The department shall provide status reports on the POINTS system to the revenue and taxation interim committee at each regularly scheduled committee meeting. The status reports must include work plan benchmark updates, progress on fixing mission-critical and nonmission-critical defects, and the status of implementing and operating all phases of the system.

DEPARTMENT OF ADMINISTRATION (6101)

1. Accounting and Management Support Program (03)

1,070,018	5,057	64,315	41,053	0	1,180,443	~~1,076,779~~ *1,018,263*	5,057	63,451	41,334	0	~~1,186,511~~ *1,126,990*

a. Legislative Audit (Restricted/Biennial)

53,571	0	0	0	0	53,571	0	0	0	0	0	0

b. Actuarial Study — Police Retirement Fund (Restricted/Biennial)

2,450	0	0	0	0	2,450	0	0	0	0	0	0

c. Accounting Bureau Contracted Services (Biennial/OTO)

100,000	0	0	0	0	100,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Special Purpose District Reports											
0	0	0	0	0	0	28,446	0	0	0	0	28,446
e. Local Government Services Division											
422,204	0	0	0	0	422,204	423,300	0	0	0	0	423,300
f. Consumer Affairs Division											
266,248	74,505	0	0	0	340,753	266,117	74,503	0	0	0	340,620
g. Telemarketing/Lemon Law Programs Fund Switch (Restricted/OTO)											
55,354	0	0	0	0	55,354	55,354	0	0	0	0	55,354
2. Architecture and Engineering Program (04)											
0	1,137,916	0	0	0	1,137,916	0	1,147,932	0	0	0	1,147,932
a. Legislative Audit (Restricted/Biennial)											
0	1,635	0	0	0	1,635	0	0	0	0	0	0
3. Procurement and Printing Division (06)											
515,947	0	0	0	0	515,947	518,826	0	0	0	0	518,826
4. Information Services Division (07)											
127,593	0	800,000	0	0	927,593	126,588	0	0	0	0	126,588
a. Legislative Audit (Restricted/Biennial)											
794	0	0	0	0	794	0	0	0	0	0	0
5. General Services Program (08)											
394,409	0	0	0	933,055	1,327,464	401,439	0	0	0	933,055	1,334,494
6. Banking and Financial Division (14)											
0	1,485,053	0	0	0	1,485,053	0	1,490,815	0	0	0	1,490,815
a. Legislative Audit (Restricted/Biennial)											
0	2,621	0	0	0	2,621	0	0	0	0	0	0
7. Montana State Lottery (15)											
0	0	0	8,574,656	0	8,574,656	0	0	0	~~8,904,330~~	0	~~8,904,330~~
									8,714,550		*8,714,550*
a. Legislative Audit (Restricted/Biennial)											

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	0	8,365	0	8,365	0	0	0	0	0	0
b. Online Terminals (OTO)											
0	0	0	345,000	0	345,000	0	0	0	0	0	0
8. State Personnel Division (23)											
1,092,389	26,600	0	0	0	1,118,989	1,095,102	27,400	0	0	0	1,122,502
9. State Tax Appeal Board (37)											
273,523	0	0	0	0	273,523	275,231	0	0	0	0	275,231
Total											
4,376,500	3,733,591	864,315	8,968,974	933,055	17,876,441	~~4,368,182~~ *4,209,661*	3,745,707	63,451	~~9,945,554~~ *9,786,884*	933,055	~~19,954,949~~ *19,706,428*

For the data network rate, all increases over a rate of $64.59 are one time only. The executive must use $64.59 as the base level and justify all increases requested for the 2005 biennium over this level.

Item 1 includes a reduction in fiscal year 2003 of $11,794 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction in general fund money of $4,122 in fiscal year 2002 and $4,122 in fiscal year 2003. This reduction is the equivalent of an 8% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 1 includes a reduction of $4,049 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $42,673 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Items 1e, 1f, 1g, 6, 6a, 7, 7a, and 7b and $1,519 of general fund money in fiscal year 2002 in item 1a are contingent upon passage and approval of Senate Bill No. 445.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department is appropriated in each of the fiscal years 2002 and 2003 up to $500,000 of state special revenue that is deposited in the account established for the purpose of processing charter applications and for the chartering, examination, and regulation of each foreign capital depository that obtains a charter under the provisions of 32-8-205.

The department is appropriated up to $56,354 in state special revenue authority in each year of the biennium for operations within the telemarketing and lemon law programs and shall seek and use state special revenue received from consumer affairs' settlements as authorized by a district court order to offset and minimize use of the general fund money within the telemarketing and lemon law programs, as provided in 17-2-108.

The department shall report to the 2003 legislature on the status and results related to the purchase and placement of additional online terminals funded in item 7b.

Item 8 includes a reduction of $21,490 in fiscal year 2002 and $21,564 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

APPELLATE DEFENDER COMMISSION (6102)

1. Appellate Defender (01)											
0	177,534	0	0	0	177,534	~~178,901~~ *176,878*	0	0	0	0	~~178,901~~ *176,878*
Total											
0	177,534	0	0	0	177,534	~~178,901~~ *176,878*	0	0	0	0	~~178,901~~ *176,878*

Item 1 includes an increase of $178,901 of general fund money in fiscal year 2003 and a reduction of $178,901 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 1 includes a reduction in fiscal year 2003 of $537 in general fund money and represents the equivalent of 3% of office supplies expenditures funded with general fund money in fiscal year 2002.

Item 1 includes a reduction of $1,789 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the commission.

TOTAL SECTION A

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
$66,167,045	187,357,954	$11,158,968	10,904,031	9,330,655	$474,857,076	$64,477,901	186,935,860	$38,630,343	10,944,814	9,330,655	$312,660,573

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				B. HEALTH AND HUMAN SERVICES								
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)												
1. Public Assistance (02)												
21,740,389	1,121	135,599,150	0	0	157,340,536	22,040,643	1,139	138,605,780	0	0	160,647,422
a. FAIM II R — Parents as Scholars (Biennial)												
0	0	1,331,183	0	0	1,331,183	0	0	0	0	0	0
b. FAIM II R — Tribal Projects (Restricted/Biennial)												
0	0	2,489,360	0	0	2,489,360	0	0	0	0	0	0
c. FAIM II R — Tribal NEW (Biennial)												
0	0	1,139,093	0	0	1,139,093	0	0	1,116,468	0	0	1,116,468
d. FAIM II R — Nontraditional Job Training (Biennial)												
0	0	841,394	0	0	841,394	0	0	0	0	0	0
e. FAIM II R —Nontraditional Job Training — Tribal (Restricted/Biennial)												
0	0	989,875	0	0	989,875	0	0	0	0	0	0
f. FAIM II R — Nontraditional Job Training — Nontribal (Biennial)												
0	0	494,937	0	0	494,937	0	0	0	0	0	0
g. FAIM II R — Assessment Services — Intensive Case Management (Biennial)												
0	0	1,092,974	0	0	1,092,974	0	0	1,071,367	0	0	1,071,367
h. FAIM II R — Chemical Dependency Home (Biennial)												
0	0	629,550	0	0	629,550	0	0	0	0	0	0
i. FAIM II R — Learning Disability Services OPI/Tribal Colleges (Biennial)												
0	0	593,924	0	0	593,924	0	0	0	0	0	0
j. FAIM II R — Mental Health Services (Biennial)												
0	0	494,937	0	0	494,937	0	0	0	0	0	0
k. FAIM II R — Family Drug Court (Biennial)												
0	0	395,950	0	0	395,950	0	0	0	0	0	0
l. FAIM II R — Low-Income Housing (Biennial)												

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	~~3464.561~~	0	0	~~3464.561~~	0	0	0	0	0	0
		700.000			*700.000*						
m. FAIM II R — Transportation (Biennial)											
0	0	791.899	0	0	791.899	0	0	0	0	0	0
n. FAIM II R — Additional Month Grant for Working Families (Biennial)											
0	0	1328.979	0	0	1328.979	0	0	1304.670	0	0	1304.670
o. FAIM II R — Emergency Supportive Services for Working Families (Biennial)											
0	0	1036.610	0	0	1036.610	0	0	374.309	0	0	374.309
p. FAIM II R — School Breakfast Program (Biennial)											
0	0	178.178	0	0	178.178	0	0	0	0	0	0
q. FAIM II R — Individual Development Accounts (Biennial)											
0	0	138.742	0	0	138.742	0	0	136986	0	0	136986
r. FAIM II R — Children as Scholars (Head Start) (Biennial)											
0	0	1979.874	0	0	1979.874	0	0	0	0	0	0
s. FAIM II R — TEAMS Reprocurement Enhancements (Biennial)											
0	0	989.875	0	0	989.875	0	0	485.107	0	0	485.107
t. High-Wage, High-Skill Training (Restricted/Biennial)											
0	0	494.937	0	0	494.937	0	0	485.108	0	0	485.108
u. Adult Basic Education (Restricted)											
0	0	195.000	0	0	195.000	0	0	195.000	0	0	195.000
v. Children's Trust Fund (Biennial)											
0	0	250.000	0	0	250.000	0	0	250.000	0	0	250.000
w. *TANF Plus Performance Bonus (Restricted)*											
0	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*2276.700*	*0*	*0*	*2276.700*
2. Child and Family Services Division (03)											
20.339.215	1269.964	23954.861	0	0	45.564.060	21.641.204	1.335.670	24.109.035	0	0	46.965.910
a. Computer Hardware (OTO)											
49.800	0	33.200	0	0	83.000	123.504	0	82.335	0	0	205.840

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Community Collaboration Project and FTE (Biennial/OTO)											
25,000	0	3,025,000	0	0	3,050,000	25,000	0	25,000	0	0	50,000
c. Big Brothers Big Sisters (OTO)											
25,000	0	0	0	0	25,000	25,000	0	0	0	0	25,000
d. In-Home Services (Restricted)											
100,000	0	0	0	0	100,000	0	0	0	0	0	0
3. Director's Office (04)											
1,134,316	1,198,077	1,736,992	0	0	4,069,387	1,141,783	1,369,907	1,732,421	0	0	4,134,111
a. Deputy Director (Restricted)											
37,000	15,750	47,250	0	0	100,000	37,000	15,750	47,250	0	0	100,000
4. Child Support Enforcement Division (05)											
225,000	2,798,222	6,242,600	0	0	9,265,822	225,000	2,812,929	6,271,998	0	0	9,309,927
a. Voice Response Unit Enhancements (OTO)											
0	10,200	19,800	0	0	30,000	0	0	0	0	0	0
b. SEARCHS — Level of Effort Increase (Biennial/OTO)											
0	209,104	405,908	0	0	615,012	0	0	0	0	0	0
c. Financial Institutions Data Match (Restricted)											
0	51,000	99,000	0	0	150,000	0	51,000	99,000	0	0	150,000
d. Cost Study — Raising a Child in Montana (Restricted/OTO)											
0	8,621	113,793	0	0	122,414	0	0	0	0	0	0
5. Health Policy and Services Division (07)											
63,683,731	7,188,743	233,165,968	0	0	304,038,462	68,017,693	7,780,885	248,236,170	0	0	324,034,748
a. Assistance to Montanans Exposed to Asbestos (Restricted/OTO)											
18,500	0	0	0	0	18,500	18,500	0	0	0	0	18,500
b. Medicaid Provider Rate Increases (RBRVS)											
252,524	0	678,614	0	0	931,138	506,681	0	1,371,305	0	0	1,877,986
c. Cardiovascular Grant											
0	0	260,902	0	0	260,902	0	0	236,768	0	0	236,768

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Fiber Optic Rural TeleHealth Equipment (Restricted/Biennial/OTO)											
200,000	0	0	0	0	200,000	0	0	0	0	0	0
e. HIV/AIDS Treatment and Coverage (Restricted/Biennial)											
84,010	0	0	0	0	84,010	0	0	0	0	0	0
6. Quality Assurance Division (08)											
2,006,639	219,623	4,957,197	0	0	7,183,458	2,035,415	309,983	4,980,608	0	0	7,316,006
a. Contracted Licensure Services (OTO)											
68,737	0	0	0	0	68,737	68,863	0	0	0	0	68,863
7. Operations and Technology Division (09)											
11,430,755	1,530,353	15,881,434	0	0	28,842,431	~~11,302,569~~ *9,527,615*	3,111,463	16,339,740	0	0	~~29,643,772~~ *27,328,716*
a. Legislative Audit (Restricted/Biennial)											
154,465	37,600	151,200	0	0	343,265	0	0	0	0	0	0
8. Disability Services Division (10)											
43,100,436	97,354	53,417,647	0	0	96,615,427	~~43,314,055~~ *40,248,587*	~~97,354~~ *2,062,885*	53,733,089	0	0	96,033,499
a. Developmental Disabilities Program Federal Funds (Biennial)											
0	0	4,000,000	0	0	4,000,000	0	0	0	0	0	0
b. Movement From Institutions to Community Settings (OTO)											
1,400,277	0	0	0	0	1,400,277	1,400,224	0	0	0	0	1,400,224
c. Direct Care Worker Wage Parity (Restricted)											
1,551,313	0	1,496,488	0	0	3,047,801	2,445,300	0	2,364,731	0	0	4,810,031
9. Senior and Long-Term Care Division (22)											
44,036,794	6,365,604	135,666,053	0	0	186,067,351	45,675,083	7,143,437	142,344,588	0	0	194,963,108
a. One-Time Payments to Nursing Homes for Medicaid Services											
0	1,350,000	3,627,876	0	0	4,977,876	0	1,625,000	4,397,980	0	0	6,022,980
b. Nursing Home and Community Services Improvements (OTO)											
0	162,720	437,280	0	0	600,000	0	161,880	438,120	0	0	600,000

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Personal Assistant Wage Increases											
401,931	0	1,080,114	0	0	1,482,045	638,676	0	1,728,544	0	0	2,367,220
d. Additional Federal Special Revenue											
0	0	1,000,000	0	0	1,000,000	0	0	1,000,000	0	0	1,000,000
e. *Maintain Community Services for Elderly and Physically Disabled (Restricted)*											
0	*0*	*0*	*0*	*0*	*0*	*97,191*	*0*	*0*	*0*	*0*	*97,191*
10. Addictive and Mental Disorders Division (33)											
49,801,030	6,163,613	70,643,831	0	0	126,597,453	~~51,413,723~~ *50,715,725*	~~6,590,808~~ *7,290,806*	76,394,948	0	0	133,699,479
a. Community Incentive/State Hospital (Restricted/Biennial/OTO)											
1,196,553	0	0	0	0	1,196,553	1,196,553	0	0	0	0	1,196,553
b. Basic Mental Health Services for Children (Restricted)											
647,962	0	0	0	0	647,962	671,928	0	0	0	0	671,928
c. Regional Mental Health System Planning (Restricted/Biennial)											
208,531	0	278,041	0	0	486,572	208,530	0	278,040	0	0	486,570
d. Olmstead Planning/Implementation (Restricted)											
0	0	30,000	0	0	30,000	0	0	30,000	0	0	30,000
e. Intergovernmental Transfer — Mental Health Services											
0	106,155	285,273	0	0	391,428	0	108,654	293,824	0	0	402,398
f. Intergovernmental Transfer — Chemical Dependency (Biennial)											
0	250,000	671,829	0	0	921,829	0	267,000	695,557	0	0	962,557
g. Law Enforcement/Judicial Training — Mental Illness (Restricted)											
42,219	0	25,332	0	0	67,551	42,324	0	25,395	0	0	67,719
h. Federal Community Incentive Grant — Chemical Dependency (OTO)											
0	0	3,594,483	0	0	3,594,483	0	0	3,594,483	0	0	3,594,483
i. SB 107 — Teleconferencing During Mental Health Proceedings											
7,800	0	0	0	0	7,800	8,190	0	0	0	0	8,190
j. *Maintain Mental Health Day Treatment for Children (Restricted)*											

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	*0*	*0*	*0*	*0*	*0*	*0*	*268,756*	*0*	*0*	*0*	*268,756*
k. Maintain Lower Medicaid Copayments											
0	*0*	*0*	*0*	*0*	*0*	*0*	*560,000*	*0*	*0*	*0*	*560,000*
Total											
363,958,669	38,923,811	~~73,336,848~~ *72,075,817*	0	0	~~1,015,719,464~~ *1,012,964,903*	~~373,109,341~~ *368,470,277*	~~31,563,758~~ *56,136,695*	~~733,544,386~~ *734,521,036*	0	0	~~1,038,218,485~~ *1,059,578,036*

The department shall provide the following information by program to the children, families, health, and human services interim committee and to the legislative finance committee by August 1, 2002:

(1) rates paid by each program for comparable services; and

(2) entry level and average hourly wage and benefit rates paid by community providers for direct care workers and group home employees.

The information must specify how the data was gathered and whether and how the department verified the data and must be presented to allow evaluation among comparable services and jobs.

~~Funds appropriated for grants or benefits and claims or indicated in legislative intent as having been appropriated for grants or benefits and claims may be expended only as grants or benefits and claims. The office of budget and program planning may authorize a transfer of appropriation authority from grants or benefits and claims to another category of expenditure under one of the following conditions:~~

~~(1) the department certifies to the office of budget and program planning that federal law or regulations require that funds appropriated in grants or benefits and claims must be expended in a different category of expenditure; or~~

~~(2) the department certifies to the office of budget and program planning that there will be savings if funds appropriated in grants or benefits and claims are transferred and expended in another category of expenditure~~.

~~The office of budget and program planning shall report to the legislative finance committee on transfers approved subject to these two conditions.~~

The department shall report to the legislative finance committee and the children, families, health, and human services interim committee at every meeting of each committee:

(1) the actual amount of federal temporary assistance for needy families (TANF) block grant funds expended in the current biennium;

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(2) the actual amount of TANF block grant maintenance of effort funds that have been expended in the current biennium;

(3) the balance of previous fiscal years' TANF block grant funds that remain unexpended; and

(4) the balance of the current fiscal year federal TANF block grant funds that remain unexpended.

The department shall use unexpended previous year federal TANF block grant funds to provide benefits and services that meet the federal definition of assistance. Current year federal TANF block grant funds must be used to fund benefits and services that meet the federal definition of assistance only after all available previous years' federal TANF block grant funds have been expended.

The office of budget and program planning may proportionally reduce the funding in items 1a through *1k. items 1m* through 1t. and item 1v if any of the following conditions exist:

(1) the department certifies to the office of budget and program planning that the balance of unexpended TANF funds on June 30, 2001, is less than $30 million;

(2) actual or projected cash assistance expenditures are greater than $24,067,328 in fiscal year 2002 or $23,763,854 in fiscal year 2003;

(3) the amount of TANF grant funds awarded to Montana by congress is reduced below the level anticipated by the legislature; or

(4) the department certifies to the office of budget and program planning that the reduction is necessary in order to maintain public assistance programs that were supported by federal TANF and state TANF maintenance of effort funds in fiscal year 2001.

If the TANF block grant funds report given at the March 2002 legislative finance committee meeting indicates that there are FAIM phase II R dollars unexpended and no plan is in place to expend the remaining dollars, there is appropriated up to $1.5 million of these unexpended funds for the summer youth employment program in the 2003 biennium.

Item 1 includes increases of $3,852,988 of general fund money in fiscal year 2002 and of $4,006,121 of general fund money in fiscal year 2003 and reductions of $3,356,606 of state special revenue in fiscal year 2002 and of $3,376,187 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Funds in item 1 include $68,422 in fiscal year 2002 and $69,606 in fiscal year 2003 that the department shall use to reimburse the Montana department of corrections, Montana correctional enterprises, for costs incurred to operate the Montana food bank network canning and wild game processing facility.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funds included in items 1b and 1e may be used only to fund tribal projects and to provide nontraditional job training to an enrolled tribal member of a federally recognized tribe whose reservation lies within the exterior boundaries of the Montana reservations and to the Little Shell band of Chippewa if the Little Shell band of Chippewa becomes a federally recognized tribe.

Funds in item 1b may be used to fund head start services for tribal members. Tribal members may not access services supported by funds in item 1r because funding for tribal head start projects has been included in item 1b.

The department shall transfer funds in item 1l to the Montana board of housing revolving loan account to fund eligible activities under the federal TANF block grant. The timing and amount of the transfer must comply with federal regulations governing the expenditure and transfer of TANF funds.

Funds included in item 1t may be used only to develop programs for high-wage and high-skill training for single parents, persons who are economically disadvantaged, and displaced homemakers.

Funds included in item 1u may be used only to provide adult basic education services.

The department shall transfer funds in item 1v to the children's trust fund to fund eligible child abuse and neglect prevention activities.

Projects funded in items 1a, 1d, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o, 1p, 1q, 1r, 1s, 1t, and 1u are considered approved special projects related to welfare reform for the purpose of implementation of 53-4-210. Prior to the expenditure of these funds, the department shall provide notice both verbally and in writing to tribes that have implemented a federally approved tribal family assistance plan that funding for special projects is available. Tribes that operate a tribal family assistance plan may receive the funds in these items, and the department may award all or a portion of these funds to tribes that operate tribal family assistance plans as allowable within federal regulations.

Funds included in item 1w may be used only to provide TANF WoRC contracts and supportive services and child-care services.

Item 2 includes increases of $2,206,194 of general fund money in fiscal year 2002 and of $2,241,893 of general fund money in fiscal year 2003 and reductions of $2,172,078 of state special revenue in fiscal year 2002 and of $2,135,314 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Funds in item 2d may be used only to support the costs of in-home services for families in the child welfare system. The department estimates that 25 families or 50 children will be served with this funding and that 80% of the families served will not enter the foster care system. If the department achieves this goal, the estimated increase in the foster care caseload will decrease from 3% to 2%. Any savings realized because of a lower than anticipated caseload increase may be used by the department to expand the provision of in-home services or other services within the child welfare system.

Item 3 includes $1,482,291 in fiscal year 2002 and $1,482,748 in fiscal year 2003 for the tobacco prevention and control program. It is the intent of the legislature that the interagency coordinating council on prevention administer the tobacco control and prevention program.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes increases of $93,333 of general fund money in fiscal year 2002 and of $96,915 of general fund money in fiscal year 2003 and reductions of $90,463 of state special revenue in fiscal year 2002 and of $91,028 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 3 includes funding for 5 FTE above the level funded by the 2001 legislature for the purpose of establishing a department-wide refinancing unit. The cost of the FTE and any supporting contracting efforts must be supported from anticipated savings from the refinancing of social worker case management services and maximizing of federal funding in the child and family services division. The department shall report on the progress of its refinancing efforts periodically to the office of budget and program planning, legislative finance committee, and the 2003 legislature.

It is the intent of the legislature that up to $3 million of funds that the department receives because of refinancing general fund costs with federal special revenue be used to offset the across-the-board general fund reductions included in item 7.

Funds in item 3a may be used only to fund a deputy director position within the department.

Funds included in item 4c may be used only to support costs for the completion of a financial institution data match.

Funds included in item 4d may be used only to support the costs incurred to complete a study of the costs of raising a child in Montana.

Items 5, 9, and 10 include appropriations of state special revenue for provider rate increases funded from the interest income on the tobacco settlement trust fund provided for in Article XII, section 4, of the Montana constitution. If the interest income on the tobacco settlement trust fund provided for in Article XII, section 4, of the Montana constitution is insufficient to fully fund the state special revenue appropriations in items 5, 9, and 10, the legislature intends that the department find alternative funding sources to fully fund the provider rate increases. Alternative sources may include but are not limited to enhanced medicaid intergovernmental transfer programs and transfers of general fund money from other appropriations.

Item 5 includes increases of $6,717,000 of general fund money in fiscal year 2002 and of $6,862,000 of general fund money in fiscal year 2003 and reductions of $6,717,000 of state special revenue in fiscal year 2002 and of $6,862,000 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

The health policy and services division is authorized to pursue up to $1.5 million in federal special revenue each year of the biennium in item 5 to enhance or improve division services or programs to public schools. This additional federal special revenue may be expended on services by the division as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated by the legislature to the division.

Item 5a must be spent on services to assist Montanans who have been exposed to asbestos. Funds in item 5a may not be expended for any other purpose.

Implementation of the resource-based relative value scale (RBRVS) provider rate system must continue to be phased in over the 2003 biennium. The department shall use funds in item 5b to raise rates paid to those current procedural terminology (CPT) codes paid the lowest percentage of medicare reimbursement

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

that were restricted to 145% of the level of the state fiscal year 1997 reimbursement in state fiscal year 1999. The department may not change reimbursement for CPT codes, which were paid at 80% of the level of the state fiscal year 1997 reimbursement in state fiscal year 1999.

Item 5c includes funds for 3.5 FTE. Funds for the FTE may not be included in the adjusted base budget for the 2005 biennium unless federal funds or private revenue is available to fund the position.

Funds in item 5d may be used only to purchase equipment to transmit or to facilitate the transmission of medical images and x-rays from rural hospitals to medical specialists. The funds may be granted only to rural hospitals or groups of rural hospitals to purchase the equipment.

The department shall provide to the legislative finance committee each year of the biennium an analysis of the number of medicaid hospital projects completed and associated cost savings because of funding for claims adjudication specialists as approved by the 2001 legislature.

Item 6 includes increases of $211,082 of general fund money in fiscal year 2002 and of $218,916 of general fund money in fiscal year 2003 and reductions of $204,359 of state special revenue in fiscal year 2002 and of $205,400 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes increases of $1,044,768 of general fund money in fiscal year 2002 and of $1,070,319 of general fund money in fiscal year 2003 and reductions of $1,037,443 of state special revenue in fiscal year 2002 and of $1,055,626 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes a reduction in general fund money of $158,038 in fiscal year 2002 and $158,038 in fiscal year 2003. This reduction is the equivalent of a 15% reduction in fiscal 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 7 includes a reduction in fiscal year 2003 of $107,796 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 7 includes a reduction of $257,261 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 7 includes a reduction of $1.46 million of general fund money in fiscal year 2003. This reduction is the equivalent of a 0.68% reduction in the fiscal year 2003 general fund appropriation for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 7 includes a reduction of $542,660 in fiscal year 2002 and $544,550 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

The department shall make every effort to achieve an unqualified opinion in the financial compliance audit issued by the legislative audit division for the 2 years ending June 30, 2003. The legislature expects the department to take action to ensure that this achievement occurs, including exempting the fiscal bureau from vacancy savings requirements, exempting the fiscal bureau from reductions in staffing, establishing clear and appropriate fiscal policies and processes, and any other management actions that may reasonably be expected to result in the achievement of an unqualified audit opinion.

The developmental disability program is directed to use existing general fund appropriations within the developmental disabilities program budget to refinance services, if possible. General fund money made available through refinancing efforts may be used to:

(1) reduce the developmental disability program waiting list;

(2) improve wages paid by community providers to direct care workers;

(3) provide a provider rate increase to community services providers; and

(4) fund existing plans of care for individuals waiting for residential services.

The developmental disabilities program will report to the legislative fiscal division semiannually in January and July:

(1) the amount of general fund money that was made available through refinancing efforts;

(2) the amount, scope, and nature of services provided by funds made available through refinancing;

(3) the number of consumers, providers, and direct care worker staff benefiting from initiatives funded through refinancing efforts; and

(4) the amount of additional state special and federal funds obtained through refinancing efforts.

Item 8 includes a $1,965,199 general fund decrease in fiscal year 2003 for the disability services division replaced by a like amount of employment security account state special revenue funds administered by the department of labor and industry.

Item 8c includes $3,996,613 in general fund money and $3,861,209 in federal funds to begin equalization of wages paid to direct care workers employed by developmental disability community providers with direct care worker wages paid to employees at Eastmont human services center and the Montana developmental center.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The disability services division shall complete a report on the impact that applying income criteria to determine eligibility for developmental disabilities program services and benefits would have on individuals, the waiting list for services, and the budget for the developmental disabilities program. The report must be presented to the legislative finance committee by June 30, 2002. The report to the legislative finance committee should include by age group (0-3, 4-5, 6-18, 18-21, and over 21 years of age) and by residential setting (recipient home, group home, institution, etc.):

(1) the number of nonmedicaid-eligible recipients and the value of services, by funding source, provided to individuals and families with income at or below 200% of the federal poverty level; and

(2) the number of nonmedicaid-eligible recipients and the value of services, by funding source, provided to individuals and families with income at or below 150% of the federal poverty level.

The fiscal year 2003 funds in items 8, 8a, and 8b may not be expended until the report has been presented to the legislative finance committee.

Included in item 8b is general fund money of $1,400,277 in fiscal year 2002 and $1,400,224 in fiscal year 2003. This funding is one time only. The combined population at the two institutions (Eastmont human services center and Montana developmental center) may not exceed 88 individuals at the end of the 2003 biennium. If the disability services division has a population of more than 88 individuals at the two institutions at the end of the 2003 biennium, the division shall certify that a community residential setting was not available for the individuals remaining in the two institutions.

Funds in item 9a may be used only to make one-time payments to nursing homes based on the number of medicaid services provided. State special revenue in item 9a may be expended only after the office of budget and program planning has certified that the department has received $2 million each year from counties participating in the intergovernmental transfer program for nursing homes.

The department shall distribute funds in items 8c and 9c in a way that provides reasonable assurance that the funds are used solely for direct care wage and benefit increases. Not all providers or types of direct care workers must receive the same rate increase for the biennium. Funds appropriated in items 8c and 9c may be used only for direct care worker wage increases. Funds in items 8c and 9c may not be used to fund other programs. In the event that the department finds it necessary to institute program reductions, it is the intent of the legislature that funds in items 8c and 9c be the last items eliminated.

The senior and long-term care division is authorized to pursue up to $2 million in federal special revenue in item 9d over the biennium to enhance or improve division services or programs. This additional federal special revenue may be expended by the division on services as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated for the 2003 biennium by the legislature to the division in [this act].

Pursuant to 17-7-140, item 9e is exempt from spending reductions because of a projected general fund budget deficit.

The department shall post on the senior and long-term care division website the staffing levels provided in Montana nursing facilities.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department shall require that area agencies on aging provide a written assessment of the need for increased funding in their nutrition program prior to expending the additional Title III of the Older Americans Act of 1965 grant funds appropriated in [this act].

The appropriation in item 10 is contingent on the department developing a management plan to:

(1) ensure that the department staff tracking the census of residential treatment of children in Montana communicate in-state service availability to appropriate staff; and

(2) negotiate or issue requests for proposals in compliance with 52-2-306 and 52-2-307 for placement of children with in-state providers in lieu of placing the child in out-of-state treatment. The department shall submit the plan to the children, families, health, and human services interim committee and the legislative finance committee by July 1, 2001.

Item 10 is contingent on the department maintaining $3,539,842 of federal block grant contracts to state-approved chemical dependency programs for treatment and rehabilitation each year of the 2003 biennium.

Item 10 includes $559,560 in general fund money in fiscal year 2002 and $713,907 in fiscal year 2003 that must be used to fund mental health services for persons eligible for the mental health services plan. At least $480,000 of these general fund appropriations must be used for grants to one or more local children's mental health provider coalitions to prevent placement of emotionally disturbed children in out-of-home services.

Item 10 must be increased by $1 million in general fund money and must be reduced by $1 million in state special revenue in fiscal year 2003 unless Senate Bill No. 1, August 2002 Special Session, is passed and approved in a form that:

(1) maintains at least a $1 million distribution to state-approved chemical dependency programs to provide treatment, rehabilitation, and prevention of chemical dependency pursuant to 53-24-208; and

(2) requires the department to distribute in the same proportion as provided in 53-24-206(3)(b) at least $730,000 of the $1 million in funds referenced in item 1 to the state-approved chemical dependency programs.

Funds in item 10a must be used to fund services at Montana state hospital and for staff and utilization review activities to reduce the use of institutional services. Any funds not spent for staff and utilization review activities must be used to fund community services, which will reduce the need for inpatient and institutional care. The funds may not be used for any other purpose.

Funds in item 10b must be used to fund mental health services for low-income children. Funds in item 10b may not be used for any other purpose or transferred to any other program.

Funds in item 10d must be used to contract with the Montana consensus council.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funds in item 10e must be used to pay one-time increases in reimbursement for services provided in frontier counties by county-funded mental health medicaid service providers.

Item 10f includes $26,000 in contracted services in fiscal year 2003 funded equally from state special revenue and federal special revenue.

Funds in item 10g must be used for:

(1) activities related to training and educating law enforcement personnel, judicial personnel, and persons instrumental to the commitment process in recognizing serious mental illness and appropriate approaches to and treatment for persons who exhibit symptoms of mental illness; and

(2) development of screening tools to help identify whether a person may be mentally ill.

Item 10j is contingent upon passage and approval of Senate Bill No. 26, August 2002 Special Session.

Item 10k is contingent upon passage and approval of Senate Bill No. 26, August 2002 Special Session.

TOTAL SECTION B											
262,958,169	28,923,811	~~72,336,948~~	0	0	~~1,015,719,464~~	~~273,103,341~~	~~31,563,758~~	~~733,544,395~~	0	0	~~1,038,210,494~~
		72,078,817			*1,012,964,903*	*268,420,277*	*56,136,698*	*756,822,056*			*1,039,378,086*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				C. NATURAL RESOURCES AND COMMERCE							
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)											
1. Administration and Finance Division (01)											
0	5,683,118	1,199,741	0	0	6,882,859	0	5,715,736	1,196,547	0	0	6,912,283
a. Legislative Audit (Restricted/Biennial)											
0	62,028	10,946	0	0	72,974	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)											
0	0	75,000	0	0	75,000	0	0	75,000	0	0	75,000
2. Field Services Division (02)											
0	6,601,852	724,700	0	0	7,326,262	0	6,651,474	729,488	0	0	7,380,962
a. Public Wildlife Interface (Biennial)											
0	65,000	0	0	0	65,000	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)											
0	0	60,000	0	0	60,000	0	0	60,000	0	0	60,000
c. SB 285 — Revise Conservation License Laws (OTO)											
0	0	0	0	0	0	0	803,000	0	0	0	803,000
3. Fisheries Division (03)											
0	3,314,986	3,786,792	0	0	7,101,778	0	3,338,044	3,799,927	0	0	7,137,971
a. Fishing Access Assistance (Restricted OTO)											
0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
b. Recreation Conflict Coordinator (OTO)											
0	15,874	37,039	0	0	52,913	0	15,874	37,039	0	0	52,913
c. Legislative Contract Authority (Restricted/OTO)											
0	0	1,851,019	0	0	1,851,019	0	0	1,651,019	0	0	1,851,019
d. Echo Lake Fish Planting (OTO)											
0	7,500	22,500	0	0	30,000	0	7,500	22,500	0	0	30,000
4. Law Enforcement Division (04)											

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	5983.160	277.002	0	0	6360.162	0	6057.818	280.150	0	0	6337.968
a. Alternative Livestock Environmental Review (Biennial/OTO)											
0	96.000	0	0	0	96.000	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)											
0	0	10.000	0	0	10.000	0	0	10.000	0	0	10.000
c. HB 419 — Create Natural Resources Enforcement Program in Attorney General's Office											
0	41.600	0	0	0	41.600	0	41.600	0	0	0	41.600
5. Wildlife Division (05)											
0	3641.942	3432.582	0	0	7074.524	0	3682.843	3434.308	0	0	7117.151
a. Mountain Lion Research (Restricted/OTO)											
0	38.992	116.978	0	0	155.970	0	38.992	116.978	0	0	155.970
b. Black Bear Research (OTO)											
0	14.830	44.490	0	0	59.320	0	14.830	44.490	0	0	59.320
c. Sage Grouse Monitoring (OTO)											
0	22.500	67.500	0	0	90.000	0	22.500	67.500	0	0	90.000
d. Legislative Contract Authority (Restricted/OTO)											
0	0	533.798	0	0	533.798	0	0	533.798	0	0	533.798
6. Parks Division (06)											
279.255	4518.599	244.914	0	0	5043.169	~~279.255~~ *274.929*	4564.968	244.896	0	0	~~5089.119~~ *5.084.793*
a. Motorboat Site Maintenance (Restricted)											
0	11.000	40.000	0	0	51.000	0	11.000	40.000	0	0	51.000
b. Snowmobile Equipment (Biennial)											
0	298.000	0	0	0	298.000	0	0	0	0	0	0
c. Continue Chief Plenty Coups (Restricted/Biennial/OTO)											
0	214.155	0	0	0	214.155	0	0	0	0	0	0
d. Legislative Contract Authority (Restricted/OTO)											
0	0	50.000	0	0	50.000	0	0	50.000	0	0	50.000

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
7. Conservation Education Division (08)											
2.562	1,699,295	499,461	0	0	2,201,338	2.562	1,711,770	499,472	0	0	2,213,804
a. Aquatic Education/Family Fishing (Restricted)											
0	0	200,000	0	0	200,000	0	0	200,000	0	0	200,000
b. Shooting Range Grants (Biennial)											
0	120,000	0	0	0	120,000	0	0	0	0	0	0
c. Shooting Range Grants Enhancement (Biennial/OTO)											
0	60,000	0	0	0	60,000	0	0	0	0	0	0
d. Legislative Contract Authority (Restricted/OTO)											
0	0	35,000	0	0	35,000	0	0	35,000	0	0	35,000
8. Department Management (09)											
0	2,586,380	862,199	0	0	3,468,579	0	2,595,545	680,521	0	0	3,476,066
a. Office Maintenance and Small Equipment (Restricted/OTO)											
0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
b. Cadastral Database (Restricted)											
0	9,000	0	0	0	9,000	0	9,000	0	0	0	9,000
c. Native Species Conservation (Restricted/OTO)											
0	0	511,437	0	0	511,437	0	0	511,437	0	0	511,437
d. Hunting and Fishing License Research (Restricted/OTO)											
0	15,000	0	0	0	15,000	0	10,000	0	0	0	10,000
e. Legislative Contract Authority (Restricted/OTO)											
0	0	200,000	0	0	300,000	0	0	300,000	0	0	300,000
Total											
281.818	35,195,921	14,913,108	0	0	50,390,847	~~281.817~~ *277.491*	35,366,484	14,920,060	0	0	~~50,568,361~~ *50,564,058*

The appropriations for legislative contract authority are subject to all of the following provisions:

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) Legislative contract authority applies only to federal funds.

(2) Legislative contract authority expenditures must be reported on the state's accounting system, and the records must be separate from present law operations. In preparing the 2005 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the department to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a list of projects with the related amount of expenditures and FTE for each project.

The department is to report to the natural resources and commerce appropriations subcommittee on the projects funded with federal Sikes Act money and state matching money. The report is to include an analysis of the viability for continuance of the program and a list of projects funded with the money.

If the department is required to adjust personal services expenditure costs between state and federal accounts, the approving authority shall adjust the state special revenue appropriation and the federal appropriation by like amounts. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning.

The department shall determine and quantify any efficiencies generated as a result of incorporating the Smith River drawing process into the automated license system and report its findings to the 2003 legislature.

Item 1b legislative contract authority (LCA) is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 2b LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 3 includes $19,726 in state special revenue funds each fiscal year and $59,178 in federal special revenue funds each fiscal year that are restricted to equipment purchases in the fisheries division and payouts of leave accruals because of retirements in the fisheries division.

Item 3c LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 4 includes a reduction in general fund money of $18,339 in fiscal year 2002 and $18,339 in fiscal year 2003. This reduction is the equivalent of a 25% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 4a contains a biennial appropriation of $96,000 for game farm environmental assessment/environmental impact statements.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 4b ! CA is subject to all ! CA provisions stated in the agency's language. ! CA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ! CA applies only to federal funds.

Item 4c is contingent upon passage and approval of House Bill No. 419.

Item 5a is a restricted and one-time-only appropriation for mountain lion research.

Item 5d ! CA is subject to all ! CA provisions stated in the agency's language. ! CA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ! CA applies only to federal funds.

Item 6 includes a reduction of $224 in fiscal year 2002 and $225 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 6 includes a reduction of $2,817 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 6 includes a reduction in fiscal year 2003 of $1,609 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The agency may allocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 6a is a restricted appropriation for motorboat site maintenance.

Item 6b includes a biennial appropriation of $298,000 for snowmobile equipment.

The department may expend from the appropriation in item 6c no more than one-half of the unspent 2001 biennium appropriation made for this purpose. It is the intent of the legislature for the department to use any funds reverted from the 2001 biennium for the purpose of carrying out various maintenance and construction projects described in the management plan for Chief Plenty Coups state park. Further, the department may pursue up to $214,155 of lodging facility use tax funds appropriated to the department for state park maintenance in addition to the $214,155 appropriated in [this act] for purposes of completing the maintenance and construction projects at Chief Plenty Coups state park. The department shall develop a tracking and reporting method for amounts spent from the lodging facility use tax for this purpose. The department shall report to the legislative finance committee at its June 2002 (or nearest) meeting on factors such as projects completed, dollars spent, and a timeline for completion of the remainder of the projects.

Item 6d ! CA is subject to all ! CA provisions stated in the agency's language. ! CA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ! CA applies only to federal funds.

Item 7a is a restricted appropriation for aquatic education program/family fishing.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 7b is a biennial appropriation of $120,000 for shooting range grants.

Item 7c is a biennial and one-time-only appropriation of $60,000 for shooting range grants enhancement.

Item 7d ICA is subject to all ICA provisions stated in the agency's language. ICA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ICA applies only to federal funds.

Item 8 includes a total of $138,780 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 8b is a restricted appropriation for the cadastral database.

Item 8e ICA is subject to all ICA provisions stated in the agency's language. ICA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ICA applies only to federal funds.

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)

1. Central Management Program (10)												
16,918	0	3,381	0	0	20,299	16,926	0	3,381	0	0	20,307
a. Database Development (Restricted/Biennial/OTO)												
150,000	0	0	0	0	150,000	0	0	0	0	0	0
b. Legal Challenges (Biennial/OTO)												
150,000	0	0	0	0	150,000	0	0	0	0	0	0
2. Planning, Prevention, and Assistance Division (20)												
2,152,156	1,063,532	6,703,501	0	0	11,919,191	~~2,143,601~~	1,068,511	6,637,953	0	0	~~11,849,065~~
						2,036,055					*11,751,497*
a. Technical Assistance to Tribal Air Quality (OTO)												
0	0	108,464	0	0	108,464	0	0	103,773	0	0	103,773
b. Particulate Matter (2.5) Monitoring (Restricted)												
0	0	250,784	0	0	250,784	0	0	249,099	0	0	249,099
c. One-Stop Grant for Database (Biennial/OTO)												
0	0	460,000	0	0	460,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Flathead Lake Biological Monitoring Station											
0	0	100,000	0	0	100,000	0	0	0	0	0	0
e. SB 506 — Alternative Energy Revolving Loan Account											
0	60,000	0	0	0	60,000	0	60,000	0	0	0	60,000
3. Enforcement Division (30)											
537,765	179,013	372,895	0	0	1,089,673	525,799	180,035	374,997	0	0	1,080,831
4. Remediation Division (40)											
0	3,312,736	7,164,214	0	0	10,376,950	0	3,244,983	7,173,433	0	0	10,418,416
a. Enterprise Database Development (OTO)											
0	300,000	0	0	0	300,000	0	35,000	0	0	0	35,000
b. Cleanup Lockwood Solvent (Biennial)											
0	0	680,450	0	0	680,450	0	0	513,206	0	0	513,206
c. Contracted Services — Legal Support (Restricted/Biennial/OTO)											
0	150,000	0	0	0	150,000	0	0	0	0	0	0
d. Leaking Underground Storage Tank Trust — Truck Replacement (OTO)											
0	3,000	27,000	0	0	30,000	0	0	0	0	0	0
e. Orphan Share Reimbursement (Restricted/Biennial/OTO)											
0	3,500,000	0	0	0	3,500,000	0	0	0	0	0	0
f. Aboveground Storage Tank Survey (Restricted/OTO)											
0	25,000	0	0	0	25,000	0	35,000	0	0	0	35,000
g. Petroleum Tank Release Compensation Board Fund Liability Study (Restricted/OTO)											
0	75,000	0	0	0	75,000	0	0	0	0	0	0
h. Database Development (Restricted/OTO)											
0	18,306	34,294	0	0	52,600	0	18,306	34,294	0	0	52,600
i. Leaking Underground Storage Tank Trust Contracted Services (Restricted/OTO)											
0	30,000	270,000	0	0	300,000	0	30,000	270,000	0	0	300,000
5. Permitting and Compliance Division (50)											
1,317,914	8,382,151	3,716,638	0	0	13,316,703	1,185,231	8,342,531	3,701,871	0	0	13,229,633

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Junk Vehicle Database Conversion (Restricted/OTO)											
0	60,000	0	0	0	60,000	0	18,000	0	0	0	18,000
b. Asbestos Compliance (Restricted/OTO)											
28,300	56,700	0	0	0	85,000	28,300	56,700	0	0	0	85,000
c. Hazardous Waste Contract Service (Restricted/Biennial/OTO)											
0	150,000	0	0	0	150,000	0	0	0	0	0	0
d. Bond Forfeitures (Restricted/Biennial)											
0	30,500,000	0	0	0	30,500,000	0	0	0	0	0	0
e. Montana Environmental Policy Act Projects (Restricted/Biennial)											
0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0
f. Hard-Rock Federal Funds (Restricted/Biennial/OTO)											
0	0	3,000,000	0	0	3,000,000	0	0	0	0	0	0
g. SB 449 — Environmental Rehabilitation and Response (Restricted/Biennial)											
0	125,000	0	0	0	125,000	0	0	0	0	0	0
h. Major Facility Siting Act Projects (Restricted/Biennial/OTO)											
0	300,000	0	0	0	300,000	0	0	0	0	0	0
i. Abandoned Vehicle Operating Costs (Restricted/OTO)											
0	173,230	0	0	0	173,230	0	173,230	0	0	0	173,230
j. Public Water Supply Equipment (Restricted/OTO)											
0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
k. Hard-Rock Equipment (Restricted/OTO)											
0	8,990	0	0	0	8,990	0	0	0	0	0	0
l. Solid Waste Database Conversion (OTO)											
50,000	50,000	0	0	0	100,000	15,000	15,000	0	0	0	30,000
m. Zortman Landusky Long-Term Water Treatment Trust (Restricted/OTO)											
0	0	0	0	0	0	0	540,000	0	0	0	540,000
n. SB 484 — Hard-Rock Mining Reclamation, Operation, and Maintenance (Restricted/Biennial)											
0	4,000,000	0	0	0	4,000,000	0	0	0	0	0	0

	Fiscal 2002					Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
o. SB 167 — Sanitation in Subdivision Grants to Counties (Restricted)											
0	204,000	0	0	0	204,000	0	204,000	0	0	0	204,000
Total											
4,303,046	53,440,656	24,781,622	0	0	82,525,324	~~3,914,957~~ *5,256,259*	14,005,396	21,063,008	0	0	~~38,983,161~~ *55,975,695*

Items 2, 4, and 5 include a total of $177,855 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 2 includes a reduction in fiscal year 2003 of $6,146 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 2 includes a reduction of $13,278 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2 includes a reduction of $39,144 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2d is contingent upon receipt of environmental protection agency 104b(3) ecosystem protection grant funds for the purposes of water quality monitoring and assessment activities. Upon receipt, the department shall contract with the Flathead Lake biological monitoring station for up to $100,000 of these funds in support of department priority total maximum daily load monitoring and assessment projects.

Item 2e is contingent upon passage and approval of Senate Bill No. 506. The funds appropriated in item 2d are from the alternative energy revolving loan account created in Senate Bill No. 506. The funding must be spent for administration of the loan program subject to restrictions provided in Senate Bill No. 506.

Item 5 includes a reduction in general fund money of $7,328 in fiscal year 2002 and $7,328 in fiscal year 2003. This reduction is the equivalent of an 8% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 5 includes a reduction of $21,608 in fiscal year 2002 and $21,683 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 5g is contingent upon passage and approval of Senate Bill No. 449.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 5m includes a restricted, one-time-only appropriation of up to $540,000 from state special revenue funds in fiscal year 2003 that have been transferred from the resource indemnity trust fund. The appropriation is contingent upon the state treasurer's certification to the office of budget and program planning and to the legislative finance committee that the trust balance is in excess of $100 million. Upon meeting the contingency in fiscal year 2003, the office of budget and program planning is authorized to transfer up to $540,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used to purchase federal debt obligation securities that mature in June 2017 to partially fund the long-term water treatment trust for the former Zortman and Landusky mines.											
Item 5n is contingent upon passage and approval of Senate Bill No. 484.											
Item 5o is contingent upon passage and approval of Senate Bill No. 167.											
The department is authorized to decrease federal special revenue in the pollution control and the drinking water revolving fund loan programs and increase state special revenue by a like amount within the special administration account.											
DEPARTMENT OF LIVESTOCK (5603)											
1. Centralized Services Program (01)											
14.748	1,028,523	116,009	0	0	1,159,680	~~17,415~~ *16,575*	1,054,776	87,157	0	0	~~1,159,349~~ *1,158,508*
a. Legislative Audit (Restricted/Biennial)											
2,734	26,653	4,768	0	0	34,055	0	0	0	0	0	0
b. Laboratory Information System Equipment/Installation (OTO)											
0	96,300	10,000	0	0	106,300	0	0	0	0	0	0
c. Board of Horseracing											
0	237,913	0	0	0	237,913	0	241,877	0	0	0	241,877
d. Legislative Audit — Board of Horseracing (Restricted/Biennial)											
0	450	0	0	0	450	0	0	0	0	0	0
2. Diagnostic Laboratory Program (03)											
190,933	1,144,465	11,115	0	0	1,346,513	~~190,949~~ *134,860*	1,212,404	17,371	0	0	~~1,420,724~~ *1,414,635*
3. Animal Health Program (04)											
0	680,445	0	0	0	680,445	0	710,510	0	0	0	710,510

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Bison Federal Cooperative Agreement (Restricted/OTO)											
0	0	651,310	0	0	651,310	0	0	651,310	0	0	651,310
b. Disease Outbreak (Restricted/OTO)											
0	177,623	0	0	0	177,623	0	177,623	0	0	0	177,623
c. Greater Yellowstone Interagency Brucellosis Committee (Restricted/OTO)											
0	0	127,600	0	0	127,600	0	0	143,211	0	0	143,211
4. Milk and Egg Program (05)											
0	342,143	24,758	0	0	366,901	0	346,775	24,762	0	0	371,537
5. Inspection and Control Program (06)											
0	1,608,699	39,244	0	0	1,647,943	0	1,564,838	36,381	0	0	1,601,219
a. Brand Rerecord (Restricted/OTO)											
0	45,654	0	0	0	45,654	0	0	0	0	0	0
6. Predator Control Program (08)											
0	435,235	0	0	0	435,235	0	442,716	0	0	0	442,716
7. Meat and Poultry Inspection Program (10)											
396,716	1,756	397,475	0	0	794,947	400,683	1,756	402,441	0	0	804,880
8. Milk Control Bureau (37)											
0	186,643	0	0	0	186,643	0	186,801	0	0	0	186,801
Total											
604,121	6,962,912	1,382,269	0	0	8,949,312	~~609,048~~ *602,115*	6,869,978	1,355,633	0	0	~~8,944,659~~ *8,957,729*

The department shall record separately all personal services, operating expenses, equipment, and capital expenditures related to bison control for all programs in which any resources are expended for that purpose on the state accounting, budgeting, and human resources system in a manner so that those expenditures may be readily derived and shall create a summary report. The department shall provide an annual report by program to the legislative fiscal analyst and the office of budget and program planning of all expenditures related to bison control.

Item 1 includes a reduction of $4,398 in fiscal year 2002 and $4,413 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction in fiscal year 2003 of $841 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Items 1c and 1d are contingent upon passage and approval of Senate Bill No. 445.

Item 2 includes a reduction of $16,089 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Centralized Services (21)											
1,542,276	425,057	105,000	0	0	2,072,345	~~1,563,631~~	433,259	105,000	0	0	~~2,091,890~~
						1,111,630					*1,649,889*
a. Legislative Audit (Restricted/Biennial)											
80,373	0	0	0	0	80,373	0	0	0	0	0	0
b. Missoula Office Rewiring (Restricted/OTO)											
0	0	25,750	0	0	25,750	0	0	0	0	0	0
c. Debt Service to Reimburse Montana Science Institute (Restricted)											
0	0	0	0	0	0	38,000	0	0	0	0	38,000
2. Oil and Gas Conservation Division (22)											
0	1,132,006	0	0	0	1,132,006	0	1,143,052	0	0	0	1,143,052
a. Operating Adjustments (OTO)											
0	84,343	0	0	0	84,343	0	89,708	0	0	0	89,708
3. Conservation and Resource Development Division (23)											
1,823,646	1,497,854	161,651	0	0	3,483,353	~~1,741,762~~	~~1,584,942~~	161,651	0	0	~~3,488,355~~
						741,762	*2,584,942*				*3,488,355*
a. Irrigation Assistance (OTO)											
140,000	0	0	0	0	140,000	160,000	0	0	0	0	160,000
b. Dry Prairie Rural Water Project (OTO)											
0	99,720	0	0	0	99,720	0	99,720	0	0	0	99,720

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. North Central Montana Regional Water Authority (OTO)											
125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
d. Eastern Plains Resource Conservation and Development (OTO)											
0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
e. Gallatin Resource Conservation and Development (OTO)											
15,000	0	0	0	0	15,000	15,000	0	0	0	0	15,000
f. Sheridan County Conservation District (OTO)											
0	0	0	0	0	0	35,000	0	0	0	0	35,000
g. Coal Tax Allocation to Conservation Districts (Biennial)											
0	100,000	0	0	0	100,000	0	0	0	0	0	0
h. Grass Conservation Commission (Biennial)											
45,000	51,606	0	0	0	96,606	0	0	0	0	0	0
i. Regional Water System Coordinator (OTO)											
0	52,054	0	0	0	52,054	0	52,054	0	0	0	52,054
4. Water Resources Division (24)											
5,930,069	1,016,253	160,035	0	0	7,106,357	5,991,483	1,019,340	160,733	0	0	7,171,556
a. State Water Project Rehabilitation (Restricted/Biennial/OTO)											
0	3,600,000	0	0	0	3,600,000	0	0	0	0	0	0
b. Dam Safety Improvement (Restricted/OTO)											
0	0	81,845	0	0	81,845	0	0	83,177	0	0	83,177
c. Water Well Litigation (Restricted)											
0	16,000	0	0	0	16,000	0	16,000	0	0	0	16,000
d. Water Right Permit Verification (OTO)											
0	170,000	0	0	0	170,000	0	145,000	0	0	0	145,000
e. Flood Damage Reduction (Restricted/OTO)											
0	0	169,748	0	0	169,748	0	0	169,786	0	0	169,786
f. Broadwater Hydropower Facility (OTO)											
0	62,000	0	0	0	62,000	0	32,000	0	0	0	32,000

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
g. HB 357 — Clark Fork River Task Force (OTO)											
0	0	0	0	0	0	0	120,000	0	0	0	120,000
5. Reserved Water Rights Compact Commission (25)											
724,261	0	0	0	0	724,261	726,624	0	0	0	0	726,624
a. Equipment Replacement (OTO)											
6,000	0	0	0	0	6,000	10,500	0	0	0	0	10,500
6. Forestry and Trust Lands (35)											
6,056,464	10,923,550	1,055,209	0	0	18,034,223	6,093,328	11,034,040	1,064,587	0	0	18,191,955
a. Fire Protection Assessment Software Rewrite (Restricted/OTO)											
79,200	40,800	0	0	0	120,000	0	0	0	0	0	0
b. Federal Fire Reimbursement (Restricted)											
0	0	229,684	0	0	229,684	0	0	229,684	0	0	229,684
c. Phase II/Slash Programming (OTO)											
23,600	0	0	0	0	23,600	0	0	0	0	0	0
d. Remote Weather Station (OTO)											
8,710	4,290	0	0	0	13,000	0	0	0	0	0	0
e. Forest Health Monitoring Program (Restricted/OTO)											
0	0	78,000	0	0	78,000	0	0	78,000	0	0	78,000
f. Forest Rehabilitation (OTO)											
0	177,500	0	0	0	177,500	0	140,500	0	0	0	140,500
g. Replacement Equipment (OTO)											
0	15,000	0	0	0	15,000	0	17,000	0	0	0	17,000
h. Habitat Conservation Plan (Restricted/Biennial/OTO)											
0	0	200,000	0	0	200,000	0	0	0	0	0	0
i. Homeowner Defensible Space Audits (Biennial/OTO)											
0	0	200,000	0	0	200,000	0	0	0	0	0	0
j. Private Forest Landowner Assistance (Restricted/Biennial/OTO)											
0	0	350,000	0	0	350,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
k. SB 31 — Revise State Trust Land Laws											
0	5.000	0	0	0	5.000	0	5.000	0	0	0	5.000
l. SB 354 — Full Compensation for School Trust for Natural Areas											
0	0	0	0	0	0	0	35.000	0	0	0	35.000
m. SB 495 — Purchase of Public School Fund Mineral Production Rights (Restricted/Biennial/OTO)											
75.000.000	0	0	0	0	75.000.000	0	0	0	0	0	0
Total											
91.598.702	19.496.647	2.816.922	0	0	113.912.471	~~16.480.318~~ *15.955.877*	~~15.961.645~~ *16.941.645*	2.051.618	0	0	~~34.523.581~~ *34.051.640*

All remaining proceeds in excess of $100 million in the resource indemnity trust *fund*, up to $100,000, must be appropriated in fiscal year 2003 to the department based upon a split of two-thirds for conservation district grant projects and one-third for irrigation grants. The appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. ~~Upon meeting~~ *If* the contingency *is met* in fiscal year 2003, the office of budget and program planning is authorized to transfer up $100,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used for these purposes. Further, the cash for ~~these purposes~~ *this purpose* cannot be transferred until ~~$500,000~~ *$1 million has been transferred for a fund switch in item 3. $300,000* has been transferred for the purpose of weed eradication, $540,000 has been transferred for the purpose of purchasing securities for water treatment at the former Zortman and Landusky mines, and $120,000 has been transferred ~~to conduct~~ *for* the Clark Fork *River* study.

Item 1 includes a reduction in fiscal year 2003 of $28,167 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $250,840 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $162,934 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction in general fund money of $33,468 in fiscal year 2002 and $33,468 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction of $107,169 in fiscal year 2002 and $107,543 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 2 includes a total of $98,310 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

The department is authorized to decrease state special revenue in the underground injection control program and to increase federal special revenue by a like amount when the amount of federal EPA funds available for the program becomes known. Any federal special revenue funds are to be spent before state special revenue funds.

The department is appropriated up to $600,000 for the 2003 biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as provided in 85-1-618.

During the 2003 biennium, up to $100,000 of excess loan loss reserve money in the water pollution control state revolving fund is appropriated to make grants to aid in the feasibility of projects as authorized in 75-5-1113(3)(b).

During the 2003 biennium, up to $100,000 of excess loan loss reserve money in the drinking water state revolving fund is appropriated to make grants to aid in the feasibility of projects as authorized in 75-6-224(3)(b).

The department is authorized to decrease federal special revenue in the pollution control and the drinking water revolving fund loan programs and to increase state special revenue money by a like amount within the special administration account.

During the 2003 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2003 biennium, up to $70,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2003 biennium, up to $500,000 of funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

The department shall report back to the 2003 legislature to provide an update on the progress of the flood damage reduction project.

The department is appropriated up to $20,000 for the 2003 biennium from the bond proceeds provided for in 76-13-408 for hazard reduction bonds during the 2003 biennium.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes a fund switch in fiscal year 2003 of $1 million from the general fund to the state special revenue fund, which is the first $1 million in proceeds in excess of $100 million in the resource indemnity trust fund, contingent upon passage and approval of House Bill No. 9, August 2002 Special Session.

Item 3 includes a reduction of $50,000 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

It is the intent of the legislature that the agency not use general fund money in items 3 and 6 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

~~Item 4g is contingent upon passage and approval of House Bill No. 397.~~ Item 4g is an appropriation from state special revenue funds in fiscal year 2003 that have been transferred from the resource indemnity trust fund. The appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. ~~Upon meeting~~ *If* the contingency *is met* in fiscal year 2003, the office of budget and program planning is authorized to transfer the $120,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used for this purpose. ~~The~~ *Further, the* cash for this purpose cannot be transferred until ~~$500,000~~ *$1 million has been transferred for a fund switch in item 3. $300,000* has been transferred for the purpose of weed eradication, and $540,000 has been transferred for the purpose of purchasing securities for water treatment at the former Zortman and Landusky mines.

State special revenue appropriations in item 6 may be used for firefighting costs. It is the intent of the legislature to replace any state special revenue expenditures with a general fund supplemental appropriation in the next legislative session.

Item 6b includes funds received from nonstate entities for the use of department personnel and equipment to assist them in managing emergency incidents, such as fire suppression activities. Only funds up to $100,000 received as reimbursement of personnel expenses credited against the department's operational budget and up to $250,000 of funds received as payment under equipment use agreements are considered fire reimbursement funds. All other funds received must be deposited in the general fund. Funds reimbursed for the use of department equipment must be expended for the repair, maintenance, and replacement of equipment that supports the state-county cooperative fire program. The department shall report fire reimbursement expenditures on state accounting records, and the records must be separate from present law operations.

Item 6k is contingent upon passage and approval of Senate Bill No. 31.

Item 6l is contingent upon passage and approval of Senate Bill No. 354.

Item 6m is limited to the amount borrowed from the coal tax permanent fund and may be used only for the purpose of purchasing public school fund mineral production rights from the trust and legacy account.

DEPARTMENT OF AGRICULTURE (6201)

1. Central Management Division (15)

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
165,498	446,473	68,813	48,893	0	729,676	~~188,249~~	431,837	68,655	50,973	0	~~739,714~~
						168,184					*719,619*
a. Legislative Audit (Restricted/Biennial)											
34,055	0	0	0	0	34,055	0	0	0	0	0	0
b. Electronic Transactions Strategic Planning Consulting Services (OTO)											
0	79,000	0	39,000	0	118,000	0	30,414	0	4,000	0	34,414
2. Agricultural Sciences Division (30)											
96,116	4,554,865	421,963	0	0	5,073,003	97,137	4,537,373	423,377	0	0	5,057,786
a. Federal Special Grants (OTO)											
0	0	100,000	0	0	100,000	0	0	100,000	0	0	100,000
b. Organic Certification Program (Restricted/OTO)											
41,567	0	0	0	0	41,567	41,680	0	0	0	0	41,680
c. Federal Special Grants (Biennial)											
0	0	2,000,000	0	0	2,000,000	0	0	0	0	0	0
d. Weed Control Program (Restricted)											
101,341	0	0	0	0	101,341	101,337	0	0	0	0	101,337
e. SB 326 — Weed Control Program (Restricted/OTO)											
0	0	0	0	0	0	0	~~500,000~~	0	0	0	~~500,000~~
							500,000				*500,000*
3. Agricultural Development Division (50)											
353,765	3,184,193	45,710	267,869	0	3,851,537	355,635	~~3,147,491~~	45,710	268,174	0	~~3,817,010~~
							2,964,491				*3,634,010*
a. Rail Transportation Technical Assistance (Restricted/Biennial/OTO)											
0	50,000	0	0	0	50,000	0	0	0	0	0	0
Total											
791,394	8,315,131	2,636,485	355,751	0	12,098,761	~~485,068~~	~~8,647,014~~	637,742	323,147	0	~~10,392,971~~
						764,945	*7,754,014*				*9,979,846*

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that the department use sources other than the general fund to fund operations of the organic certification program in the 2005 biennium.

Item 1 includes a reduction in general fund money of $4,827 in fiscal year 2002 and $4,827 in fiscal year 2003. This reduction is the equivalent of a 13% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 1 includes a reduction of $2,715 in fiscal year 2002 and $2,725 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 1 includes a reduction in fiscal year 2003 of $3,208 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $9,069 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $7,843 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2 contains $100,000 each year of the 2003 biennium from the department of transportation highway state special revenue fund for use in the weed control program. This appropriation is contingent upon passage and approval of Senate Bill No. 326.

The funds in item 2d are to be granted to governmental entities through an application process, to mitigate the impact of noxious weeds on private and state lands, except department of fish, wildlife, and parks lands, as a result of the activities of the department of fish, wildlife, and parks.

Item 2e contains a ~~$500,000~~ *$300,000* appropriation in fiscal year 2003 from state special revenue funds that are to be transferred from the resource indemnity trust fund. The ~~$500,000~~ *$300,000* appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. ~~Upon meeting~~ *If* the contingency *is met* in fiscal year 2003, the office of budget and program planning is authorized to transfer the ~~$500,000~~ *$300,000* in cash from the resource indemnity trust fund to a state special revenue fund to be used for this purpose. ~~Item 2e is contingent upon passage and approval of Senate Bill No. 326.~~

Item 3 includes a reduction of $193,000 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

DEPARTMENT OF COMMERCE (6501)

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~1. Weights and Measures Bureau (02)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~2. Banking and Financial Division (35)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~3. Professional and Occupational Licensing Bureau (39)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
4. *1.* Board of Research and Commercialization (50)											
119,300	0	0	0	0	119,300	130,469	0	0	0	0	130,469
a. Legislative Audit (Restricted/Biennial)											
340	0	0	0	0	340	0	0	0	0	0	0
5. *2.* Economic Development Division (51)											
1,179,577	247,344	4,069,728	0	0	5,496,649	~~1,186,368~~ *1,165,949*	247,339	4,070,115	0	0	~~5,503,822~~ *5,456,406*
a. Legislative Audit (Restricted/Biennial)											
7,051	0	0	0	0	7,051	0	0	0	0	0	0
6. *3.* Montana Promotion Division (52)											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
a. Legislative Audit (Restricted/Biennial)											
0	15,149	0	0	0	15,149	0	0	0	0	0	0
7. *4.* Community Development Division (60)											
430,411	1,685,393	8,179,207	0	0	10,295,011	~~435,204~~ *450,563*	~~1,945,408~~ *1,760,403*	8,179,673	0	0	~~10,560,285~~ *10,370,449*
a. Legislative Audit (Restricted/Biennial)											
4,930	915	0	0	0	5,845	0	0	0	0	0	0
b. Hard-Rock Mining Impact Account Reserve (Restricted)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
~~8. Local Government Services Division (62)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~9. Building Codes Bureau (65)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~10~~ 5. Housing Division (74)											
0	0	53,450,673	0	0	53,450,673	0	0	56,320,247	0	0	56,320,247
a. Legislative Audit (Restricted/Biennial)											
0	0	11,973	0	0	11,973	0	0	0	0	0	0
~~11. Montana State Lottery (77)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~12. Board of Horseracing (78)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~13. Consumer Affairs (79)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~14~~ 6. Director's Office/Management Services Division (81)											
a. Department Server/Hardware Replacement (OTO)											
14,389	1,701	18,566	0	0	34,656	0	0	0	0	0	0
b. Federal Building Rent											
0	0	0	0	0	0	0	57,838	55,038	0	0	112,876
c. Federal Building/Move (OTO)											
0	0	18,000	0	0	18,000	0	30,000	6,000	0	0	36,000
Total											
1,755,586	3,000,512	65,748,147	0	0	70,504,647	~~1,743,041~~ *1,719,736*	~~3,130,585~~ *2,946,638*	68,631,076	0	0	~~73,503,702~~ *73,296,447*

~~The reduction in funding for items 1, 2, 3, 8, 9, 11, 12, and 13 are contingent upon passage and approval of Senate Bill No. 445. If Senate Bill No. 445 is not passed and approved, the department is appropriated $746,325 in general fund money, $11,179,874 in state special revenue, and $8,927,921 in proprietary authority in fiscal year 2002 and $745,771 in general fund money, $11,104,944 in state special revenue, and $8,904,330 in proprietary authority in fiscal year 2003. The allocation among divisions and the realignment of language associated with the reallocation will be outlined in the Legislative Fiscal Division's 2003 Biennium Legislative Fiscal Report if Senate Bill No. 445 is not passed and approved.~~

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that the money allocated in item 1 to the board of research and commercialization and other money allocated to the board from statutory appropriations and other sources be allocated by the board in a manner that gives preferences to applications that advance projects that have a positive impact on homeland security technologies, such as the R.A.V.E project that is developing and commercializing technologies for national airport security and is using Montana airports as pilot projects and Montana companies as vendors.

Item 5 2 includes a reduction of $13.252 in fiscal year 2002 and $13.298 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 2 includes a reduction of $17.419 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4 includes a reduction in fiscal year 2003 of $4.836 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 4 includes a reduction of $186.000 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

It is the intent of the legislature that the department use lodging facility use taxes to fund $515.961 in fiscal year 2002 and $511.677 in fiscal year 2003 for the Montana historical society. This would be expended as follows:

	2002	2003
MHS Lewis and Clark Bicentennial	$116.477	$111.134
MHS Scriver Curator	28.484	25.553
MHS Scriver Rent Storage		96.000
MHS Lewis and Clark Bicentennial Commission	300.000	200.000
MHS Historical Interpretation	75.000	75.000

TOTAL SECTION C											
99.335.069	136.411.979	113.278.563	365.751	0	339.391.363	~~713.813.149~~ *722.269.004*	~~84.011.002~~ *84.525.002*	108.668.137	323.147	0	~~716.815.435~~ *716.685.290*

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				D. CORRECTIONS AND PUBLIC SAFETY							
CRIME CONTROL DIVISION (4107)											
1. Justice System Support Service (01)											
678,832	0	595,313	0	0	1,274,145	~~691,889~~ *669,676*	0	893,355	0	0	~~1,585,244~~ *1,563,031*
a. Regional Juvenile Detention (Biennial)											
1,114,942	0	0	0	0	1,114,942	1,114,942	0	0	0	0	1,114,942
b. Federal Pass-Through Grants (Biennial)											
0	0	9,625,213	0	0	9,625,213	0	0	9,625,213	0	0	9,625,213
c. Computer Crime Unit (Biennial)											
0	0	149,670	0	0	149,670	0	0	0	0	0	0
Total											
1,793,614	0	10,270,196	0	0	12,063,970	~~1,806,831~~ *1,784,618*	0	10,518,568	0	0	~~12,325,399~~ *12,303,186*

All remaining federal pass-through grant appropriations, including reversions, for the 2001 biennium are authorized to continue and are appropriated in fiscal year 2002 and fiscal year 2003.

Item 1 includes a reduction in general fund money of $2,352 in fiscal year 2002 and $2,352 in fiscal year 2003. This reduction is the equivalent of an 11% reduction in fiscal year 2000 base budget travel expenses.

Item 1 includes a reduction in fiscal year 2003 of $2,671 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The division may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $1,575 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $18,067 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the division.

The board of crime control shall update juvenile crime statistics from the child and adult protective services system on the board's web page semiannually.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF JUSTICE (4110)											
1. Legal Services Division (01)											
2,672,641	327,095	149,660	0	0	3,149,622	~~2,689,485~~	328,436	150,137	0	0	~~3,168,058~~
						2,649,477					*3,128,050*
a. Major Litigation (Restricted/Biennial)											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
b. Crime Victim Benefits (Biennial)											
579,398	0	225,000	0	0	804,398	581,300	0	225,000	0	0	806,300
c. HB 419 — Natural Resources Enforcement Program											
0	41,600	0	0	0	41,600	0	41,600	0	0	0	41,600
d. Amber Alert System (Restricted/OTO)											
0	*0*	*0*	*0*	*0*	*0*	*75,000*	*0*	*0*	*0*	*0*	*75,000*
2. Gambling Control Division (07)											
380,000	3,368,635	0	611,103	0	3,349,738	~~380,000~~	3,368,893	0	613,766	0	~~3,361,659~~
						342,000					*3,224,659*
3. Motor Vehicle Division (12)											
8,191,905	432,194	0	0	0	8,624,099	~~8,240,751~~	~~432,194~~	0	0	0	~~8,672,945~~
						1,479,845	*7,068,993*				*8,548,838*
a. HB 577 — Motor Vehicle IT Account (Biennial)											
0	960,000	0	0	0	960,000	0	0	0	0	0	0
b. SB 334 — Driver Rehabilitation and Improvement Program											
0	33,146	0	0	0	33,146	0	32,778	0	0	0	32,778
4. Highway Patrol Division (13)											
1,039,779	17,050,446	964,494	0	0	19,054,719	~~1,072,796~~	17,349,960	971,207	0	0	~~19,393,963~~
						1,040,260					*19,361,417*
a. SB 358 — Access to Traffic Accident Reports											
0	16,574	0	0	0	16,574	0	13,946	0	0	0	13,946

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. HB 256 — Reckless or Careless Driving												
	12,073	0	0	0	0	12,073	12,073	0	0	0	0	12,073
5. Division of Criminal Investigation (18)												
	2,307,312	317,557	1,340,619	0	0	3,965,398	~~2,321,541~~ *2,771,544*	318,802	1,346,416	0	0	~~3,986,759~~ *5,736,862*
6. County Attorney Payroll (19)												
	1,695,751	0	0	0	0	1,695,751	~~1,749,594~~ *1,659,694*	0	0	0	0	~~1,749,594~~ *1,659,694*
7. Law Enforcement Academy Division (22)												
	1,104,721	50,000	199,607	0	0	1,354,328	1,089,970	50,000	199,723	0	0	1,339,693
8. Central Services Division (28)												
	276,527	364,448	0	13,888	0	654,863	275,326	353,914	0	13,831	0	641,071
a. Legislative Audit (Restricted/Biennial)												
	36,149	33,447	0	1,316	0	60,813	0	0	0	0	0	0
9. Information Technology Services Division (29)												
	2,700,396	656,401	771,611	10,199	0	4,138,606	~~2,714,182~~ *2,471,569*	655,357	~~471,594~~ *771,696*	10,199	0	~~4,152,332~~ *3,910,040*
10. Forensic Sciences Division (32)												
	2,085,304	303,305	185,613	0	0	2,574,183	~~2,074,816~~ *2,054,816*	303,305	185,973	0	0	~~2,563,994~~ *2,523,994*
a. HB 359 — Expand Collection of DNA Evidence												
	24,160	0	0	0	0	24,160	24,160	0	0	0	0	24,160
Total												
	32,396,321	23,834,740	3,835,584	635,406	0	60,603,051	~~23,425,984~~ *16,056,671*	~~23,149,115~~ *25,726,914*	~~3,850,049~~ *5,260,060*	635,796	0	~~80,061,944~~ *49,569,451*

The appropriations for legislative contract authority are subject to all of the following provisions:

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on the state accounting records and kept separate from present law operations. In preparing the 2005 biennium executive budget, the office of budget and program planning may not include expenditures from this item in the present law base.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year, listing legislative contract authority grants received and the amount of expenditures and FTE for each grant.

The legislature recognizes that the costs associated with litigation in which the legal services division is required to provide representation to the state of Montana may exceed the appropriation provided. In that event, the department will need to request a supplemental appropriation from the 2003 legislature to adequately represent the state.

Item 1 includes a reduction in fiscal year 2003 of $40,008 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 1c is contingent upon passage and approval of House Bill No. 419.

The appropriation for the gambling control division contains funding for the automated accounting and reporting system (AARS). The general fund appropriation of $380,000 in each year of the 2003 biennium reflects continuation of a 5-year general fund commitment for this project through the 2005 biennium. It is the intent of the legislature that an annual general fund commitment of $236,250 be continued in each year of the 2007 biennium. If the long-range building program committee bill, to use intercap funding for AARS implementation, is passed by the 2001 legislature, a portion of these appropriations may be used to make debt service payments.

The department is appropriated up to $2,800,000 for the biennium from state special revenue funds for the purchase of system interface boards to be used for the implementation of the AARS.

Item 2 includes a reduction in fiscal year 2003 of $38,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 2 includes a reduction of $567,203 in general fund money in fiscal year 2002 and $569,866 in fiscal year 2003 and an increase in proprietary funds of $611,103 in fiscal year 2002 and $613,766 in fiscal year 2003. These reductions and increases are contingent upon passage and approval of House Bill No. 399.

Item 3 includes a reduction in general fund money of $31,502 in fiscal year 2002 and $31,502 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes $5,738 of general fund money in fiscal year 2002 that is contingent upon passage and approval of House Bill No. 124.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Fiscal year 2003 state special revenue in item 3 includes $6,636,799 of the fund balance from revenue sources not restricted to certain purposes by the Montana constitution.

Item 3 includes a reduction in fiscal year 2003 of $220,438 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 3a is contingent upon passage and approval of House Bill No. 577 and is for:

(1) debt service payments or repayment of any loan incurred for the creation of a new information technology system for motor vehicles; or

(2) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system.

Item 4 includes a reduction in fiscal year 2003 of $32,646 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 4a is contingent upon passage and approval of Senate Bill No. 358.

Item 4b is contingent upon passage and approval of House Bill No. 256.

There is appropriated from the highway patrol retirement clearing account for payments to the Montana highway patrol pension fund the amount required for this transfer, not to exceed $1,500,000 for each fiscal year.

Item 5 includes a reduction in fiscal year 2003 of $200,197 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

It is the intent of the legislature that the agency not use general fund money in item 5 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

Item 6 includes a reduction in fiscal year 2003 of $60,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 9 includes a reduction of $127,892 in fiscal year 2002 and $128,336 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 9 includes a reduction in fiscal year 2003 of $31,972 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 9 includes a reduction of $68,506 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses in all divisions of the department except the forensic sciences division. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 9 includes a reduction of $151,846 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 10 includes a reduction in fiscal year 2003 of $40,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

If Senate Bill No. 328 is not passed and approved, the extradition and transportation of prisoners program will remain in the department of justice as program 30 and there is appropriated $177,724 of general fund money in fiscal year 2002 and $178,936 of general fund money in fiscal year 2003. In addition, if Senate Bill No. 328 is not passed and approved, the amendment to the reference copy of [this act] striking the language accompanying the extradition and transportation of prisoners program in the department of justice is void.

Item 10 includes $12,000 in general fund money for fiscal year 2002 for lab accreditation. The use of the funds for accreditation is contingent on passage of a federal requirement that a lab needs to be accredited to receive federal funds.

Item 10a is contingent upon passage and approval of House Bill No. 359.

PUBLIC SERVICE REGULATION (4201)

1. Public Service Regulation Program (01)											
0	2,525,654	13,667	0	0	2,539,321	0	2,505,913	13,666	0	0	2,519,578
a. Legislative Audit (Restricted/Biennial)											
0	17,027	0	0	0	17,027	0	0	0	0	0	0
b. Consultants (Biennial)											
0	100,000	0	0	0	100,000	0	0	0	0	0	0
c. Universal Access Program (Biennial)											
0	683,454	0	0	0	683,454	0	0	0	0	0	0
Total											
0	3,326,135	13,667	0	0	3,339,802	0	2,505,913	13,666	0	0	2,519,578

DEPARTMENT OF CORRECTIONS (6401)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration and Support Services (01)												
	14,797,935	4,321	0	67,057	0	14,869,314	~~14,406,654~~ *14,076,515*	1,368	0	65,151	0	~~14,473,193~~ *14,142,587*
a. Legislative Audit (Restricted/Biennial)												
	91,947	0	0	0	0	91,947	0	0	0	0	0	0
b. Establishment of Criteria and Treatment of Hepatitis C												
	103,510	0	0	0	0	103,510	557,909	0	0	0	0	557,909
2. Community Corrections (02)												
	32,621,208	573,690	428,967	0	0	33,624,065	34,345,320	573,690	426,967	0	0	35,348,197
3. Secure Facilities (03)												
	48,134,474	1,152,279	533,362	0	0	49,820,115	47,083,654	1,152,595	556,968	0	0	48,793,217
4. Montana Correctional Enterprises (04)												
	1,014,403	0	0	516,831	0	1,531,234	1,016,834	0	0	518,341	0	1,535,075
Total												
	96,763,478	1,730,490	962,349	583,888	0	100,040,205	~~97,420,371~~ *97,090,085*	1,727,643	983,935	583,492	0	~~100,715,591~~ *100,385,255*

Because the percentage of American Indians in our state's correctional system ranges from 17% in the men's prison to up to 40% in the women's prison, it is important that the department maintain open communications and liaisons with the Montana tribes. Therefore, the department shall designate one of its current full-time equivalent employees in the administration and support services division to have included as a part of the employee's job responsibilities the duty to serve as a liaison with the Montana tribes and the department regarding American Indian inmate issues and concerns in all correctional facilities, including contracted bed facilities.

The department is encouraged to use telemedicine technology to the fullest extent possible to effect savings within the department.

The legislature encourages the department to use the authority that it possesses under current statute to allow early discharge of offenders subject to the jurisdiction of the department for the purpose of relieving the projected cost overrun caused by high prison populations.

Item 1 includes a reduction of $401,402 in fiscal year 2002 and $402,801 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction in fiscal year 2003 of $111,748 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $218,589 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2 includes a reduction in general fund money of $107,057 in fiscal year 2002 and $107,057 in fiscal year 2003. This reduction is the equivalent of a 24% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

It is the intent of the legislature that the agency not use general fund money in items 2 and 3 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

If Senate Bill No. 489 is not passed and approved, general fund money in item 2 is reduced by $667,156 in fiscal year 2002 and by $2,165,633 in fiscal year 2003.

If Senate Bill No. 489 is not passed and approved, general fund money in item 3 is increased by $4 million in fiscal year 2003.

The department shall negotiate with the department of public health and human services and the Montana food bank for any costs incurred by the Montana correctional enterprises in operating the food bank program.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1. Job Service Division (01)

691,355	6,701,113	24,354,444	6,832	0	31,753,744	~~693,758~~	~~6,735,551~~	~~24,371,112~~	6,832	0	~~31,807,247~~
						17,861	*5,516,547*	*23,432,112*			*51,322,382*

a. Legislative Audit (Restricted/Biennial)

988	58,073	6,543	0	0	65,573	0	0	0	0	0	0

b. Research and Analysis Bureau Additional FTE (OTO)

0	0	82,903	0	0	82,903	0	0	83,194	0	0	83,194

c. Displaced Homemaker Program

235,605	0	0	0	0	235,605	~~235,605~~	~~0~~	0	0	0	~~235,605~~
						18,423	*219,768*				*238,191*

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. SB 322 — Natural Resource Worker Education and Retraining											
0	0	0	0	0	0	0	150,000	0	0	0	150,000
2. Unemployment Insurance Division (02)											
0	288,653	6,186,716	0	0	6,475,369	0	288,653	6,236,208	0	0	6,524,861
a. Legislative Audit (Restricted/Biennial)											
0	0	30,506	0	0	30,506	0	0	0	0	0	0
b. Unemployment Insurance Modified FTE to Permanent (OTO)											
0	0	108,306	0	0	108,306	0	0	108,583	0	0	108,583
3. Commissioner's Office/Centralized Services Division (03)											
149,746	530,587	445,678	52,540	0	1,178,951	150,348	535,048	447,431	53,819	0	1,186,636
a. Legislative Audit (Restricted/Biennial)											
196	3,164	0	0	0	3,360	0	0	0	0	0	0
4. Employment Relations Division (04)											
886,698	5,815,940	761,902	0	0	7,464,540	~~691,317~~ *330,441*	5,849,545	765,250	0	0	~~7,306,112~~ *7,496,236*
a. Legislative Audit (Restricted/Biennial)											
2,990	14,813	2,660	0	0	20,463	0	0	0	0	0	0
b. Human Rights Workload (Restricted/OTO)											
21,159	0	0	0	0	21,159	21,227	0	0	0	0	21,227
5. Professional and Occupational Licensing (05)											
0	5,272,276	0	0	0	5,272,276	0	5,202,573	0	0	0	5,202,573
a. Legal Contingency (Restricted/OTO)											
0	70,000	0	0	0	70,000	0	70,000	0	0	0	70,000
6. Weights and Measures Bureau (06)											
0	678,238	0	0	0	678,238	0	619,843	0	0	0	619,843
a. Legislative Audit (Restricted/Biennial)											
0	1,573	0	0	0	1,573	0	0	0	0	0	0
7. Montana Community Services (07)											

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
34.895	28.191	3.964.714	0	0	3.017.800	34.895	28.300	3.966.472	0	0	3.019.667
a. Legislative Audit (Restricted/Biennial)											
0	0	863	0	0	863	0	0	0	0	0	0
8. Building Codes Bureau (08)											
0	3.276.316	0	0	0	3.276.316	0	3.296.263	0	0	0	3.296.263
a. Legislative Audit (Restricted/Biennial)											
0	6.427	0	0	0	6.427	0	0	0	0	0	0
b. Building Codes Vehicle Replacement (OTO)											
0	46.118	0	0	0	46.118	0	46.118	0	0	0	46.118
9. Workers' Compensation Court (09)											
0	423.967	0	0	0	423.967	0	438.938	0	0	0	438.938
a. Legislative Audit (Restricted/Biennial)											
0	1.034	0	0	0	1.034	0	0	0	0	0	0
Total											
2.013.602	23.216.890	34.935.134	59.372	0	60.224.998	~~2.017.144~~	~~23.310.732~~	~~34.678.240~~	59.651	0	~~60.365.767~~
						1.112.896	*20.111.295*	*39.089.240*			*60.313.079*

It is the intent of the legislature that the rates charged for centralized services functions be agreed to by the United States department of labor federal cost negotiator. It is anticipated that the assessment will be approximately 9% and 10% of a program's actual personal service costs incurred in fiscal year 2002 and fiscal year 2003.

Item 1 includes a $672,609 reduction in general fund money for fiscal year 2003 for the job service division to be replaced by employment security account state special revenue funds in the amount of $691,796 administered by the department. The increased amount includes the House Bill No. 13, Chapter 553, Laws of 2001, allocation. Item 1 also includes a $4,111,000 reduction in the employment security account state special revenue funds to be replaced by "Reed Act" (a part of the Employment Security Administrative Financing Act of 1954) federal special revenue funds.

Item 1 includes a reduction in fiscal year 2003 of $3,582 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1c includes a $217,182 reduction in general fund money for fiscal year 2003 for the displaced homemaker program to be replaced by employment security account state special revenue funds in the amount of $219,765 administered by the department. The increased amount includes the House Bill No. 13, Chapter 553, Laws of 2001, allocation.

Item 1d is contingent upon passage and approval of Senate Bill No. 322.

Item 3 includes a reduction in general fund money of $923 in fiscal year 2002 and $923 in fiscal year 2003. This reduction is the equivalent of a 1% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes a reduction of $7,635 in fiscal year 2002 and $7,661 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 4 includes a reduction of $10,876 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

The professional and occupational licensing staff and operating budget designated as proprietary will transfer into this department with professional and occupational licensing (05).

Items 5, 5a, 6, 6a, 8, 8a, and 8b are contingent upon passage and approval of Senate Bill No. 445.

It is the intent of the legislature that the internal service rates charged for program 05, program 06, and program 08 will be approximately 9% and 10% of a program's actual personal services costs incurred in fiscal year 2002 and fiscal year 2003.

The department shall report to the 2003 legislature on options for a fleet management plan to stabilize vehicle replacement costs within the building codes division.

Item 8 contains state special revenue authority of $70,389 in fiscal year 2002 and $52,889 in fiscal year 2003, including funding for 1.5 full-time equivalent employees each year, that is contingent upon passage and approval of House Bill No. 437.

Item 8 contains state special revenue authority of $100,925 in fiscal year 2002 and $151,950 in fiscal year 2003, including funding for 1.5 full-time equivalent employees in fiscal year 2002 and 3 full-time equivalent employees in fiscal year 2003, that is contingent upon passage and approval of Senate Bill No. 242.

DEPARTMENT OF MILITARY AFFAIRS (6701)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Operations Support (01)												
	367,042	0	45,697	0	0	412,739	366,807	0	50,448	0	0	416,255
a. Legislative Audit (Restricted/Biennial)												
	414	0	0	0	0	414	0	0	0	0	0	0
b. Operations Support Compliance Specialist (OTO)												
	0	0	36,548	0	0	36,548	0	0	37,153	0	0	37,153
2. Challenge Program (02)												
a. Legislative Audit (Restricted/Biennial)												
	4,135	0	6,203	0	0	10,338	0	0	0	0	0	0
b. Youth Challenge Program (OTO)												
	1,114,021	0	1,671,040	0	0	2,785,061	~~1,118,162~~ *84,805*	~~0~~ *1,125,240*	1,677,243	0	0	~~2,795,405~~ *2,887,288*
3. Scholarship Program (03)												
a. National Guard Scholarship Program (Biennial/OTO)												
	250,000	0	0	0	0	250,000	0	0	0	0	0	0
4. Army National Guard Program (12)												
	1,181,699	124,400	3,640,939	0	0	4,947,038	~~1,240,481~~ *1,198,147*	222,800	3,736,366	0	0	~~5,201,647~~ *5,164,313*
a. Legislative Audit (Restricted/Biennial)												
	6,410	0	16,746	0	0	23,156	0	0	0	0	0	0
5. Air National Guard Program (13)												
	200,331	0	2,020,763	0	0	2,221,094	208,550	0	2,016,840	0	0	2,225,390
a. Legislative Audit (Restricted/Biennial)												
	931	0	4,446	0	0	5,377	0	0	0	0	0	0
b. Firefighters Retirement (Restricted/Biennial)												
	0	0	5,686	0	0	5,686	0	0	0	0	0	0
6. Disaster Coordination Response (21)												

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
505,769	21,891	1,766,785	0	0	2,294,151	503,463	21,891	1,321,478	0	0	1,846,832
a. Legislative Audit (Restricted/Biennial)											
630	0	630	0	0	1,340	0	0	0	0	0	0
b. Disaster and Emergency Services Server Replacement (OTO)											
0	0	0	0	0	0	12,679	0	4,651	0	0	17,330
7. Veterans' Affairs Program (31)											
689,897	161,513	0	0	0	851,410	685,468	161,614	0	0	0	847,082
a. Legislative Audit (Restricted/Biennial)											
827	0	0	0	0	827	0	0	0	0	0	0
b. Veterans' Affairs Copier Replacement (OTO)											
4,000	0	0	0	0	4,000	0	0	0	0	0	0
Total											
4,326,105	307,510	9,215,463	0	0	13,849,078	~~4,139,609~~ *5,008,916*	~~406,011~~ *1,529,761*	8,652,179	0	0	~~13,397,799~~ *15,590,846*

The terrorism/weapons of mass destruction program and the associated 1 FTE are terminated when federal funding for the program is terminated.

The general fund appropriation in item 2b may be used only for matching funds for Montana residents.

Item 2b includes a $1,083,359 reduction in general fund money in fiscal year 2003 for the youth challenge program to be replaced by employment security account state special revenue funds in the amount of $1,123,240, which are administered by the department of labor and industry. The increased amount includes the House Bill No. 13, Chapter 553, Laws of 2001, allocation.

Item 4 includes a reduction in general fund money of $14,018 in fiscal year 2002 and $14,018 in fiscal year 2003. This reduction is the equivalent of a 1% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 4 includes a reduction of $20,312 in fiscal year 2002 and $20,331 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 4 includes a reduction in fiscal year 2003 of $3,735 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.											
Item 4 includes a reduction of $13,389 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.											
Item 4 includes a reduction of $30,210 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.											
Item 5b is contingent upon passage and approval of Senate Bill No. 289.											
TOTAL SECTION D											
138,193,330	61,415,165	59,233,353	1,378,666	0	240,121,104	~~138,689,938~~	~~69,999,613~~	~~58,496,688~~	1,319,869	0	~~268,506,108~~
						119,033,136	*84,660,213*	*62,909,649*			*266,602,998*

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					E. EDUCATION						
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)											
1. OPI Administration (06)											
4,338,810	181,100	0	73,133	0	4,593,043	~~4,333,867~~ *4,168,320*	181,178	0	73,133	0	~~4,578,198~~ *4,422,651*
a. Advanced Placement Administration (OTO)											
0	0	27,557	0	0	27,557	0	0	39,841	0	0	39,841
b. Emergency Renovation (OTO)											
0	0	54,837	0	0	54,837	0	0	54,837	0	0	54,837
c. Federal Funds (Biennial)											
0	0	7,537,147	0	0	7,537,147	0	0	7,548,601	0	0	7,548,601
d. National Board Certification Stipends											
30,000	0	0	0	0	30,000	~~30,000~~ *5,000*	0	0	0	0	~~30,000~~ *5,000*
2. Distribution to Public Schools (09)											
0	0	82,994,320	0	0	82,994,320	0	0	84,576,071	0	0	84,576,071
a. BASE Aid (Restricted/Biennial)											
440,776,000	0	0	0	0	440,776,000	443,890,000	0	0	0	0	443,890,000
b. Special Education (Restricted/Biennial)											
33,899,850	0	0	0	0	33,899,850	34,916,846	0	0	0	0	34,916,846
c. Transportation Aid (Restricted/Biennial)											
10,787,993	0	0	0	0	10,787,993	~~10,887,993~~ *10,499,489*	0	0	0	0	~~10,887,993~~ *10,499,489*
d. School Facility Reimbursement (Restricted/Biennial)											
4,350,000	0	0	0	0	4,350,000	~~4,400,000~~ *4,460,000*	0	0	0	0	~~4,400,000~~ *4,460,000*
e. In-state Treatment (Biennial)											

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
974,897	0	0	0	0	974,897	974,897	0	0	0	0	974,897
f. Secondary Vocational Education (Biennial)											
715,000	0	0	0	0	715,000	715,000	0	0	0	0	715,000
g. Adult Basic Education (Biennial)											
275,000	0	0	0	0	275,000	275,000	0	0	0	0	275,000
h. Gifted and Talented (Biennial)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
i. School Food (Biennial)											
648,653	0	0	0	0	648,653	648,653	0	0	0	0	648,653
j. School District Audits (Biennial)											
145,025	0	0	0	0	145,025	149,425	0	0	0	0	149,425
k. Traffic Safety Distribution											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
l. Reduced Class Size (Biennial)											
0	0	7,605,780	0	0	7,605,780	0	0	9,493,513	0	0	9,493,513
m. Advanced Placement Incentive (Biennial)											
0	0	194,900	0	0	194,900	0	0	238,600	0	0	238,600
n. Comprehensive School Reform (Biennial)											
0	0	963,061	0	0	963,061	0	0	963,061	0	0	963,061
o. Emergency School Renovation (Biennial)											
0	0	5,428,913	0	0	5,428,913	0	0	5,428,913	0	0	5,428,913
p. SB 390 — Transfer to School Flexibility Account (Restricted/Biennial/OTO)											
0	0	0	0	0	0	~~5,000,000~~ *2,200,000*	0	0	0	0	~~5,000,000~~ *2,200,000*
q. School Flexibility Account (Restricted/Biennial/OTO)											
0	0	0	0	0	0	0	~~5,063,000~~ *4,500,000*	0	0	0	~~5,063,000~~ *4,500,000*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
497,081,228	931,100	104,806,515	73,133	0	602,891,976	~~$96,661,701~~	~~6,914,178~~	108,342,447	73,133	0	~~621,091,459~~
						$03,055,100	*$ 251,175*				*616,654,555*

It is the intent of the legislature that the advanced driver education program be funded through a proprietary account.

Item 1 includes a reduction in general fund money of $19,069 in fiscal year 2002 and $19,069 in fiscal year 2003. This reduction is the equivalent of a 13.5% reduction in fiscal 2000 base budget travel expenses.

Item 1 includes a reduction of $24,236 in fiscal year 2002 and $24,322 in fiscal year 2003 of general fund money. The office may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 1 includes $37,500 of general fund money in fiscal year 2002 and $12,500 of general fund money in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 1 includes a reduction in fiscal year 2003 of $4,104 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The office may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $25,067 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction in fiscal year 2003 of $128,896 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 1c is a biennial appropriation.

Item 1d is to provide up to 10 teachers each fiscal year who obtain certification by the national board for professional teaching standards with a one-time stipend of $3,000.

Item 1d includes a reduction in fiscal year 2003 of $27,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Items 2a through 2j and items 2l through 2o are biennial appropriations.

Item 2a is reduced to $392,189,000 in general fund money only if both House Bill No. 4 and House Bill No. 7, August 2002 Special Session, are passed an approved. If only House Bill No. 7 is passed and approved, item 2a is reduced to $396,039,000 in general fund money.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 2c includes a reduction in fiscal year 2003 of $388,634 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
Item 2d includes a reduction in fiscal year 2003 of $250,000 in general fund money and represent s the reductions ordered by the governor pursuant to 17-7-140.											

Money deposited in the general fund for fiscal year 2001 under 20-9-343(3)(a)(ii) must be transferred to the school technology account in the state special revenue fund in fiscal year 2002.

If House Bill No. 41 is not passed and approved in the form that statutorily appropriates timber harvest funds to schools for technology acquisitions, there is a restricted, biennial general fund appropriation of $1,250,000 in fiscal year 2002 and $1,600,000 in fiscal year 2003. In addition, if House Bill No. 41 is not passed and approved, the amendment to the reference copy of [this act] striking the language accompanying the timber harvest appropriation and inserting language is void.

The office of public instruction may distribute funds from the appropriation in item 2e to public school districts for the purpose of providing educational costs of children with significant behavioral or physical needs.

If Senate Bill No. 495 is enjoined before April 1, 2002, items 2p and 2q are void.

Item 2p includes a reduction in fiscal year 2003 of $134,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

It is the intent of the legislature that $200,000 in item 2q be used to pay for costs that would otherwise be incurred by districts to meet the board of public education student testing requirements.

Any cash balance remaining in the school flexibility account must be transferred to the general fund by June 30, 2003.

BOARD OF PUBLIC EDUCATION (5101)

1. Administration (01)												
170,135	13,041	0	0	0	183,166	~~170,507~~ *168,192*	13,041	0	0	0	~~183,548~~ *181,233*
a. Legislative Audit (Restricted/Biennial)												
1,703	0	0	0	0	1,703	0	0	0	0	0	0
2. Advisory Council (03)												
0	161,433	0	0	0	161,433	0	161,994	0	0	0	161,994
a. Legislative Audit (Restricted/Biennial)												
0	1,703	0	0	0	1,703	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
171.838	175.176	0	0	0	347.004	~~170.507~~	174.035	0	0	0	~~344.542~~
						168.142					*342.227*

Item 1 includes a reduction in fiscal year 2003 of $610 in general fund money and represents the equivalent of 2.6% of office supplies expenditures funded with general fund money in fiscal year 2002. The board of public education may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $1.705 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the board of public education. The board of public education may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)											
302.064	0	0	0	0	302.064	300.387	0	0	0	0	300.387
a. Legislative Audit (Restricted/Biennial)											
28.127	0	0	0	0	28.127	0	0	0	0	0	0
2. General Services Program (02)											
314.060	0	0	0	0	314.060	315.497	0	0	0	0	315.497
3. Student Services (03)											
918.708	0	25.000	0	0	943.708	922.187	0	25.000	0	0	947.187
4. Education (04)											
1,891.051	235.065	63.898	0	0	2,190.014	~~1,891.657~~	~~235.065~~	63.898	0	0	~~2,190.620~~
						1,356.709	*546.063*				*2,266.672*
a. *MTAP Transfer to General Fund (Restricted)*											
0	*0*	*0*	*0*	*0*	*0*	*66.996*	*0*	*0*	*0*	*0*	*66.996*
Total											
3,454.030	235.065	88.898	0	0	3,777.993	~~3,429.738~~	~~235.065~~	88.898	0	0	~~3,753.691~~
						5,451.775	*546.063*				*5,826.758*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that the agency not use general fund money in item 3 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

Item 4 includes a reduction of $26,189 in fiscal year 2002 and $26,279 in fiscal year 2003 of general fund money. The school may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 4 includes $111,000 in fiscal year 2003 of state special revenue. The school may reallocate this funding among programs as necessary.

Item 4 includes $26,000 in fiscal year 2003 of general fund money. The school may reallocate this funding among programs as necessary.

Item 4 includes a reduction in fiscal year 2003 of $6,453 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The school may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 4 includes a reduction of $19,201 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4 includes a reduction of $34,294 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the school. The school may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)

314,039	140,639	477,500	0	0	932,178	~~302,551~~ *289,019*	137,416	477,500	0	0	~~917,467~~ *903,935*

a. Legislative Audit (Restricted/Biennial)

19,460	0	0	0	0	19,460	0	0	0	0	0	0

Total											
333,499	140,639	477,500	0	0	951,638	~~302,551~~ *289,019*	137,416	477,500	0	0	~~917,467~~ *903,935*

All federal funds in item 1 are biennial appropriations.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 1 includes a reduction in general fund money of $1,132 in fiscal year 2002 and $1,132 in fiscal year 2003. This reduction is the equivalent of a 16% reduction in fiscal year 2000 base budget travel expenses.												
Item 1 includes a reduction in fiscal year 2003 of $507 in general fund money and represents the equivalent of 2.6% of office supplies expenditures funded with general fund money in fiscal year 2002.												
Item 1 includes a reduction of $3,025 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the Montana arts council.												
MONTANA STATE LIBRARY COMMISSION (5115)												
1. State Library Operations (01)												
1,790,071	177,710	1200,694	0	0	3,168,475	~~1,581,278~~ *1,410,559*	~~147,710~~ *117,614*	150,694	0	0	~~1,459,682~~ *2,378,647*
a. Legislative Audit (Restricted/Biennial)												
17,027	0	0	0	0	17,027	0	0	0	0	0	0
b. Periodical Electronic Database (OTO)												
82,500	117,500	0	0	0	200,000	82,500	117,500	0	0	0	200,000
2. Natural Resources Information System (07)												
84,838	470,348	30,000	0	0	585,186	88,980	495,341	30,000	0	0	614,321
a. Stable Natural Resources Information System Funding (OTO)												
4,513	140,487	0	0	0	145,000	4,513	115,487	0	0	0	120,000
b. Legislative Contract Authority (Biennial/OTO)												
0	25,000	475,000	0	0	500,000	0	0	0	0	0	0
Total												
1,978,949	931,045	1,705,694	0	0	4,615,688	~~1,497,271~~ *1,636,552*	~~905,038~~ *848,942*	780,694	0	0	~~3,364,003~~ *3,527,963*
Item 1 includes biennial appropriations of $251,138 in general fund money and $889,102 in federal funds for grants to local libraries.												

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction in general fund money of $4.561 in fiscal year 2002 and $4.561 in fiscal year 2003. This reduction is the equivalent of a 16% reduction in fiscal year 2000 base budget travel expenses. The commission may reallocate this reduction in funding between programs when developing 2003 biennium operating plans.

Item 1 includes a reduction in fiscal year 2003 of $3,868 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The commission may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $60,096 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

Item 1 includes a reduction of $17,071 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the commission. The commission may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2b includes $500,000 for legislative contract authority as a biennial appropriation, subject to the following provisions:

(1) Legislative contract authority applies only to state special revenue funds received from the Montana university system, federal funds, and private funds.

(2) Legislative contract authority expenditures must be reported on the state accounting system. The records must be separate from present law operations. In preparing the 2005 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the state library commission to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

(4) Legislative contract authority may be transferred between state and federal special revenue, depending upon the contract received by the Montana state library.

MONTANA HISTORICAL SOCIETY (5117)

1. Administration Program (01)

796,234	317,473	55,796	70,000	0	1,140,493	~~809,573~~ *774,822*	313,116	51,616	70,000	0	~~1,140,305~~ *1,114,554*

a. Legislative Audit (Restricted/Biennial)

26,757	0	0	0	0	26,757	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Lewis and Clark Bicentennial (OTO)											
31,847	0	0	0	0	31,847	31,715	0	0	0	0	31,715
2. Library Program (02)											
585,835	2,606	0	59,447	0	648,091	588,810	2,606	0	59,518	0	651,136
a. Equipment to Read and Print Microfilm (Biennial/OTO)											
6,000	0	0	0	0	6,000	0	0	0	0	0	0
3. Museum Program (03)											
282,162	251,533	0	7,618	0	541,333	284,383	253,151	0	7,618	0	545,152
4. Publications (04)											
53,652	0	0	710,135	0	763,787	53,652	0	0	711,646	0	765,298
5. Historical Sites Preservation (06)											
47,361	0	805,461	0	0	852,862	44,451	0	807,864	0	0	852,315
6. Lewis and Clark Bicentennial (08)											
a. Grant Funding (Restricted)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
Total											
1,829,879	571,814	862,277	847,200	0	4,111,170	~~1,803,584~~ *1,777,853*	568,075	865,480	848,782	0	~~4,085,921~~ *4,060,170*

Item 1 includes a reduction in general fund money of $5,278 in fiscal year 2002 and $5,278 in fiscal year 2003. This is a reduction in travel funding. The agency may reallocate this reduction in funding among programs when developing 2003 biennium operating plans.

Item 1 includes a reduction of $9,453 in fiscal year 2002 and $9,483 in fiscal year 2003 of general fund money. The society may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 1 includes a reduction in fiscal year 2003 of $2,421 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The society may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction of $6,297 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $18,033 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the society. The society may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

The legislative intent of item 2a is to acquire equipment based on the newest available technology within the available funding limit at the time of purchase.

It is the intent of the legislature that the department of commerce use lodging facility use taxes to fund $515,961 in fiscal year 2002 and $511,677 in fiscal year 2003 for the Montana historical society. This would be expended as follows:

	2002	2003	
Lewis and Clark Bicentennial	$116,477	$111,134	
Scriver Curator	28,484	25,553	
Scriver Rent Storage	96,000	100,000	
Lewis and Clark Bicentennial Commission		200,000	200,000
Historical Interpretation	75,000	75,000	

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

1. OCHE — Administration (01)

1,226,557	0	0	0	0	1,226,557	~~1,343,480~~ *1,090,248*	0	0	0	0	~~1,343,480~~ *1,090,248*

a. Legislative Audit (Restricted/Biennial)

35,514	0	0	0	0	35,514	0	0	0	0	0	0

2. OCHE — Student Assistance (02)

8,299,390	0	151,531	0	0	8,450,921	~~8,477,208~~ *8,352,791*	0	151,531	0	0	~~8,628,739~~ *8,504,322*

3. OCHE — Dwight D. Eisenhower Mathematics and Science Education Act (03)

0	0	312,744	0	0	312,744	0	0	312,744	0	0	312,744

4. OCHE — Community College Assistance (04) (Biennial)

5,551,948	0	0	0	0	5,551,948	~~5,579,546~~	0	0	0	0	~~5,579,546~~

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
						~~6,410,220~~					~~6,410,220~~
a. Legislative Audit (Restricted/Biennial)											
33,930	0	0	0	0	33,930	0	0	0	0	0	0
5. OCHE — Talent Search (06)											
92,846	0	2,993,405	0	0	3,086,251	~~93,349~~ *59,846*	0	3,129,072	0	0	~~3,222,421~~ *3,215,418*
6. OCHE — C.D. Perkins Administration (08)											
78,748	0	7,765,831	0	0	7,844,579	78,746	0	6,125,761	0	0	6,204,507
7. OCHE — Appropriation Distribution Transfers (09)											
99,801,741	13,333,348	0	0	0	113,033,989	~~100,312,988~~ *91,174,717*	13,400,460	0	0	0	~~113,713,448~~ *105,575,177*
a. Legislative Audit (Restricted/Biennial)											
228,503	0	0	0	0	228,503	0	0	0	0	0	0
b. Increase State Support $100 per Resident Student per Year											
3,500,000	0	0	0	0	3,500,000	5,000,000	0	0	0	0	5,000,000
c. Agricultural Experiment Station *(Restricted)*											
9,830,460	0	0	0	0	9,830,460	~~9,866,810~~ *9,244,584*	0	0	0	0	~~9,866,810~~ *9,244,584*
d. Institute for Biobased Products and Food Science											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
e. Extension Service *(Restricted)*											
4,087,036	0	0	0	0	4,087,036	~~4,102,993~~ *5,296,586*	0	0	0	0	~~4,102,993~~ *5,296,586*
f. Montana Beef Network (Restricted/Biennial/OTO)											
90,000	0	0	0	0	90,000	90,000	0	0	0	0	90,000
g. Forestry and Conservation Experiment Station *(Restricted)*											
897,428	0	0	0	0	897,428	~~900,784~~ *867,776*	0	0	0	0	~~900,784~~ *867,776*

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
h. Bureau of Mines and Geology (*Restricted*)												
	1,533,607	600,000	0	0	0	2,133,607	~~1,538,621~~ *1,462,875*	666,000	0	0	0	~~2,204,621~~ *2,128,875*
i. Fire Services Training School (*Restricted*)												
	497,630	0	0	0	0	497,630	~~504,250~~ *488,155*	0	0	0	0	~~504,250~~ *488,155*
j. Flathead Lake Biological Station — University of Montana-Missoula (Restricted/Biennial/OTO)												
	100,000	0	0	0	0	100,000	~~100,000~~ *96,800*	0	0	0	0	~~100,000~~ *96,800*
8. Tribal College Assistance Program (11) (Biennial)												
	~~100,000~~ *96,800*	0	0	0	0	~~100,000~~ *96,800*	0	0	0	0	0	0
9. OCHE — Guaranteed Student Loan (12)												
	0	0	34,668,909	0	0	34,668,909	0	0	37,373,404	0	0	37,373,404
a. Legislative Audit (Restricted/Biennial)												
	0	0	4,379	0	0	4,379	0	0	4,378	0	0	4,378
10. OCHE — Board of Regents (13)												
	43,631	0	0	0	0	43,631	43,631	0	0	0	0	43,631
Total												
	~~135,338,949~~ *135,527,449*	13,833,348	45,896,799	0	0	~~194,069,996~~ *194,086,496*	~~138,335,485~~ *127,849,205*	13,066,460	47,096,890	0	0	~~198,396,835~~ *187,711,555*

Items 1 through 3 and 5 through 7b are a single biennial lump-sum appropriation.

Total audit costs of the office of the commissioner of higher education are estimated to be $35,514.

Item 1 includes a reduction in general fund money of $11,255 in fiscal year 2002 and $11,255 in fiscal year 2003. This reduction is the equivalent of a 17% reduction in fiscal year 2000 base budget travel expenses. The agency may reallocate this reduction in funding among programs when developing 2003 biennium operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction of $99,292 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the programs.

Item 1 includes a reduction in fiscal year 2003 of $53,930 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 2 includes a reduction in fiscal year 2003 of $144,417 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Total Summitnet costs are estimated to be $25,000 each year for the community colleges. The general fund appropriation for the community colleges provides 53% of the total Summitnet costs. The remaining 47% of these costs must be paid from funds other than those appropriated in item 4. Summitnet costs for each year may not exceed $8,000 each for Dawson and Miles community colleges and $9,000 for Flathead Valley community college.

The general fund appropriation in item 4 is calculated to fund education in the community colleges for an estimated 2,030 resident FTE students in fiscal year 2002 and 2,040 resident FTE students in fiscal year 2003. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $2,792 in general fund money to the state for each estimated FTE student who did not enroll.

Item 4 includes a reduction of $56,795 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the programs.

Item 4 includes a reduction in fiscal year 2003 of $212,631 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Total audit costs are estimated to be $64,000 for the community colleges for the biennium. The general fund appropriation for each community college provides 53% of the total audit costs in fiscal year 2002. The remaining 47% of these costs must be paid from funds other than those appropriated in item 4a. Audit costs for the biennium may not exceed $20,000 each for Dawson and Miles community colleges and $24,000 for Flathead Valley community college.

Item 6 includes a reduction in fiscal year 2003 of $4,003 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002.

Item 7 includes a reduction of $779,826 in fiscal year 2002 and $782,537 in fiscal year 2003 of general fund money. The board of regents may reallocate this reduction in funding among university system units, as defined in 17-7-102(13), when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

The decision of the legislature to deny funds for initiatives or budget requests proposed by the governor and the board of regents for the 2003 biennium does not imply an intent to prohibit the board of regents from implementing those initiatives unless specifically stated otherwise in [this act].

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The general fund and millage appropriation in item 7 is calculated to fund education in the 4-year units and the colleges of technology for an estimated 25.004 resident FTE students in fiscal 2002 and 25.207 resident FTE students in fiscal 2003. If actual resident student enrollment is greater than the estimated number for the biennium, the university system shall serve the additional students without a state general fund contribution. If actual resident student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $1,914 in general fund money to the state for each estimated FTE student who did not enroll.

Revenue appropriated to the Montana university system units and colleges of technology includes:

(1) state special revenue from interest earnings of $1,913,590 each year of the 2003 biennium;

(2) tuition revenue of $110,420,878 in fiscal year 2002 and $109,775,339 in fiscal year 2003; and

(3) other revenue of $1,013,738 each year of the 2003 biennium.

These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in item 7.

Item 7 includes $428,660 in each year of the biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $201,100; Montana tech of the university of Montana, $28,000; Montana state university-northern, $97,000; Montana state university-Billings, $91,800; and western Montana college of the university of Montana, $10,760.

Item 7 includes a total of $44,253 of general fund money for the 2003 biennium for the Montana natural resources information system (NRIS). The Montana university system shall pay an additional $44,253 for the 2003 biennium in current funds in support of NRIS. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 7 includes increases of $194,088 of general fund money in fiscal year 2002 and of $194,088 of general fund money in fiscal year 2003 and reductions of $194,088 of state special revenue in fiscal year 2002 and of $194,088 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes a reduction of $3.4 million in fiscal year 2003 of general fund money. Although the legislature acknowledges the constitutional power of the board of regents to manage and control the Montana university system, it is the intent of the legislature that state support of intercollegiate athletics be reduced and that replacement funding, if desired, be from nonstate sources.

Item 7 includes a reduction in fiscal year 2003 of $149,466 in general fund money and represents the equivalent of 25% of state-funded office supplies expenditures in fiscal year 2002.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 7 includes a reduction of $1,064,130 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7 includes a reduction in fiscal year 2003 of $4,076,966 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Total audit costs are estimated to be $681,092 for the university system other than the office of the commissioner of higher education. Each unit shall pay a percentage of these costs from funds other than those appropriated in item 7a.

Item 7b is intended by the legislature to be used to increase state support for resident student FTE at the university units each year of the 2003 biennium.

University system unit is defined in 17-7-102(13). For all university system units, except the office of the commissioner of higher education, all funds (other than plant funds appropriated in House Bills No. 5 and 14, relating to long-range building, and current unrestricted operating funds) are appropriated contingent on approval of the comprehensive program budget by the board of regents by October 1 of each year. For all university system 4-year units and colleges of technology, all funds, other than funds appropriated in House Bills No. 5 and 14 for long-range building programs, are appropriated as a lump sum for the biennium contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The board of regents shall allocate the appropriations to the individual units according to board policy. The budget must contain detailed revenue and expenditure and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justifications must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

All university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the standards of accounting and reporting, as described by the national college and university business officers, as a minimum for achieving consistency.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall allow the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, including data warehouses, except:

(1) the ability to change data;

(2) portions of the banner information system that are the property of third parties (such as alumni associations or foundations); and

(3) information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

Subsections (1) through (3) in no way limit the power of the legislative fiscal analyst or the budget director to receive and examine copies of any state government information, including confidential records, in accordance with 5-12-303 and 17-1-132.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

All financial data recorded in the various funds in banner must agree with the financial data as recorded on the statewide accounting, budgeting, and human resources system (SABHRS), including:

(1) all statutory and restricted appropriations must be clearly segregated on SABHRS; and

(2) the budgeted personal services for current unrestricted operating funds on banner must tie to the operating plan for expenditure of funds appropriated in [this act] and other bills, as approved by the board of regents.

The Montana university system shall provide the electronic data required to upload human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

Revenue appropriated to the agricultural experiment station includes:

(1) state special revenue from interest earnings and other revenue of $184,239 in fiscal year 2002 and $184,705 in fiscal year 2003;

(2) federal revenue of $2,022,369 in fiscal year 2002 and $2,030,499 in fiscal year 2003; and

(3) proprietary revenue from sales of $937,627 in fiscal year 2002 and $942,135 in fiscal year 2003. These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7c.

Item 7c includes a reduction in fiscal year 2003 of $17,548 in general fund money and represents the equivalent of 25% of state-funded office supplies expenditures in fiscal year 2002.

Item 7c includes a reduction of $124,432 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the state portion of fiscal year 2002 equipment expenditures.

Item 7c includes a reduction of $100,668 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7c includes a reduction in fiscal year 2003 of $879,805 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

The general fund money in item 7d is appropriated with the condition that, prior to the expenditure of the general fund money, the Montana agricultural experiment station collect $140,000 of private, nonpublic money each year of the 2003 biennium for the purpose of supporting the institute for biobased products and food science.

Revenue appropriated to the extension service includes:

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) state special revenue from interest earnings of $46,892 in fiscal year 2002 and $47,070 in fiscal year 2003; and

(2) federal revenue of $2,268,928 in fiscal year 2002 and $2,278,065 in fiscal year 2003. These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7e.

Item 7e includes a reduction in fiscal year 2003 of $3,883 in general fund money and represents the equivalent of 26% of state-funded office supplies expenditures in fiscal year 2002.

Item 7e includes a reduction of $41,930 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7e includes a reduction in fiscal year 2003 of $161,824 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

General fund money of $90,000 each year of the 2003 biennium in item 7f is a biennial, one-time-only appropriation for one staff person and for expenses for the Montana beef network within the extension service.

Interest revenue of $4,923 in each year of the 2003 biennium is appropriated to the forestry and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in item 7g.

Item 7g includes a reduction in fiscal year 2003 of $604 in general fund money and represents the equivalent of 26% of state-funded office supplies expenditures in fiscal year 2002.

Item 7g includes a reduction of $9,008 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7g includes a reduction in fiscal year 2003 of $33,496 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Proprietary revenue of $27,310 each year of the 2003 biennium is appropriated to the bureau of mines and geology for current unrestricted operating expenses. This amount is in addition to that shown in item 7h.

Item 7h includes a reduction in fiscal year 2003 of $3,401 in general fund and represents the equivalent of 26% of state-funded office supplies expenditures in fiscal year 2002.

Item 7h includes a reduction of $374 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the state portion of fiscal year 2002 equipment expenditures.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 7h includes a reduction of $15,386 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the bureau.											
Item 7h includes a reduction in fiscal year 2003 of $57,085 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
Interest revenue of $4,097 each year of the 2003 biennium is appropriated to the fire services training school for current unrestricted operating expenses. This amount is in addition to that shown in item 7i.											
Item 7i includes a reduction in fiscal year 2003 of $413 in general fund money and represents the equivalent of 25% of state-funded office supplies expenditures in fiscal year 2002.											
Item 7i includes a reduction of $5,073 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.											
Item 7i includes a reduction in fiscal year 2003 of $18,631 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
Item 7j includes a reduction in fiscal year 2003 of $3,500 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
Item 8 includes a reduction in the 2003 biennium of $3,500 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
TOTAL SECTION E											
~~640,180,382~~	15,817,277	153,837,663	920,333	0	~~810,755,655~~	~~652,310,748~~	~~21,101,267~~	157,650,909	921,915	0	~~831,984,839~~
640,176,382					*810,752,144*	*657,970,484*	*20,569,171*				*816,942,449*
TOTAL STATE FUNDING											
~~1,156,216,635~~	409,945,692	~~1,370,312,465~~	13,456,781	933,055	~~2,961,006,728~~	~~1,132,513,329~~	~~373,711,500~~	~~1,387,282,333~~	13,402,745	933,055	~~2,907,843,962~~
1,156,212,635		*1,367,677,904*			*2,977,746,690*	*1,102,206,771*	*331,436,959*	*1,393,670,054*	*152,745*		*2,891,567,844*

Section 17. Rates. Internal service fund type fees and charges established by the legislature for the 2003 biennium in compliance with 17-7-123(6)(b) are as follows:

	Fiscal Year 2002	Fiscal Year 2003
Sec re tary of State - 3201		
1. Ad min is tra tive Rules of Montana Fees		
a. Ad min is tra tive Rules of Montana (per set)	$350.00	$350.00
b. Quar terly Up dates of ARM (per year)	$250.00	$250.00
c. Ex tra Ti tles (per book)	$50.00	$50.00
d. Quar terly Up dates of Ex tra Ti tles (per year per ti tle)	$50.00	$50.00
e. Montana Ad min is tra tive Regis ter (per sub scrip tion)	$300.00	$300.00
f. Agency Fil ing Fee for Pages of Reg is ter Pub li ca tion (per page)	$40.00	$40.00
g. Binders (per binder)	$5.00	$5.00
h. Lapsed Sub scrip tion Fee ARM (per sub scrip tion)	$50.00	$50.00
i. Lapsed Sub scrip tion Fee Ex tra Ti tle (per ti tle)	$10.00	$10.00
j. Fax Fee - 10 Pages or Less (first 10 pages)	$3.00	$3.00
k. Fax Fee - Ad di tional Pages Over 10 Pages (per page)	$0.25	$0.25
l. Re search Fee (per hour)	$12.00	$12.00
m. Set Cleanup Fee (per hour)	$12.00	$12.00
n. Missing Page Fee (per page up to cost of set)	$0.50	$0.50
o. Rule Edit Fee (per hour)	$15.00	$15.00
p. Late Fil ling Fee (less than 2 hours) (per oc cur rence)	$5.00	$5.00
q. Late Fil ling Fee (2 hours to 4 hours) (per oc cur rence)	$10.00	$10.00
r. Late Fil ling Fee (more than 4 hours) (per oc cur rence)	$25.00	$25.00
2. Records Man age ment Fees (based on 2-6-203)		
a. 16MM Microfilm		
Less than 250,000	$38.58	$38.58
Non typical ex treme weight and size	$38.58	$38.58
8" x 11"; 8" x 14" pa per work	$30.00	$30.00
8" x 11"; 8" x 14" com puter print out	$30.00	$30.00
Ex treme size and weight vari ance	$31.50	$31.50
Cards - fixed weight and color	$15.75	$15.75
Cards - mixed weight and color	$26.25	$26.25
b. 35MM Microfilm		
L (per 12" x 12") ae rial pho tos	$68.25	$68.25
16" x 20" bound books	$63.00	$63.00
24" x 34" news pa pers	$115.50	$115.50
24" x 34" bound news pa pers	$136.50	$136.50
48" x 48" blue prints/maps	$288.75	$288.75
c. 105MM Mi cro film		
8" x 11" pa per work	$68.25	$68.25
8" x 11"; 8" x 14" com puter print out	$77.17	$77.17

	Cards (per 1,000)	$77.17	$77.17
	Mini mum filing charge	$37.50	$37.50
d.	Film Pro cessing		
	16mm, 100 foot roll	$3.62	$3.62
	16mm, 215 foot roll	$7.10	$7.10
	35mm, 100 foot roll	$6.35	$6.35
	16mm, 3M car tridges	$4.73	$4.73
e.	Film In specting		
	100 foot roll in spec tion (per roll)	$3.65	$3.65
	215 foot roll in spec tion (per roll)	$5.23	$5.23
	Film splicing	$0.79	$0.79
	3M car tridge loading	$2.25	$2.25
f.	Duplication		
	16mm, 100 foot roll (per roll)	$6.81	$6.81
	16mm, 215 foot roll (per roll)	$13.03	$13.03
	35mm, 100 foot roll (per roll)	$9.21	$9.21
	105mm, microfiche or jackets	$0.16	$0.16
	Reader/printer copies	$0.50	$0.50
	Photocopies/own labor	$0.10	$0.10
	Photocopies/our labor	$0.50	$0.50
	16mm, 100 foot roll (per roll)	$9.92	$9.92
	35mm, 100 foot roll (per roll)	$14.54	$14.54
g.	Jacket Loading		
	16mm, 5 chan nel jacket	$0.3150	$0.3150
	Agency's own jacket	$0.2887	$0.2887
	35mm, 1 and 2 chan nel jacket	$0.3150	$0.3150
	Loading 16mm ap er ture card	$0.2625	$0.2625
	Jacket ti tle	$0.2625	$0.2625
	Jacket notch ing	$0.0525	$0.0525
h.	Miscellaneous		
	Fiche ti tle (per ti tle)	$0.2625	$0.2625
	Indexing and doc u ment prep/hour (per hour)	$18.00	$18.00
	Cam era rental (per day)	$95.00	$95.00
i.	Supplies		
	NMI reader bulbs (per bulb)	$10.75	$10.75
	16mm, 100 foot roll film (per roll)	$6.68	$6.68
	16mm, 215 foot roll film (per roll)	$12.95	$12.95
	35mm, 100 foot roll film (per roll)	$13.95	$13.95
j.	Records Cen ter Ser vices		
	Stor age (per square foot per month)	$0.2565	$0.2565
	Stor age (per cu bic foot per month)	$0.295	$0.295
	Re trievals (per occur rence)	$1.50	$1.50
	Emergency re trievals (per occur rence)	$6.25	$6.25

Large retrievals, delivery, interfiling (per occurrence)	$22.50	$22.50
Records disposal (per hour)	$22.50	$22.50
Shredding confidential records (per hour)	$23.05	$23.05
k. Records Center Boxes		
Records storage boxes: standard size A (per box)	$1.34	$1.34
Drawing and map storage boxes: size C (per box)	$1.34	$1.34
l. Imaging Services		
Imaging (per image)	$0.055	$0.055
Indexing and document preparation (per hour)	$18.00	$18.00
Department of Transportation - 5401		
1. State Motor Pool		
a. Class 02 (small utilities)		
per hour assigned	$1.597	$1.600
per mile operated	$0.022	$0.022
b. Class 04 (large utilities)		
per hour assigned	$2.116	$2.335
per mile operated	$0.056	$0.056
c. Class 06 (passenger cars)		
per hour assigned	$1.501	$1.643
per mile operated	$0.054	$0.054
d. Class 07 (small and standard size pick ups)		
per hour assigned	$1.270	$1.260
per mile operated	$0.030	$0.030
e. Class 11 (large 4X4 pick ups)		
per hour assigned	$1.832	$2.334
per mile operated	$0.056	$0.056
f. Class 12 (vans)		
per hour assigned	$1.449	$1.632
per mile operated	$0.071	$0.071
2. Equipment Program		
a. 60-Day Working Capital		
Department of Revenue - 5801		
1. Customer Service Center		
a. Delinquent Account Collection Fee (percent of amount collected)	10.0%	10.0%
Department of Administration - 6101		
1. Accounting and Management Support		
a. Legal Services Unit	Share (percent) of Total Revenue Each Program or Division Will Pay	
Teachers' Retirement	20%	20%
Employee Benefits Program	26%	26%
Risk Management and Tort Defense	2%	2%
General Services Division	7%	7%
Architecture and Engineering	18%	18%

Information Services Division	27%	27%
Total	100%	100%

b. Network Support Unit

Programming cost	60-day working capital reserve	
Computer support (per computer)	$714	$732
Server support (per server)	$1,072	$1,098

c. Warrant Writing (per warrant)

Mailer warrants	$0.6170	$0.6145
Nonmailers	$0.2080	$0.2055
Emergency warrant	$4.1329	$4.1320
Duplicate warrant	$5.6632	$5.6624
Direct deposits	$0.1671	$0.1660
Externals - printed from an outside system	$0.1850	$0.1825

d. Personnel Unit

Allocation to supported divisions (per FTE basis)	$88,262	$92,691

e. SB 445 Indirect Costs - The department is authorized to spend up to $294,208 in fiscal year 2002 and $296,509 in fiscal year 2003 (proprietary funds) to implement the reorganization specified in Senate Bill No. 445.

2. Procurement and Printing

a. Publications and Graphics	60-day working capital reserve	
b. Central Stores	60-day working capital reserve	
c. Natural Gas Procurement	break-even (no reserve)	
d. Statewide Fueling Network (percent of gross purchases)	5.0%	5.0%
e. Statewide Procurement Card Program (per card)	$1.00	$1.00

3. Information Services Division

a. Data Network Fee (per connected terminal per month)	$72.60	$72.60
b. Statewide Accounting, Budgeting, and Human Resources System (SABHRS) Allocation to Agencies	$4,168,460	$4,211,734
c. All Remaining Operations of the Division	45-day working capital reserve	

4. General Services Division

a. Office Space Rent (per square foot)	$4.77	$4.88
b. Warehouse Space Rent (per square foot)	$2.12	$2.12

5. Mail and Distribution Bureau

a. Interagency Mail (total amount allocated to agencies)	$171,655	$171,655
b. All Other Operations Except for Interagency Mail	60-day working capital reserve	

6. State Personnel Division

a. Intergovernmental Training (per hour)	$113	$113
b. State Payroll Unit (total amount allocated to agencies)	$356,958	$366,248

c. Employee Benefits Program - Because state employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of the premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to meet the

requirements of 2-18-812(1) to maintain state employee group benefit plans on an actuarially sound basis, the legislature defines "rates and fees" for state employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to meet the requirements of 2-18-812(1).

7. Risk Management and Tort Defense		
a. General Liability (total allocation to agencies)	$5,362,500	$5,775,000
b. Automobile Liability (total allocation to agencies)	$1,137,500	$1,225,000
c. Property (total allocation to agencies)	$1,200,500	$1,270,930
d. Airport/Aircraft (total allocation to agencies)	$116,567	$128,222
e. All Other Lines (total allocation to agencies)	$239,413	$258,508
Fish, Wildlife & Parks - 5201		
1. Administration and Finance (% markup)		
a. Warehouse Overhead	14%	14%
2. Vehicle Account Rates Per Mile		
a. Sedans	$0.20	$0.24
b. Suburban - 4x4	$0.33	$0.35
c. Vans 1/2 Ton	$0.18	$0.21
d. Vans 1/2 Ton Window	$0.27	$0.32
e. Pickup 1/2 Ton 2x4	$0.33	$0.34
f. Pickup 3/4 Ton 4x4 V8	$0.20	$0.22
g. Grounds Maintenance	$0.75	$0.85
h. Bronco 4x4	$0.24	$0.28
i. Pickup 1/2 Ton 4x4	$0.27	$0.34
j. Pickup 3/4 Ton 4x4 HD	$0.30	$0.35
k. Pickup 3/4 Ton 4x4 HD XC	$0.35	$0.38
l. Pickup 1 Ton 4x4	$0.33	$0.37
m. Pickup 3/4 Ton 4x4 MD	$0.24	$0.27
n. Pickup 3/4 Ton 4x4 MD XC	$0.29	$0.33
o. Pickup 1/2 Ton 4x4 LD XC	$0.29	$0.33
3. Aircraft Per Hour Rates		
a. Two-Place Single Engine	$ 54.02	$ 56.72
b. Partnavia	$257.24	$270.10
c. Turbine Helicopters	$313.58	$329.26
4. Parks – Capitol Grounds Maintenance	$0.3696/sq. ft.	$0.3696/sq. ft.
5. Duplicating – Number of Copies (includes paper)		
a. 1-20	$0.045	$0.050
b. 21-100	$0.030	$0.035
c. 101-1000	$0.025	$0.030
d. 1001-5000	$0.020	$0.025
6. Bindery		
a. Collating (per sheet)	$0.005	$0.005
b. Hand Stapling (per set)	$0.015	$0.015
c. Saddle Stitch (per set)	$0.030	$0.030

d. Folding (per sheet)	$0.005	$0.005
e. Punching (per sheet)	$0.001	$0.001
f. Cutting (per minute)	$0.550	$0.550
Department of Environmental Quality - 5301		
1. Central Management		
a. Expenses Against Personal Services	24%	24%
Department of Natural Resources and Conservation - 5706		
1. Air Operations Program		
a. Fixed Wing	$95	$95
b. Bell 206A Helicopter	$355	$355
c. UH-1 Huey Helicopter	$875	$875
Department of Commerce - 6501		
1. Local Government Services Bureau		
a. Local Government Assistance Administration Recharge	1.70%	1.70%
2. Board of Investments		
For purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:		
a. Administration Charge (total)	$2,860,200	$2,805,200
3. Director's Office/Management Services		
a. Management Services Indirect Charge Rate	15.50%	15.50%
Department of Justice - 4110		
1. Agency Legal Services		
a. Attorney (per hour)	$70	$70
b. Investigator/Paralegal (per hour)	$38	$38
Department of Corrections - 6401		
1. Secure Facilities		
a. Cook/chill rate to MSP	$1.80/meal	$1.78/meal
b. Cook/chill rate to MSH	$1.83/meal	$1.82/meal
c. Cook/chill rate to TSCTC	$1.83/meal	$1.81/meal
d. Cook/chill rate to Riverside	$2.79/meal	$2.86/meal
e. Cook/chill rate to DUI facility	$1.86/meal	$1.84/meal
f. Cook/chill rate to Helena prerelease	$2.43/meal	$2.47/meal
2. Montana Corrections Enterprises		
a. Laundry rate to MSP	$0.39/lb	$0.39/lb
b. Laundry rate to MSH	$0.38/lb	$0.38/lb
c. Laundry rate to MDC	$0.46/lb	$0.46/lb
Department of Labor and Industry - 6602		
1. Centralized Services Division		
a. Cost Allocation Plan	9.44%	10.14%
2. Professional and Occupational Licensing		
a. House Bill No. 2 Programs Recharge Rate	38%	38%
Office of Public Instruction - 3501		
1. OPI Indirect Cost Pool	17%	17%

2.	Advanced Driver Education	
	a. Work shop Fees	
	Full-day work shop/per son	$175.00 - $200.00
	Half-day refresher/per son	$115.00 - $125.00
	b. Facility Usage Fees	
	Montana state government/day	$85.00
	High school driver ed u ca tion	
	Per year when track not in use	$500.00
	Per day af ter hours and not in use	$25.00
	Private non profit/day	$200.00
	Com mercial use/day	$1,500.00 - $2,000.00

MONTANA UNI VER SITY SYS TEM - 5100

Because certain employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to maintain employee group benefit plans on an actuarially sound basis, the legislature defines rates and fees for Montana university system employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to maintain the employee group benefit plans on an actuarially sound basis."

Ap proved Au gust 26, 2002

CHAPTER NO. 24

[SB 15]

AN ACT REDUCING THE IMPACT ON THE GENERAL FUND OF THE TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT; TEMPORARILY REDUCING THE INDIVIDUAL INCOME TAX CREDIT FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT TO 30 PERCENT; TEMPORARILY REDUCING THE CORPORATE TAX CREDIT FOR CHARITABLE CONTRIBUTIONS TO A QUALIFIED ENDOWMENT TO 13.3 PERCENT; TEMPORARILY REDUCING THE AMOUNT OF THE MAXIMUM CREDIT THAT CAN BE CLAIMED TO $6,600; TEMPORARILY INCREASING THE TAX CREDITS FOR CONTRIBUTIONS TO A QUALIFIED ENDOWMENT TO OFFSET THE TEMPORARY DECREASES TO THE CREDITS; AMENDING SECTIONS 15-30-166, 15-30-167, 15-31-161, AND 15-31-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-166, MCA, is amended to read:

"15-30-166. (Temporary) Credit for contributions to qualified endowment. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to ~~40%~~ *30%* of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is

~~$10,000~~ *$6,600*. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 2. Section 15-30-166, MCA, is amended to read:

"15-30-166. (Temporary) Credit for contributions to qualified endowment. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to ~~40%~~ *50%* of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is ~~$10,000~~ *$13,400*. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 3. Section 15-30-167, MCA, is amended to read:

"15-30-167. (Temporary) Beneficiaries of estates — credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in 15-30-165, by an estate qualifies for the credit provided in 15-30-166 if the contribution is a planned gift or in 15-31-161 if the contribution is an outright gift to a qualified endowment. Any credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a beneficiary may claim is ~~$10,000~~ *$6,600*, subject to the limitation in 15-30-166(2), and the credit must be claimed in the year in which the contribution is made. The credit may not be carried forward or carried back. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 4. Section 15-30-167, MCA, is amended to read:

"15-30-167. (Temporary) Beneficiaries of estates — credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in 15-30-165, by an estate qualifies for the credit provided in 15-30-166 if the contribution is a planned gift or in 15-31-161 if the contribution is an outright gift to a qualified endowment. Any credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a beneficiary may claim is ~~$10,000~~ *$13,400*, subject to the limitation in 15-30-166(2), and the credit must be claimed in the year in which the contribution is made. The credit may

not be carried forward or carried back. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 5. Section 15-31-161, MCA, is amended to read:

"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment. A corporation is allowed a credit in an amount equal to ~~20%~~ *13.3%* of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is ~~$10,000~~ *$6,600*. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 6. Section 15-31-161, MCA, is amended to read:

"15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment. A corporation is allowed a credit in an amount equal to ~~20%~~ *26.7%* of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is ~~$10,000~~ *$13,400*. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 7. Section 15-31-162, MCA, is amended to read:

"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is ~~$10,000~~ *$6,600*, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 8. Section 15-31-162, MCA, is amended to read:

"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is ~~$10,000~~ *$13,400*, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)"

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Applicability. (1) [Sections 1, 3, 5, and 7] apply to charitable gifts made on or after [the effective date of this act].

(2) [Sections 2, 4, 6, and 8] apply to charitable gifts made on or after July 1, 2003.

Section 11. Termination. (1) [Sections 1, 3, 5, and 7] terminate June 30, 2003.

(2) [Sections 2, 4, 6, and 8] terminate April 30, 2004.

Ap proved Au gust 28, 2002

RESOLUTIONS

Passed by the

FIFTY-SEVENTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
August 5, 2002, through August 10, 2002

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

House Joint Resolution

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED GENERAL FUND REVENUE FOR THE 2002-03 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET; ACCEPTING THE JUNE 30, 2002, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AND REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE FIGURES CONTAINED IN THE RESOLUTION AS THE OFFICIAL REVENUE TOTALS FOR FISCAL YEAR 2002 AND THE OFFICIAL REVENUE ESTIMATES FOR FISCAL YEAR 2003.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail the estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, between the April 2001 adjournment of the 57th Legislature and October 2001, general fund revenue was exceeding expectations; and

WHEREAS, the 57th Legislature had estimated a projected general fund ending fund balance of $53.8 million by June 30, 2003; and

WHEREAS, at the end of fiscal year 2001, the general fund balance had increased $62.2 million, leaving a projected ending fund balance on June 30, 2003, of $116.5 million; and

WHEREAS, in December 2001, the Legislative Fiscal Division reported to the Revenue and Transportation Interim Committee that revenue collections from individual income taxes had begun to slow; and

WHEREAS, by May 2001, individual and corporate income tax revenue was well below projections while income tax refunds to taxpayers had increased; and

WHEREAS, the Legislative Fiscal Division has attributed the decline in revenue partly to the national economic recession, the September 11 terrorist attacks, and a marked decline in capital gains, which has resulted in corresponding reductions in individual and corporate income tax revenue; and

WHEREAS, section 17-7-140, MCA, requires the Governor to implement limited spending reductions in the event of a projected general fund budget deficit; and

WHEREAS, pursuant to section 17-7-140, MCA, the Governor's Budget Director recommended a 3.5% reduction in general fund expenditures and notified the Legislative Fiscal Analyst, the Legislative Finance Committee, and the Revenue and Transportation Interim Committee of this recommendation; and

WHEREAS, on June 13 and 14, the Legislative Finance Committee and the Revenue and Transportation Interim Committee met separately to examine the

proposed spending reductions, to review revised revenue estimates, and to make recommendations to the Governor; and

WHEREAS, revenue to the general fund has continued to decline and it was determined at the end of June that the 3.5% reduction in expenditures would be insufficient to avoid deficit spending;

WHEREAS, the Legislative Fiscal Division expects total general fund revenue for the 2003 biennium to be $114.6 million below the estimates adopted by the 57th Legislature in House Joint Resolution No. 2; and

WHEREAS, on June 28, the Governor issued a call for a special session of the 57th Legislature to begin August 5, 2002; and

WHEREAS, the Governor's call directed the Legislature to consider legislation that would approve fund balance transfers, reduce general fund expenditures, reduce nongeneral fund appropriations and nonbudgeted transfers, reduce the general fund shortfall, and provide for a guarantee account in the state special revenue fund; and

WHEREAS, given the magnitude of Montana's fiscal crisis and given the Legislature's constitutional responsibility to balance the budget, it is in the best interests of the state that revenue forecasts be discussed and determined in a public hearing at which all interested individuals may attend and participate; and

WHEREAS, actual revenue for fiscal year 2002 and revised revenue projections for fiscal year 2003 will be reviewed by the House and Senate Taxation Committees in a joint meeting prior to the commencement of the special session; and

WHEREAS, the revenue estimates contained in this resolution are intended to supersede the estimates contained in House Joint Resolution No. 2 of the 57th Legislature meeting in regular session.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the actual state general fund revenue for fiscal year 2002 be $1,265,711,000 and that the estimated general fund revenue for fiscal year 2003 be $1,259,027,000.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes, the unreserved fiscal year 2002 fund balance of $84,105,211 for the general fund, prepared according to generally accepted accounting principles.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use, as contemplated in 5-18-107(2), the figures contained in this resolution as the official revenue totals for fiscal year 2002 and the official revenue estimates for fiscal year 2003.

GEN ERAL FUND REV E NUE

The revised estimates for total general fund revenue for the 2002-03 biennium are based on an assumption of a continuation of Montana law as it existed on July 1, 2002. The general fund revenue estimates contained in the following table are also based on statutory changes affecting general fund revenue that were enacted during the 2001 Legislative Session.

Current Law
General Fund Revenue Estimates
(In Millions of Dollars)

Source of Revenue	Actual FY 2002	Estimated FY 2003	Actual and Estimated FY 2002 and FY 2003
Individual Income Tax	$517.568	$527.919	$1,045.487
Statewide School and Vo-Tech Property Taxes	169.339	174.297	343.636
Corporation Income Tax	68.173	63.095	131.268
Vehicle Fees in Lieu of Tax	73.127	74.224	147.351
Common School Interest & Income	48.938	48.801	97.739
Insurance Tax & License Fees	47.291	47.793	95.084
Permanent Coal Trust Interest Earnings	37.605	37.640	75.245
U.S. Mineral Royalty	19.772	20.474	40.246
All Other Revenue	42.439	20.358	62.797
Tobacco Settlement Revenue	18.647	18.854	37.501
Telecommunications Excise Tax	19.594	21.379	40.973
Video Gambling Machine Tax	43.666	45.413	89.079
Treasury Cash Account Interest	13.191	14.316	27.507
Inheritance Tax and Estate Tax	13.816	9.299	23.115
Oil & Natural Gas Production Tax	12.902	13.819	26.721
Motor Vehicle Registration Fees	27.271	27.680	54.951
Public Institution Reimbursements	14.283	16.332	30.615
Coal Severance Tax	8.469	8.460	16.929
Liquor Excise & License Tax	9.514	9.990	19.504
Cigarette Tax	7.887	7.722	15.609
Investment License Fee	4.992	5.067	10.059
Lottery Profits	7.467	6.800	14.267
Liquor Profits	5.600	5.713	11.313
Nursing Facilities Fee	5.918	5.968	11.886
Foreign Capital Depository Tax	0.000	0.000	0.000
Electrical Energy Producer's License Tax	4.197	4.217	8.414
Metalliferous Mines Tax	3.329	3.176	6.505
Highway Patrol Fines	4.062	4.130	8.192
Public Contractors Tax	3.267	2.275	5.542
Wholesale Energy Transaction Tax	2.906	3.143	6.049
Tobacco Tax	2.183	2.319	4.502
Driver's License Fee	2.580	2.592	5.172
Railroad Car Tax	1.490	1.537	3.027
Wine Tax	1.232	1.265	2.497
Beer Tax	2.784	2.960	5.744
Telephone License Tax	0.212	0.000	0.212
Long-Range Bond Excess	0.000	0.000	0.000
Total General Fund	$1,265.711	$1,259.027	$2,524.738

Adopted August 10, 2002

Sen ate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT, MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE, OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE.

WHEREAS, the Chief Justice of the Montana Supreme Court has made the nomination, below designated, pursuant to an Order of the Court, dated June 21, 2001; and

WHEREAS, the appointment has been submitted to the Senate, to wit:

C. Bruce Loble as Chief Water Judge for the State of Montana, for a 4-year term of office commencing July 1, 2001, and ending June 30, 2005.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted Au gust 5, 2002

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JULY 29, 2002, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointment, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with the provisions of section 90-4-402, MCA:

Mr. Ed Bartlett, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. John Hines, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the August 2002 Special Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of

this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted Au gust 7, 2002

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JULY 29, 2002, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Commissioner of Labor and Industry, in accordance with the provisions of sections 2-15-111 and 2-15-1701, MCA:

Ms. Wendy Keating, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the August 2002 Special Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted Au gust 7, 2002

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JULY 29, 2002, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Administration, in accordance with the provisions of sections 2-15-111 and 2-15-1001, MCA:

Mr. Scott Darkenwald, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the August 2002 Special Session of the 57th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of

this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted Au gust 7, 2002

TABLES

Code Sections Affected
Session Laws Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates By Chapter Number
Effective Dates by Date
Session Law to Code

CODE SECTIONS AFFECTED

Title-Ch.-Sec.	Action	Chapter	Bill Number
2-18-503	amended	Ch. 4	HB 6
15-1-111	amended	Ch. 13	HB 18
15-1-112	amended	Ch. 13	HB 18
15-1-116	amended	Ch. 13	HB 18
15-1-121	amended	Ch. 13	HB 18
15-1-122	amended	Ch. 9	HB 5
15-24-921	amended	Ch. 13	HB 18
15-24-925	amended	Ch. 13	HB 18
15-30-166	amended	Ch. 24	SB 15
15-30-167	amended	Ch. 24	SB 15
15-31-161	amended	Ch. 24	SB 15
15-31-162	amended	Ch. 24	SB 15
15-35-108	amended	Ch. 9	HB 5
	amended	Ch. 12	HB 10
	amended	Ch. 13	HB 18
15-36-324	amended	Ch. 12	HB 10
15-37-102	amended	Ch. 19	SB 30
15-37-103	amended	Ch. 19	SB 30
15-37-104	amended	Ch. 19	SB 30
15-37-105	amended	Ch. 19	SB 30
15-37-106	amended	Ch. 19	SB 30
15-37-108	amended	Ch. 19	SB 30
15-37-117	amended	Ch. 12	HB 10
	amended	Ch. 19	SB 30
15-38-202	amended	Ch. 20	HB 9
15-65-121	amended	Ch. 11	HB 8
	amended	Ch. 13	HB 18
17-2-107	amended	Ch. 8	HB 16
17-3-111	amended	Ch. 14	HB 21
17-3-240	amended	Ch. 5	HB 11
17-4-106	amended	Ch. 7	HB 13
17-7-502	amended	Ch. 10	HB 7
	amended	Ch. 13	HB 18
20-9-342	amended	Ch. 10	HB 7
20-9-343	amended	Ch. 10	HB 7
20-9-534	amended	Ch. 3	HB 4
20-9-620	amended	Ch. 3	HB 4
20-9-622	amended	Ch. 10	HB 7
23-5-123	amended	Ch. 13	HB 18
23-5-136	amended	Ch. 13	HB 18
25-1-201	amended	Ch. 13	HB 18
39-71-2352	amended	Ch. 16	SB 19
46-12-204	amended	Ch. 22	SB 17
46-18-202	amended	Ch. 22	SB 17
46-18-256	amended	Ch. 22	SB 17
46-23-502	amended	Ch. 22	SB 17
46-23-504	amended	Ch. 22	SB 17
46-23-506	amended	Ch. 22	SB 17
46-23-509	amended	Ch. 22	SB 17
46-23-1031	amended	Ch. 13	HB 18
50-15-301	amended	Ch. 13	HB 18
53-2-207	amended	Ch. 13	HB 18
53-19-306	amended	Ch. 18	SB 27
53-19-310	amended	Ch. 18	SB 27
53-24-108	amended	Ch. 21	SB 1
61-3-201	amended	Ch. 13	HB 18
61-3-317	amended	Ch. 13	HB 18
61-3-321	amended	Ch. 13	HB 18

61-3-537	amended	Ch.	13	HB	18
61-3-562	amended	Ch.	13	HB	18
61-4-310	amended	Ch.	13	HB	18
61-4-311	repealed	Ch.	13	HB	18
61-10-148	amended	Ch.	13	HB	18
61-12-701	amended	Ch.	13	HB	18
69-3-859	amended	Ch.	17	SB	26
69-3-861	amended	Ch.	17	SB	26
75-10-743	amended	Ch.	20	HB	9
80-2-230	amended	Ch.	13	HB	18
80-7-823	amended	Ch.	20	HB	9
90-1-108	repealed	Ch.	13	HB	18

SESSION LAWS AFFECTED

Laws Affected	Action	Chapter		Bill Number	
Laws of 1991					
Ch. 749, sec. 4	repealed	Ch.	13	HB	18
Laws of 1993					
Ch. 217, sec. 1	repealed	Ch.	13	HB	18
Laws of 1995					
Ch. 217, sec. 2, 3	repealed	Ch.	13	HB	18
Laws of 1997					
Ch. 108, sec. 2	amended	Ch.	20	HB	9
Laws of 1999					
Ch. 557, sec. 2	amended	Ch.	12	HB	10
Laws of 2001					
Ch. 232, sec. 1, 2	amended	Ch.	20	HB	9
Ch. 434, sec. 2	amended	Ch.	11	HB	8
Ch. 502, sec. 2	amended	Ch.	15	SB	6
Ch. 553, sec. 8	amended	Ch.	2	HB	3
Ch. 572	amended	Ch.	23	HB	2
Ch. 573, sec. 2	amended	Ch.	12	HB	10
Ch. 573, sec. 5	amended	Ch.	20	HB	9
Ch. 574, sec. 244, 245, 246, 248 249, 250, 257	amended	Ch.	13	HB	18

SENATE BILL TO CHAPTER NUMBER

Bill Number	Chapter Number	Bill Number	Chapter Number
SB 1	21	SB 19	16
SB 6	15	SB 26	17
SB 15	24	SB 27	18
SB 17	22	SB 30	19

HOUSE BILL TO CHAPTER NUMBER

Bill Number	Chapter Number	Bill Number	Chapter Number
HB 1	1	HB 9	20
HB 2	23	HB 10	12
HB 3	2	HB 11	5
HB 4	3	HB 12	6
HB 5	9	HB 13	7
HB 6	4	HB 16	8
HB 7	10	HB 18	13
HB 8	11	HB 21	14

CHAPTER NUMBER TO BILL NUMBER

Chapter Number	Bill Number	Chapter Number	Bill Number
Ch. 1	HB 1	Ch. 13	HB 18
Ch. 2	HB 3	Ch. 14	HB 21
Ch. 3	HB 4	Ch. 15	SB 6
Ch. 4	HB 6	Ch. 16	SB 19
Ch. 5	HB 11	Ch. 17	SB 26
Ch. 6	HB 12	Ch. 18	SB 27
Ch. 7	HB 13	Ch. 19	SB 30
Ch. 8	HB 16	Ch. 20	HB 9
Ch. 9	HB 5	Ch. 21	SB 1
Ch. 10	HB 7	Ch. 22	SB 17
Ch. 11	HB 8	Ch. 23	HB 2
Ch. 12	HB 10	Ch. 24	SB 15

EFFECTIVE DATES BY CHAPTER NUMBER

Chapter Number	Bill Number	Effective Date
Ch. 1	HB 1	08/13/2002
Ch. 2	HB 3	08/13/2002
Ch. 3	HB 4	08/13/2002
Ch. 4	HB 6	08/13/2002
Ch. 5	HB 11	08/13/2002
Ch. 6	HB 12	08/13/2002
Ch. 7	HB 13	08/13/2002
Ch. 8	HB 16	08/13/2002
Ch. 9	HB 5	08/16/2002
Ch. 10	HB 7	08/16/2002
Ch. 11	HB 8	08/16/2002
Ch. 12	HB 10	08/16/2002
Ch. 13	HB 18	08/16/2002
Ch. 14	HB 21	08/16/2002
Ch. 15	SB 6	08/20/2002
Ch. 16	SB 19	08/20/2002
Ch. 17	SB 26	08/20/2002
Ch. 18	SB 27	08/20/2002
Ch. 19	SB 30	08/20/2002
Ch. 20	HB 9	08/21/2002
Ch. 21	SB 1	08/21/2002
Ch. 22	SB 17	08/21/2002
Ch. 23	HB 2	07/01/2003
Ch. 24	SB 15	08/28/2002

EFFECTIVE DATES BY DATE

Effective Date	Chapter Number	Bill Number
08/13/2002	Ch. 1	HB 1
08/13/2002	Ch. 2	HB 3
08/13/2002	Ch. 3	HB 4
08/13/2002	Ch. 4	HB 6
08/13/2002	Ch. 5	HB 11
08/13/2002	Ch. 6	HB 12
08/13/2002	Ch. 7	HB 13
08/13/2002	Ch. 8	HB 16
08/16/2002	Ch. 9	HB 5
08/16/2002	Ch. 10	HB 7
08/16/2002	Ch. 11	HB 8
08/16/2002	Ch. 12	HB 10
08/16/2002	Ch. 13	HB 18
08/16/2002	Ch. 14	HB 21
08/20/2002	Ch. 15	SB 6
08/20/2002	Ch. 16	SB 19
08/20/2002	Ch. 17	SB 26
08/20/2002	Ch. 18	SB 27
08/20/2002	Ch. 19	SB 30
08/21/2002	Ch. 20	HB 9
08/21/2002	Ch. 21	SB 1
08/21/2002	Ch. 22	SB 17
08/28/2002	Ch. 24	SB 15
07/01/2003	Ch. 23	HB 2

SESSION LAW TO CODE

Ch.	Sec.	MCA
1	1	Appropriations
	2	Reversion
	3	Effective date
2	1	Sec. 8, Ch. 553, L. 2001
	2	Effective date
3	1	20-9-343 Voided by sec. 5(1), Ch. 10 (coordination section)
	2	20-9-534
	3	20-9-620
	4	Coordination instruction Voided by sec. 5(1), Ch. 10 (coordination section)
	5	Effective date — retroactive applicability
4	1	2-18-503
	2	Effective date
5	1	17-3-240
	2	Effective date
6	1	Fiscal year 2003 hiring freeze — exemption
	2	Effective date
	3	Termination
7	1	17-4-106
	2	Effective date
8	1	17-2-107
	2	Effective date
9	1	15-1-122
	2	15-35-108
	3	Effective date
	4	Retroactive applicability
10	1	17-7-502
	2	20-9-342
	3	20-9-343 Voided by sec. 5(1), Ch. 10 (coordination section)
	4	20-9-622
	5	Coordination instruction
	6	Effective date — retroactive applicability
11	1	Sec. 2, Ch. 434, L. 2001
	2	15-65-121
	3	Effective date
12	1	15-35-108
	2	15-36-324
	3	15-37-117
	4	Sec. 2, Ch. 557, L. 1999
	5	Sec. 2, Ch. 573, L. 2001
	6	Effective date
	7	Retroactive applicability
	8	Termination
13	1	15-1-111
	2	15-1-112
	3	15-1-116
	4	15-1-121
	5	15-24-921
	6	15-24-925
	7	15-35-108
	8	15-65-121
	9	17-7-502
	10	23-5-123
	11	23-5-136
	12	25-1-201
	13	46-23-1031
	14	50-15-301
	15	53-2-207

	16	61-3-201
	17	61-3-317
	18	61-3-321
	19	61-3-537
	20	61-3-562
	21	61-4-310
	22	61-10-148
	23	61-12-701
	24	80-2-230
	25	Sec. 244, Ch. 574, L. 2001
	26	Sec. 245, Ch. 574, L. 2001
	27	Sec. 246, Ch. 574, L. 2001
	28	Sec. 248, Ch. 574, L. 2001
	29	Sec. 249, Ch. 574, L. 2001
	30	Sec. 250, Ch. 574, L. 2001
	31	Sec. 257, Ch. 574, L. 2001
	32	Appropriation
	33	Lodging facility use tax — intent
	34	Repealer
	35	Effective date
	36	Retroactive applicability
14	1	17-3-111
	2	Effective date
15	1	Sec. 2, Ch. 502, L. 2001
	2	Effective date
16	1	39-71-2352
	2	Study of state fund structure
	3	Effective date — retroactive applicability
17	1	69-3-859
	2	69-3-861
	3	Effective date
18	1	53-19-306
	2	53-19-310
	3	Fund transfer
	4	Effective date
19	1	15-37-102
	2	15-37-103
	3	15-37-104
	4	15-37-105
	5	15-37-106
	6	15-37-108
	7	15-37-117
	8	Effective date
	9	Applicability
20	1	Transfer to reclamation and development grants account
	2	Sec. 2, Ch. 108, L. 1997
	3	Sec. 1, Ch. 232, L. 2001
	4	Sec. 2, Ch. 232, L. 2001
	5	Sec. 5, Ch. 573, L. 2001
	6	15-38-202
	7	75-10-743
	8	80-7-823
	9	Effective date
21	1	53-24-108
	2	Effective date
	3	Termination
22	1	46-12-204
	2	46-18-202
	3	46-18-256
	4	46-23-502
	5	46-23-504
	6	46-23-506
	7	46-23-509
	8	Effective date
	9	Applicability
23	1	Ch. 572, L. 2001
24	1	15-30-166
	2	15-30-166
	3	15-30-167
	4	15-30-167
	5	15-31-161
	6	15-31-161
	7	15-31-162
	8	15-31-162
	9	Effective date
	10	Applicability
	11	Termination

SESSION LAWS

Enacted by the

FIFTY-SEVENTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
September 13, 2002

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT AMENDING CHAPTER 23, SPECIAL LAWS OF AUGUST 2002, FOR THE SOLE PURPOSE OF INSERTING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Chapter 23, Special Laws of August 2002, is amended to read:

"**Section 1.** Chapter 572, Laws of 2001, is amended to read:

"**Section 1. Short title.** [This act] may be cited as "The General Appropriations Act of 2001".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying ~~this bill~~ *Chapter 572, Laws of 2001*, showing first level expenditures and *changes in [this act] to* funding for the 2003 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated as "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2005 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide budgeting and accounting system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide budgeting and accounting system, and is identified as a major subdivision of an agency ordinally numbered with an arabic numeral.

Section 6. Personal services funding — 2005 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2005 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2005 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Personal services line item. Funds appropriated for personal services or indicated in legislative intent as having been appropriated for

personal services may not be expended under any other category except for contract services (expenditure account 62102) or for the early return to work program. Any transfer of funds from personal services to contract services is to be used to directly substitute for use of personal services. Any transfer for either contract services or for the early return to work program must be reported in writing to the legislative finance committee. The provisions of this section do not apply to the Montana university system *or to the disability services division in the department of public health and human services for the purposes of adjusting the disabled population between institution and residential settings*.

Section 8. Vacancy savings analysis. The legislature is concerned about the use of the concept of vacancy savings in establishing funding for personal services. It is the intent of the legislature that an analysis of vacancy savings be completed prior to the 2003 legislative session to include the consideration of alternative options for funding of personal services at an appropriate level. The legislative finance committee is requested to include this analysis as part of the House Bill No. 613 personal services study if House Bill No. 613 is passed and approved or to include the analysis in the committee work plan for the legislative fiscal division. The legislative finance committee is encouraged to work cooperatively with the governor's budget director in completing this analysis.

Section 9. FTE reduction. The number of FTE has been reduced for all positions in the executive branch (excluding the university system) that have been identified by the legislature as vacant for over 7 months and that are not seasonal, already filled, or newly classified . The reduction is inclusive in the number of FTE shown in the agency and program tables in the legislative fiscal analyst narrative accompanying this bill. The eliminated positions are not to be funded in the present law base budget submitted by the governor for the 2005 biennium. The Legislative Fiscal Division Fiscal Report shall include a table listing the position numbers of the FTE that are eliminated. The number of FTE eliminated by agency is as follows:

Department of Transportation	49.27
Department of Revenue	2.03
Department of Administration	4.84
Department of Public Health and Human Services	9.26
Department of Fish, Wildlife, and Parks	5.02
Department of Environmental Quality	7.75
Department of Livestock	1.00
Department of Natural Resources and Conservation	9.27
Department of Agriculture	1.00
Department of Commerce	2.00
Department of Justice	4.00
Department of Public Service Regulation	0.50
Department of Corrections	0.65
Department of Labor and Industry	7.25
Office of Public Instruction	1.00

Section 10. Goals, benchmarks, and objectives. Each department, the Montana university system, and, when appropriate, each division of each department shall place their respective specific and measurable goals, benchmarks, and objectives for each year of the 2003 biennium on their

respective internet websites or, when appropriate, on the state's internet website. On July 1, 2001, and again on July 1, 2002, each department and the Montana university system shall report progress on the appropriate website in meeting the goals, benchmarks, and objectives and what changes, if any, were made to ensure that those goals, benchmarks, and objectives are attained. *On October 1, 2002, each department and the Montana university system shall report to the legislative finance committee and on their respective websites their revised goals, benchmarks, and objectives to reflect specific actions taken and changes made to implement the reductions in expenditures ordered by the governor under the authority of 17-7-140 on June 28, 2002, and all budget reduction actions taken by the legislature in the August 2002 Special Session. Revised performance measures must:*

(1) include a specific list of what programs, services, or procedures are being revised, reduced, or eliminated from current levels of operation because of budget reductions and the reasons for the change;

(2) clearly state which programs or services are the highest priority and should be maintained and why they are the highest priority;

(3) clearly state which programs or services are the least critical and why they are a lower priority;

(4) clearly state the criteria used to prioritize programs in view of budget reductions; and

(5) clearly state the specific management actions taken to implement these budget reductions and program or service revisions.

Section 11. Report from governor's office on energy management efforts. The governor's office, in cooperation with the commissioner of higher education, shall provide a report to the 58th legislature that details the efforts of state agencies to address energy costs. The report must include but is not limited to energy management activities of the department of environmental quality, the department of administration, and the Montana university system. The report should enumerate data, activities, and recommendations in the following areas:

(1) projected savings and other benefits from the state building energy conservation program, including building commissioning projects;

(2) potential changes to the conservation program that would encourage agency participation;

(3) other energy conservation efforts of state agencies;

(4) changes needed to encourage state agencies to conserve energy that do not require expending money on energy conservation projects;

(5) other energy conservation options and funding proposals;

(6) progress on the utility bill monitoring pilot project and potential benefits coming from the project;

(7) state government efforts to more efficiently purchase natural gas and electricity, including any plans to include more state facilities under the natural gas term contract and efforts to aggregate state agency electricity demand; and

(8) other recommendations to the legislature that would improve state government energy management efforts.

Section 12. Accruals analysis — 2005 biennium. The legislative fiscal division shall include an analysis of accruals for budget base year fiscal year 2002 and shall include a summary table and narrative in the Legislative Fiscal

Division 2005 Biennium Budget Analysis that provides a listing by agency of total accruals and the amount that is recommended to be removed from the base budget.

Section 13. Energy costs reserve. A total of $3.2 million must be set aside in the general fund for contingencies related to cost increases in electricity and natural gas expenditures by state government significantly above the amounts appropriated for this purpose in [this act] or to support litigation to secure affordable electricity or natural gas. The amount is classified as unreserved, designated general fund balance.

Section 14. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 15. Effective date. [This act] is effective July 1, 2001.

Section 16. Appropriations. The following money is appropriated for the respective fiscal years:

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND TRANSPORTATION											
LEGISLATIVE BRANCH (1104)											
1. Legislative Services (20)											
4,255,755	905,353	0	0	0	5,161,108	4,558,287	430,738	0	0	0	4,989,025
2. Legislative Committees and Activities (21) (Biennial)											
673,484	77,285	0	0	0	750,769	0	0	0	0	0	0
a. Health Care Access (Biennial/OTO)											
29,403	0	0	0	0	29,403	0	0	0	0	0	0
b. Northwest River Governance (Biennial/OTO)											
10,000	0	0	0	0	10,000	0	0	0	0	0	0
3. Fiscal Analysis and Review (27)											
1,041,785	0	0	0	0	1,041,785	1,086,461	0	0	0	0	1,086,461
a. Legislative Finance Committee Interim Studies (Restricted/Biennial)											
19,000	0	0	0	0	19,000	0	0	0	0	0	0
4. Audit and Examination (28)											
1,788,171	1,386,879	0	0	0	3,175,050	~~1,824,681~~ *1,670,096*	1,321,923	0	0	0	~~3,149,603~~ *2,992,017*
Total											
7,817,598	2,369,517	0	0	0	10,187,115	~~7,473,429~~ *7,314,845*	1,752,660	0	0	0	~~9,226,089~~ *9,067,505*

Item 4 includes a reduction in fiscal year 2003 of $16,197 in general fund money and represents the equivalent of 2% of office supplies expenditures funded with general fund money in fiscal year 2002. The agency may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 4 includes a reduction of $66,667 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4 includes a reduction of $74,722 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the legislative branch. The legislative branch may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
CONSUMER COUNSEL (1112)											
1. Administration Program (01)											
0	1,006,011	0	0	0	1,006,011	0	1,008,068	0	0	0	1,008,068
a. Caseload Contingency Fund (Restricted)											
0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
Total											
0	1,206,011	0	0	0	1,206,011	0	1,208,068	0	0	0	1,208,068
JUDICIARY (2110)											
1. Supreme Court Operations (01)											
2,955,903	1,150,000	363,725	0	0	4,469,628	~~3,973,254~~ *3,864,709*	1,075,000	363,725	0	0	~~4,411,979~~ *4,303,434*
a. Legislative Audit (Restricted/Biennial)											
26,757	0	0	0	0	26,757	0	0	0	0	0	0
b. Court-Appointed Special Advocate Program (Biennial)											
82,162	0	100,000	0	0	182,162	82,162	0	0	0	0	82,162
2. Boards and Commissions (02)											
244,559	0	0	0	0	244,559	274,901	0	0	0	0	274,901
3. Law Library (03)											
773,001	0	0	0	0	773,001	716,471	0	0	0	0	716,471
4. District Court Operations (04)											
4,853,964	0	0	0	0	4,853,964	4,877,311	0	0	0	0	4,877,311
a. SB 282 — Asbestos Court											
190,157	0	0	0	0	190,157	186,157	0	0	0	0	186,157
b. District Court Judges for Ravalli and Cascade Counties											
0	0	0	0	0	0	~~129,000~~ *273,259*	0	0	0	0	~~129,000~~ *273,259*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. *Startup Costs for New Judgeships (OTO)*											
0	*0*	*0*	*0*	*0*	*0*	*7.895*	*0*	*0*	*0*	*0*	*7.895*
e *d.* State Assumption of District Courts (Restricted/Biennial)											
800.500	0	0	0	0	800.500	0	0	0	0	0	0
5. Water Courts Supervision (05)											
0	669.691	0	0	0	669.691	0	618.959	0	0	0	618.959
6. Clerk of Court (06)											
288.479	0	0	0	0	288.479	337.855	0	0	0	0	337.855
a. Equipment (OTO)											
3.500	0	0	0	0	3.500	0	0	0	0	0	0
Total											
10,218.003	1,819.691	463.735	0	0	12,501.418	~~9,637,181~~ *9,630,725*	1,753.959	353.735	0	0	~~11,754,815~~ *11,738,407*

Item 1 includes a reduction in fiscal year 2003 of $12,178 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The agency may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $96,367 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the judiciary. The judiciary may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4a contains general fund money for an asbestos court. If federal funds are received for the purpose of funding a court to manage asbestos cases, the general fund appropriation in item 4a is reduced by a like amount.

Item 4b is contingent upon passage and approval of House Bill No. 214.

Item 4c *4d* is contingent upon passage and approval of House Bill No. 124.

MONTANA CHIROPRACTIC LEGAL PANEL (2115)

1. Legal Panel Operations (01)											
0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
0	15.000	0	0	0	15.000	0	15.000	0	0	0	15.000
GOVERNOR'S OFFICE (3101)											
1. Executive Office Program (01)											
1234.434	286.634	29.605	0	0	1,550.673	~~1,237.063~~ *1,174.551*	267.333	30.104	0	0	~~1,554.500~~ *1,491.761*
a. Legislative Audit (Restricted/Biennial)											
24.325	0	0	0	0	24.325	0	0	0	0	0	0
b. Extradition and Transportation of Prisoners											
177.734	0	0	0	0	177.734	178.936	0	0	0	0	178.936
c. Consensus Council Matching Funds for Grants (Biennial/OTO)											
75.000	0	0	0	0	75.000	~~75.000~~ *57.600*	0	0	0	0	~~75.000~~ *57.600*
d. Flathead Basin Commission — Flathead Valley Ground Water Quality Assessment (OTO)											
0	0	99.992	0	0	99.992	0	0	0	0	0	0
e. Office of Economic Development											
850.000	0	0	0	0	850.000	850.000	0	0	0	0	850.000
2. Mansion Maintenance Program (02)											
78.862	0	0	0	0	78.862	79.036	0	0	0	0	79.036
3. Air Transportation Program (03)											
175.409	16.000	0	0	0	191.409	176.700	16.000	0	0	0	192.700
4. Office of Budget and Program Planning (04)											
1,087.033	0	0	0	0	1,087.033	1,081.052	0	0	0	0	1,081.052
a. Legislative Audit (Restricted/Biennial)											
23.865	0	0	0	0	23.865	0	0	0	0	0	0
b. Video Projector and Computer (OTO)											

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
5,600	0	0	0	0	5,600	0	0	0	0	0	0
c. Energy Cost Contingency Account (Restricted/Biennial/OTO)											
0	868,151	387,633	0	0	1,255,784	0	0	0	0	0	0
5. Indian Affairs (05)											
112,204	0	0	0	0	112,204	112,583	0	0	0	0	112,583
a. Carryover Funds (Restricted)											
0	150,000	2,000,000	0	0	2,150,000	0	0	0	0	0	0
6. Lieutenant Governor (12)											
223,314	0	0	0	0	223,314	224,893	0	0	0	0	224,893
7. Citizens' Advocate Office (16)											
65,214	0	15,000	0	0	80,214	65,483	0	15,000	0	0	80,483
8. Mental Disabilities Board of Visitors (20)											
200,569	7,300	0	0	0	207,769	197,573	7,300	0	0	0	204,773
Total											
4,332,643	1,328,885	2,532,130	0	0	8,193,358	~~4,273,317~~ *4,178,038*	310,533	45,104	0	0	~~4,633,954~~ *4,533,722*

General fund money up to $51,000 for the 2003 biennium in item 1b not used for the extradition and transportation of prisoners may be used to purchase vans for county sheriffs and peace officers to transport prisoners.

The legislature recognizes that the cost for extradition and transportation of prisoners is dependent upon factors beyond the control of the agency and may exceed the appropriation provided. In that event, the agency will need to request a supplemental appropriation from the 2003 legislature to provide required extradition and transportation of prisoners.

Item 1 includes a reduction in fiscal year 2003 of $19,956 in general fund money and represents the equivalent of 2.6% of office supplies expenditures funded with general fund money in fiscal year 2002. The governor's office may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $42,777 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the governor's office. The governor's office may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 1b and the accompanying language are contingent upon passage and approval of Senate Bill No. 328.											
If Senate Bill No. 445 is not passed and approved, the appropriation in item 1e is void and the appropriation in item 4c is increased by $1,700,000 in general fund money in fiscal year 2002.											
Item 4c is a contingency biennial account to be managed by the office of budget and program planning to respond to contingencies related to cost increases in electricity and natural gas expenditures by state government significantly above the amounts appropriated in [this act]. Requests for use of this account must be analyzed by the office of budget and program planning and approved by the governor. Distribution of this money to state agencies must be proportional to the overall needs of state agencies relative to the total funds available. Approved expenditures must be reported to the legislative finance committee.											
Item 5a is contingent upon passage and approval of House Bill No. 21. Funds in item 5a for the 2003 biennium are limited to the unspent balance of the 2001 appropriation of up to $150,000 in state special revenue and $2 million in federal special revenue.											
COMMISSIONER OF POLITICAL PRACTICES (3202)											
1. Administration (01)											
345,738	0	0	0	0	345,738	~~345,987~~ 340,245	0	0	0	0	~~345,987~~ 340,245
a. Legislative Audit (Restricted/Biennial)											
4,865	0	0	0	0	4,865	0	0	0	0	0	0
Total											
350,603	0	0	0	0	350,603	~~345,987~~ 340,245	0	0	0	0	~~345,987~~ 340,245

Item 1 includes a reduction in general fund money of $571 in fiscal year 2002 and $571 in fiscal year 2003. This reduction is the equivalent of a 25% reduction in fiscal year 2000 base budget travel expenses.

Item 1 includes a reduction in fiscal year 2003 of $3,270 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002.

Item 1 includes a reduction of $3,469 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the office.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
OFFICE OF THE STATE AUDITOR (3401)											
1. Central Management (01)											
0	$87,253	0	0	0	$87,253	0	$526,276	0	0	0	$526,276
a. Legislative Audit (Restricted/Biennial)											
0	4,358	0	0	0	4,358	0	0	0	0	0	0
2. Insurance Program (03)											
0	3,404,683	0	0	0	3,404,683	0	3,418,935	0	0	0	3,418,935
a. Legislative Audit (Restricted/Biennial)											
0	19,319	0	0	0	19,319	0	0	0	0	0	0
b. Contract Examinations (Restricted)											
0	107,234	0	0	0	107,234	0	82,234	0	0	0	82,234
c. SB 373 — Licensing Captive Insurers (Restricted)											
0	20,000	0	0	0	20,000	0	20,000	0	0	0	20,000
d. HB 542 — Surplus Lines Fees (Restricted)											
0	62,115	0	0	0	62,115	0	49,615	0	0	0	49,615
3. Securities (04)											
334,571	190,212	0	0	0	524,783	~~335,933~~ *370,609*	190,369	0	0	0	~~527,193~~ *560,978*
a. Legislative Audit (Restricted/Biennial)											
3,669	1,644	0	0	0	5,633	0	0	0	0	0	0
b. Contract Examinations (Restricted)											
0	12,000	0	0	0	12,000	0	12,000	0	0	0	12,000
Total											
338,240	3,338,528	0	0	0	3,677,188	~~335,933~~ *370,609*	3,268,329	0	0	0	~~3,605,262~~ *3,639,047*

Item 2c is contingent upon passage and approval of Senate Bill No. 373.

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes a reduction of $9,149 in fiscal year 2002 and $9,181 in fiscal year 2003 of general fund money. The office may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 3 includes a reduction in general fund money of $2,890 in fiscal year 2002 and $2,890 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The office may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes a reduction in fiscal year 2003 of $1,153 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The office of the state auditor may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 3 includes a reduction of $3,369 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the office of the state auditor. The office of the state auditor may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 3 includes a reduction in fiscal year 2003 of $11,792 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01)												
	0	16,468,534	1,249,771	0	0	17,718,305	0	16,535,844	1,183,603	0	0	17,719,447
a. Legislative Audit (Restricted/Biennial)												
	0	109,461	0	0	0	109,461	0	0	0	0	0	0
b. General Operations One-Time Costs (OTO)												
	0	457,500	0	0	0	457,500	0	200,000	0	0	0	200,000
2. Construction Program (02) (Biennial)												
	0	71,531,203	296,588,388	0	0	368,119,591	0	74,292,575	305,671,704	0	0	380,164,279
a. Construction Program One-Time Costs (OTO)												
	0	53,000	120,000	0	0	173,000	0	0	0	0	0	0
3. Maintenance Program (03) (Biennial)												
	0	75,870,413	5,090,609	0	0	80,961,021	0	76,230,890	5,090,609	0	0	81,321,499
a. Maintenance Program One-Time Costs (OTO)												

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	167,100	0	0	0	167,700	0	0	0	0	0	0
4. Motor Carrier Services Division (22)											
0	4,971,167	0	0	0	4,971,167	0	4,994,990	0	0	0	4,994,990
a. Mobile Officer Vehicle Enforcement Computers (OTO)											
0	6,200	0	0	0	6,200	0	0	0	0	0	0
5. Aeronautics Program (40)											
0	752,611	112,500	0	0	865,111	0	767,054	86,500	0	0	853,554
a. Airport Development Grants (Biennial)											
0	750,000	0	0	0	750,000	0	0	0	0	0	0
b. Airport Pavement Preservation Grants (Biennial)											
0	350,000	0	0	0	350,000	0	0	0	0	0	0
c. Federal Airport Improvement Grants (Biennial)											
0	16,667	300,000	0	0	316,667	0	0	0	0	0	0
6. Transportation Planning Division (50)											
0	2,121,160	10,719,595	0	0	12,840,755	0	1,934,326	13,168,607	0	0	15,102,933
a. Software and Field Data Collection (Biennial OTO)											
0	60,000	240,000	0	0	300,000	0	0	0	0	0	0
b. Statewide Truck Activity Reporting System (OTO)											
0	173,212	573,068	0	0	746,280	0	115,323	381,544	0	0	496,867
c. Transportation of Seniors and Persons With Disabilities											
0	171,093	0	0	0	171,093	0	347,318	0	0	0	347,318
Total											
0	173,929,920	314,993,931	0	0	488,923,851	0	175,419,319	325,781,566	0	0	501,200,885

The department may adjust appropriations in the construction, maintenance, and transportation planning programs between state special and federal special revenue fund types if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program. All transfers between fund types must be fully explained and justified by budget documents submitted to the office of budget and program planning, and all fund transfers of more than $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

All federal special revenue appropriations in the department are biennial.

Item 2 includes a total of $63,690 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

All appropriations in the construction program are biennial.

All appropriations in the maintenance program are biennial.

Item 5 includes $4,000 of state special revenue in fiscal year 2002 and $4,000 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 430.

Item 5a includes $300,000 of state special revenue in fiscal year 2002 that is contingent upon passage and approval of Senate Bill No. 280.

All appropriations in the transportation planning program are biennial.

Item 6c is contingent upon passage and approval of Senate Bill No. 448.

DEPARTMENT OF REVENUE (5801)

1. Director's Office (01)

2,315,683	300	800	30,068	0	2,347,050	~~2,326,931~~ *2,085,026*	0	0	30,543	0	~~2,357,574~~ *2,115,661*

a. Legislative Audit (Restricted/Biennial)

131,353	0	0	0	0	131,353	0	0	0	0	0	0

~~b. SB 512 — Impose Electrical Energy Excess Revenue Tax (Restricted)~~

~~133,357~~	~~0~~	~~0~~	~~0~~	~~0~~	~~133,357~~	~~134,855~~	~~0~~	~~0~~	~~0~~	~~0~~	~~134,855~~

~~c. SB 512 — Legal and Litigation Expenses (Restricted Biennial)~~

~~150,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~150,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~

~~d. SB 512 — Personal Computers and Computer Equipment (Restricted OTO)~~

~~19,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~19,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~

2. Information Technology (02)

	Fiscal 2002					Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3,154,374	0	188,941	70,330	0	3,413,635	3,361,282	0	194,668	71,666	0	3,627,600
3. Resource Management (05)											
1,498,751	0	0	1,035,594	0	2,534,345	1,526,553	0	0	1,090,060	0	2,616,613
4. Customer Service and Information Practices (06)											
3,715,601	226,644	1,032,135	749,075	0	5,723,455	~~3,437,041~~	232,754	1,042,210	739,891	0	~~5,751,896~~
						3,919,599					*3,934,264*
a. Unclaimed Property Auditor (OTO)											
0	43,931	0	0	0	43,931	0	44,098	0	0	0	44,098
5. Compliance Valuation and Resolution (08)											
17,710,137	186,096	1,079,011	0	0	18,975,244	~~17,490,775~~	186,433	1,130,535	0	0	~~19,107,743~~
						18,461,899					*19,773,567*
a. Salary Upgrades for Auditors (Biennial)											
208,144	0	0	0	0	208,144	0	0	0	0	0	0
~~b. SB 512 — Impose Electrical Energy Excess Revenue Tax (Restricted)~~											
~~193,720~~	~~0~~	~~0~~	~~0~~	~~0~~	~~193,720~~	~~195,845~~	~~0~~	~~0~~	~~0~~	~~0~~	~~195,845~~
~~c. SB 512 — Personal Computers (Restricted OTO)~~											
~~6,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~6,000~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
Total											
~~28,236,519~~	459,171	2,300,087	1,935,051	0	~~32,931,634~~	~~27,963,282~~	463,285	2,367,397	1,931,260	0	~~32,726,224~~
27,734,447					*32,429,887*	*28,262,187*					*33,018,099*

Liquor division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profit and taxes to appropriate accounts are appropriated to the department in amounts not to exceed $64,200,950 in fiscal year 2002 and $67,857,880 in fiscal year 2003.

Item 1 includes a reduction of $2,200 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $276,423 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~Items 1b, 1c, 1d, 5b, and 5c are contingent upon passage and approval of Senate Bill No. 512.~~											
Items 1, 4, and 5 include increases totaling $813,784 in general fund money in fiscal year 2003 to fund 13.3 FTE compliance staff and to eliminate vacancy savings associated with 6 FTE existing compliance positions.											
Item 4 includes a reduction of $558,000 in general fund money in fiscal year 2002 and $558,000 in fiscal year 2003 and an increase in proprietary funds of $514,100 in fiscal year 2002 and $514,100 in fiscal year 2003. These reductions and increases are contingent upon passage and approval of House Bill No. 399.											
Item 5 includes a reduction in general fund money of $15,066 in fiscal year 2002 and $15,066 in fiscal year 2003. This reduction is the equivalent of a 3% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.											
Item 5 includes reductions of $54,934,392 of general fund money in fiscal year 2002 and of $54,934,392 of general fund money in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.											
Item 6 includes a reduction in fiscal year 2003 of $40,685 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.											
The department shall provide status reports on the POINTS system to the revenue and taxation interim committee at each regularly scheduled committee meeting. The status reports must include work plan benchmark updates, progress on fixing mission-critical and nonmission-critical defects, and the status of implementing and operating all phases of the system.											
DEPARTMENT OF ADMINISTRATION (6101)											
1. Accounting and Management Support Program (03)											
1,070,018	5,057	64,315	41,053	0	1,180,443	~~1,076,779~~ *1,018,263*	5,057	63,451	41,334	0	~~1,185,511~~ *1,126,990*
a. Legislative Audit (Restricted/Biennial)											
53,571	0	0	0	0	53,571	0	0	0	0	0	0
b. Actuarial Study — Police Retirement Fund (Restricted/Biennial)											
2,450	0	0	0	0	2,450	0	0	0	0	0	0
c. Accounting Bureau Contracted Services (Biennial/OTO)											
100,000	0	0	0	0	100,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Special Purpose District Reports											
0	0	0	0	0	0	28,446	0	0	0	0	28,446
e. Local Government Services Division											
422,204	0	0	0	0	422,204	423,300	0	0	0	0	423,300
f. Consumer Affairs Division											
266,248	74,505	0	0	0	340,753	266,117	74,503	0	0	0	340,620
g. Telemarketing/Lemon Law Programs Fund Switch (Restricted/OTO)											
55,354	0	0	0	0	55,354	55,354	0	0	0	0	55,354
2. Architecture and Engineering Program (04)											
0	1,137,916	0	0	0	1,137,916	0	1,147,932	0	0	0	1,147,932
a. Legislative Audit (Restricted/Biennial)											
0	1,635	0	0	0	1,635	0	0	0	0	0	0
3. Procurement and Printing Division (06)											
515,947	0	0	0	0	515,947	518,826	0	0	0	0	518,826
4. Information Services Division (07)											
127,593	0	800,000	0	0	927,593	126,588	0	0	0	0	126,588
a. Legislative Audit (Restricted/Biennial)											
794	0	0	0	0	794	0	0	0	0	0	0
5. General Services Program (08)											
394,409	0	0	0	933,055	1,327,464	401,439	0	0	0	933,055	1,334,494
6. Banking and Financial Division (14)											
0	1,485,053	0	0	0	1,485,053	0	1,490,815	0	0	0	1,490,815
a. Legislative Audit (Restricted/Biennial)											
0	2,621	0	0	0	2,621	0	0	0	0	0	0
7. Montana State Lottery (15)											
0	0	0	8,574,656	0	8,574,656	0	0	0	~~8,904,330~~	0	~~8,904,330~~
									8,714,550		*8,714,550*
a. Legislative Audit (Restricted/Biennial)											

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	0	8,365	0	8,365	0	0	0	0	0	0
b. Online Terminals (OTO)											
0	0	0	345,000	0	345,000	0	0	0	0	0	0
8. State Personnel Division (23)											
1,092,389	26,600	0	0	0	1,118,989	1,096,102	27,400	0	0	0	1,123,502
9. State Tax Appeal Board (37)											
273,523	0	0	0	0	273,523	275,231	0	0	0	0	275,231
Total											
4,376,600	3,733,891	864,315	8,968,974	933,055	17,875,441	~~4,368,182~~ *4,209,661*	3,745,707	63,451	~~8,945,864~~ *8,786,884*	933,055	~~16,954,949~~ *16,706,428*

For the data network rate, all increases over a rate of $64.59 are one time only. The executive must use $64.59 as the base level and justify all increases requested for the 2005 biennium over this level.

Item 1 includes a reduction in fiscal year 2003 of $11,794 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction in general fund money of $4,122 in fiscal year 2002 and $4,122 in fiscal year 2003. This reduction is the equivalent of an 8% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 1 includes a reduction of $4,049 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $42,673 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Items 1e, 1f, 1g, 6, 6a, 7, 7a, and 7b and $1,519 of general fund money in fiscal year 2002 in item 1a are contingent upon passage and approval of Senate Bill No. 445.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department is appropriated in each of the fiscal years 2002 and 2003 up to $500,000 of state special revenue that is deposited in the account established for the purpose of processing charter applications and for the chartering, examination, and regulation of each foreign capital depository that obtains a charter under the provisions of 32-8-205.

The department is appropriated up to $56,354 in state special revenue authority in each year of the biennium for operations within the telemarketing and lemon law programs and shall seek and use state special revenue received from consumer affairs' settlements as authorized by a district court order to offset and minimize use of the general fund money within the telemarketing and lemon law programs, as provided in 17-2-108.

The department shall report to the 2003 legislature on the status and results related to the purchase and placement of additional online terminals funded in item 7b.

Item 8 includes a reduction of $21,490 in fiscal year 2002 and $21,564 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

APPELLATE DEFENDER COMMISSION (6102)

1. Appellate Defender (01)											
0	177,534	0	0	0	177,534	~~178,901~~ *176,878*	0	0	0	0	~~178,901~~ *176,878*
Total											
0	177,534	0	0	0	177,534	~~178,901~~ *176,878*	0	0	0	0	~~178,901~~ *176,878*

Item 1 includes an increase of $178,901 of general fund money in fiscal year 2003 and a reduction of $178,901 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 1 includes a reduction in fiscal year 2003 of $537 in general fund money and represents the equivalent of 3% of office supplies expenditures funded with general fund money in fiscal year 2002.

Item 1 includes a reduction of $1,789 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the commission.

TOTAL SECTION A

		Fiscal 2002				Fiscal 2003			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	[illegible]	187.357.954	311.158.968	10.904.031	9.330.055	[illegible]	186.935.860	318.630.343	10.944.814	9.330.055	[illegible]
	$64.167.047					$64.477.901			10.687.814		$1.176.887.076

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				B. HEALTH AND HUMAN SERVICES								
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)												
1. Public Assistance (02)												
21,740,389	1,121	135,599,150	0	0	157,340,536	22,040,643	1,139	138,605,760	0	0	160,647,423
a. FAIM II R — Parents as Scholars (Biennial)												
0	0	1,331,183	0	0	1,331,183	0	0	0	0	0	0
b. FAIM II R — Tribal Projects (Restricted/Biennial)												
0	0	2,489,360	0	0	2,489,360	0	0	0	0	0	0
c. FAIM II R — Tribal NEW (Biennial)												
0	0	1,139,093	0	0	1,139,093	0	0	1,116,468	0	0	1,116,468
d. FAIM II R — Nontraditional Job Training (Biennial)												
0	0	841,394	0	0	841,394	0	0	0	0	0	0
e. FAIM II R —Nontraditional Job Training — Tribal (Restricted/Biennial)												
0	0	989,875	0	0	989,875	0	0	0	0	0	0
f. FAIM II R — Nontraditional Job Training — Nontribal (Biennial)												
0	0	494,937	0	0	494,937	0	0	0	0	0	0
g. FAIM II R — Assessment Services — Intensive Case Management (Biennial)												
0	0	1,092,974	0	0	1,092,974	0	0	1,071,367	0	0	1,071,367
h. FAIM II R — Chemical Dependency Home (Biennial)												
0	0	629,550	0	0	629,550	0	0	0	0	0	0
i. FAIM II R — Learning Disability Services OPI/Tribal Colleges (Biennial)												
0	0	593,924	0	0	593,924	0	0	0	0	0	0
j. FAIM II R — Mental Health Services (Biennial)												
0	0	494,937	0	0	494,937	0	0	0	0	0	0
k. FAIM II R — Family Drug Court (Biennial)												
0	0	395,950	0	0	395,950	0	0	0	0	0	0
l. FAIM II R — Low-Income Housing (Biennial)												

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	0	~~3464.561~~	0	0	~~3464.561~~	0	0	0	0	0	0
		700.000			*700.000*						
m. FAIM II R — Transportation (Biennial)											
0	0	791.899	0	0	791.899	0	0	0	0	0	0
n. FAIM II R — Additional Month Grant for Working Families (Biennial)											
0	0	1328.979	0	0	1328.979	0	0	1304.670	0	0	1304.670
o. FAIM II R — Emergency Supportive Services for Working Families (Biennial)											
0	0	1026.610	0	0	1026.610	0	0	374.309	0	0	374.309
p. FAIM II R — School Breakfast Program (Biennial)											
0	0	178.178	0	0	178.178	0	0	0	0	0	0
q. FAIM II R — Individual Development Accounts (Biennial)											
0	0	138.742	0	0	138.742	0	0	136986	0	0	136986
r. FAIM II R — Children as Scholars (Head Start) (Biennial)											
0	0	1979.874	0	0	1979.874	0	0	0	0	0	0
s. FAIM II R — TEAMS Reprocurement Enhancements (Biennial)											
0	0	989.875	0	0	989.875	0	0	485.107	0	0	485.107
t. High-Wage, High-Skill Training (Restricted/Biennial)											
0	0	494.937	0	0	494.937	0	0	485.108	0	0	485.108
u. Adult Basic Education (Restricted)											
0	0	195.000	0	0	195.000	0	0	195.000	0	0	195.000
v. Children's Trust Fund (Biennial)											
0	0	250.000	0	0	250.000	0	0	250.000	0	0	250.000
w. *TANF Plus Performance Bonus (Restricted)*											
0	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*2276.700*	*0*	*0*	*2276.700*
2. Child and Family Services Division (03)											
20.339.215	1269.964	23954.861	0	0	45.564.060	21.541.204	1.335.670	24.109.035	0	0	46.985.910
a. Computer Hardware (OTO)											
49.800	0	33.200	0	0	83.000	123.504	0	82.335	0	0	205.840

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Community Collaboration Project and FTE (Biennial/OTO)											
25,000	0	3,025,000	0	0	3,050,000	25,000	0	25,000	0	0	50,000
c. Big Brothers Big Sisters (OTO)											
25,000	0	0	0	0	25,000	25,000	0	0	0	0	25,000
d. In-Home Services (Restricted)											
100,000	0	0	0	0	100,000	0	0	0	0	0	0
3. Director's Office (04)											
1,134,316	1,198,077	1,736,992	0	0	4,069,385	1,141,783	1,359,907	1,632,421	0	0	4,134,111
a. Deputy Director (Restricted)											
37,000	15,750	47,250	0	0	100,000	37,000	15,750	47,250	0	0	100,000
4. Child Support Enforcement Division (05)											
225,000	2,798,222	6,242,600	0	0	9,265,822	225,000	2,812,929	6,271,998	0	0	9,309,927
a. Voice Response Unit Enhancements (OTO)											
0	10,200	19,800	0	0	30,000	0	0	0	0	0	0
b. SEARCHS — Level of Effort Increase (Biennial/OTO)											
0	209,104	405,908	0	0	615,012	0	0	0	0	0	0
c. Financial Institutions Data Match (Restricted)											
0	51,000	99,000	0	0	150,000	0	51,000	99,000	0	0	150,000
d. Cost Study — Raising a Child in Montana (Restricted/OTO)											
0	8,621	113,793	0	0	122,414	0	0	0	0	0	0
5. Health Policy and Services Division (07)											
63,683,731	7,188,743	233,165,968	0	0	304,038,462	68,017,693	7,780,885	248,236,170	0	0	324,034,748
a. Assistance to Montanans Exposed to Asbestos (Restricted/OTO)											
18,500	0	0	0	0	18,500	18,500	0	0	0	0	18,500
b. Medicaid Provider Rate Increases (RBRVS)											
252,524	0	678,614	0	0	931,138	506,681	0	1,371,305	0	0	1,877,986
c. Cardiovascular Grant											
0	0	260,902	0	0	260,902	0	0	236,768	0	0	236,768

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Fiber Optic Rural TeleHealth Equipment (Restricted/Biennial/OTO)											
200,000	0	0	0	0	200,000	0	0	0	0	0	0
e. HIV/AIDS Treatment and Coverage (Restricted/Biennial)											
84,010	0	0	0	0	84,010	0	0	0	0	0	0
6. Quality Assurance Division (08)											
2,006,639	219,623	4,957,197	0	0	7,183,458	2,035,415	309,983	4,980,608	0	0	7,316,006
a. Contracted Licensure Services (OTO)											
68,737	0	0	0	0	68,737	68,863	0	0	0	0	68,863
7. Operations and Technology Division (09)											
11,430,755	1,530,353	15,881,434	0	0	28,842,431	~~11,302,569~~ *9,527,815*	3,111,463	16,339,740	0	0	~~29,643,772~~ *27,328,716*
a. Legislative Audit (Restricted/Biennial)											
154,465	37,600	151,200	0	0	343,465	0	0	0	0	0	0
8. Disability Services Division (10)											
43,100,436	97,354	53,417,647	0	0	96,615,427	~~43,314,055~~ *40,248,587*	~~97,354~~ *2,062,885*	53,733,089	0	0	96,033,499
a. Developmental Disabilities Program Federal Funds (Biennial)											
0	0	4,000,000	0	0	4,000,000	0	0	0	0	0	0
b. Movement From Institutions to Community Settings (OTO)											
1,400,277	0	0	0	0	1,400,277	1,400,224	0	0	0	0	1,400,224
c. Direct Care Worker Wage Parity (Restricted)											
1,551,313	0	1,496,488	0	0	3,047,801	2,445,300	0	2,364,731	0	0	4,810,031
9. Senior and Long-Term Care Division (22)											
44,036,794	6,365,604	135,666,053	0	0	186,067,351	45,675,083	7,143,437	142,344,588	0	0	194,963,108
a. One-Time Payments to Nursing Homes for Medicaid Services											
0	1,350,000	3,627,876	0	0	4,977,876	0	1,625,000	4,397,980	0	0	6,022,980
b. Nursing Home and Community Services Improvements (OTO)											
0	162,720	437,280	0	0	600,000	0	161,880	438,120	0	0	600,000

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Personal Assistant Wage Increases											
401,931	0	1,080,114	0	0	1,482,045	638,676	0	1,728,544	0	0	2,367,220
d. Additional Federal Special Revenue											
0	0	1,000,000	0	0	1,000,000	0	0	1,000,000	0	0	1,000,000
e. *Maintain Community Services for Elderly and Physically Disabled (Restricted)*											
0	*0*	*0*	*0*	*0*	*0*	*97,191*	*0*	*0*	*0*	*0*	*97,191*
10. Addictive and Mental Disorders Division (33)											
49,801,020	6,163,613	70,643,831	0	0	126,597,463	~~51,413,723~~ *50,715,725*	~~6,590,908~~ *7,390,808*	76,394,948	0	0	133,699,479
a. Community Incentive/State Hospital (Restricted/Biennial/OTO)											
1,196,553	0	0	0	0	1,196,553	1,196,553	0	0	0	0	1,196,553
b. Basic Mental Health Services for Children (Restricted)											
647,962	0	0	0	0	647,962	671,928	0	0	0	0	671,928
c. Regional Mental Health System Planning (Restricted/Biennial)											
208,531	0	278,041	0	0	486,572	208,530	0	278,040	0	0	486,570
d. Olmstead Planning/Implementation (Restricted)											
0	0	30,000	0	0	30,000	0	0	30,000	0	0	30,000
e. Intergovernmental Transfer — Mental Health Services											
0	106,155	285,273	0	0	391,428	0	108,654	293,824	0	0	402,398
f. Intergovernmental Transfer — Chemical Dependency (Biennial)											
0	250,000	671,829	0	0	921,829	0	267,000	695,557	0	0	962,557
g. Law Enforcement/Judicial Training — Mental Illness (Restricted)											
42,219	0	25,332	0	0	67,551	42,324	0	25,395	0	0	67,719
h. Federal Community Incentive Grant — Chemical Dependency (OTO)											
0	0	3,594,483	0	0	3,594,483	0	0	3,594,483	0	0	3,594,483
i. SB 107 — Teleconferencing During Mental Health Proceedings											
7,800	0	0	0	0	7,800	8,190	0	0	0	0	8,190
j. *Maintain Mental Health Day Treatment for Children (Restricted)*											

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	*0*	*0*	*0*	*0*	*0*	*0*	*268,756*	*0*	*0*	*0*	*268,756*
k. Maintain Lower Medicaid Copayments											
0	*0*	*0*	*0*	*0*	*0*	*0*	*560,000*	*0*	*0*	*0*	*560,000*
Total											
263,958,169	38,923,811	~~73,336,848~~	0	0	~~1,015,719,454~~	~~273,109,341~~	~~31,563,158~~	~~733,644,386~~	0	0	~~1,038,316,885~~
		72,1,078,817			*1,017,964,903*	*268,420,277*	*58,136,695*	*758,271,036*			*1,059,578,066*

The department shall provide the following information by program to the children, families, health, and human services interim committee and to the legislative finance committee by August 1, 2002:

(1) rates paid by each program for comparable services; and

(2) entry level and average hourly wage and benefit rates paid by community providers for direct care workers and group home employees.

The information must specify how the data was gathered and whether and how the department verified the data and must be presented to allow evaluation among comparable services and jobs.

~~Funds appropriated for grants or benefits and claims or indicated in legislative intent as having been appropriated for grants or benefits and claims may be expended only as grants or benefits and claims. The office of budget and program planning may authorize a transfer of appropriation authority from grants or benefits and claims to another category of expenditure under one of the following conditions:~~

~~(1) the department certifies to the office of budget and program planning that federal law or regulation requires that funds appropriated in grants or benefits and claims must be expended in a different category of expenditure; or~~

~~(2) the department certifies to the office of budget and program planning that there will be savings if funds appropriated in grants or benefits and claims are transferred and expended in another category of expenditure~~.

~~The office of budget and program planning shall report to the legislative finance committee on transfers approved subject to these two conditions.~~

The department shall report to the legislative finance committee and the children, families, health, and human services interim committee at every meeting of each committee:

(1) the actual amount of federal temporary assistance for needy families (TANF) block grant funds expended in the current biennium;

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(2) the actual amount of TANF block grant maintenance of effort funds that have been expended in the current biennium;

(3) the balance of previous fiscal years' TANF block grant funds that remain unexpended; and

(4) the balance of the current fiscal year federal TANF block grant funds that remain unexpended.

The department shall use unexpended previous year federal TANF block grant funds to provide benefits and services that meet the federal definition of assistance. Current year federal TANF block grant funds must be used to fund benefits and services that meet the federal definition of assistance only after all available previous years' federal TANF block grant funds have been expended.

The office of budget and program planning may proportionally reduce the funding in items 1a through *1k. items 1m* through 1t. and item 1v if any of the following conditions exist:

(1) the department certifies to the office of budget and program planning that the balance of unexpended TANF funds on June 30. 2001. is less than $30 million;

(2) actual or projected cash assistance expenditures are greater than $24.067.328 in fiscal year 2002 or $23.763.854 in fiscal year 2003;

(3) the amount of TANF grant funds awarded to Montana by congress is reduced below the level anticipated by the legislature; or

(4) the department certifies to the office of budget and program planning that the reduction is necessary in order to maintain public assistance programs that were supported by federal TANF and state TANF maintenance of effort funds in fiscal year 2001.

If the TANF block grant funds report given at the March 2002 legislative finance committee meeting indicates that there are FAIM phase II R dollars unexpended and no plan is in place to expend the remaining dollars. there is appropriated up to $1.5 million of these unexpended funds for the summer youth employment program in the 2003 biennium.

Item 1 includes increases of $3.852.988 of general fund money in fiscal year 2002 and of $4.006.121 of general fund money in fiscal year 2003 and reductions of $3.356.606 of state special revenue in fiscal year 2002 and of $3.376.187 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Funds in item 1 include $68.422 in fiscal year 2002 and $69.606 in fiscal year 2003 that the department shall use to reimburse the Montana department of corrections. Montana correctional enterprises. for costs incurred to operate the Montana food bank network canning and wild game processing facility.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funds included in items 1b and 1e may be used only to fund tribal projects and to provide nontraditional job training to an enrolled tribal member of a federally recognized tribe whose reservation lies within the exterior boundaries of the Montana reservations and to the Little Shell band of Chippewa if the Little Shell band of Chippewa becomes a federally recognized tribe.

Funds in item 1b may be used to fund head start services for tribal members. Tribal members may not access services supported by funds in item 1r because funding for tribal head start projects has been included in item 1b.

The department shall transfer funds in item 1l to the Montana board of housing revolving loan account to fund eligible activities under the federal TANF block grant. The timing and amount of the transfer must comply with federal regulations governing the expenditure and transfer of TANF funds.

Funds included in item 1t may be used only to develop programs for high-wage and high-skill training for single parents, persons who are economically disadvantaged, and displaced homemakers.

Funds included in item 1u may be used only to provide adult basic education services.

The department shall transfer funds in item 1v to the children's trust fund to fund eligible child abuse and neglect prevention activities.

Projects funded in items 1a, 1d, 1f, 1g, 1h, 1i, 1j, 1k, 1l, 1m, 1n, 1o, 1p, 1q, 1r, 1s, 1t, and 1u are considered approved special projects related to welfare reform for the purpose of implementation of 53-4-210. Prior to the expenditure of these funds, the department shall provide notice both verbally and in writing to tribes that have implemented a federally approved tribal family assistance plan that funding for special projects is available. Tribes that operate a tribal family assistance plan may receive the funds in these items, and the department may award all or a portion of these funds to tribes that operate tribal family assistance plans as allowable within federal regulations.

Funds included in item 1w may be used only to provide TANF WoRC contracts and supportive services and child-care services.

Item 2 includes increases of $2,206,194 of general fund money in fiscal year 2002 and of $2,241,893 of general fund money in fiscal year 2003 and reductions of $2,172,078 of state special revenue in fiscal year 2002 and of $2,135,314 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Funds in item 2d may be used only to support the costs of in-home services for families in the child welfare system. The department estimates that 25 families or 50 children will be served with this funding and that 80% of the families served will not enter the foster care system. If the department achieves this goal, the estimated increase in the foster care caseload will decrease from 3% to 2%. Any savings realized because of a lower than anticipated caseload increase may be used by the department to expand the provision of in-home services or other services within the child welfare system.

Item 3 includes $1,482,291 in fiscal year 2002 and $1,482,748 in fiscal year 2003 for the tobacco prevention and control program. It is the intent of the legislature that the interagency coordinating council on prevention administer the tobacco control and prevention program.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes increases of $93,333 of general fund money in fiscal year 2002 and of $96,915 of general fund money in fiscal year 2003 and reductions of $90,463 of state special revenue in fiscal year 2002 and of $91,028 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 3 includes funding for 5 FTE above the level funded by the 2001 legislature for the purpose of establishing a department-wide refinancing unit. The cost of the FTE and any supporting contracting efforts must be supported from anticipated savings from the refinancing of social worker case management services and maximizing of federal funding in the child and family services division. The department shall report on the progress of its refinancing efforts periodically to the office of budget and program planning, legislative finance committee, and the 2003 legislature.

It is the intent of the legislature that up to $3 million of funds that the department receives because of refinancing general fund costs with federal special revenue be used to offset the across-the-board general fund reductions included in item 7.

Funds in item 3a may be used only to fund a deputy director position within the department.

Funds included in item 4c may be used only to support costs for the completion of a financial institution data match.

Funds included in item 4d may be used only to support the costs incurred to complete a study of the costs of raising a child in Montana.

Items 5, 9, and 10 include appropriations of state special revenue for provider rate increases funded from the interest income on the tobacco settlement trust fund provided for in Article XII, section 4, of the Montana constitution. If the interest income on the tobacco settlement trust fund provided for in Article XII, section 4, of the Montana constitution is insufficient to fully fund the state special revenue appropriations in items 5, 9, and 10, the legislature intends that the department find alternative funding sources to fully fund the provider rate increases. Alternative sources may include but are not limited to enhanced medicaid intergovernmental transfer programs and transfers of general fund money from other appropriations.

Item 5 includes increases of $6,717,000 of general fund money in fiscal year 2002 and of $6,862,000 of general fund money in fiscal year 2003 and reductions of $6,717,000 of state special revenue in fiscal year 2002 and of $6,862,000 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

The health policy and services division is authorized to pursue up to $1.5 million in federal special revenue each year of the biennium in item 5 to enhance or improve division services or programs to public schools. This additional federal special revenue may be expended on services by the division as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated by the legislature to the division.

Item 5a must be spent on services to assist Montanans who have been exposed to asbestos. Funds in item 5a may not be expended for any other purpose.

Implementation of the resource-based relative value scale (RBRVS) provider rate system must continue to be phased in over the 2003 biennium. The department shall use funds in item 5b to raise rates paid to those current procedural terminology (CPT) codes paid the lowest percentage of medicare reimbursement

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

that were restricted to 145% of the level of the state fiscal year 1997 reimbursement in state fiscal year 1999. The department may not change reimbursement for CPT codes, which were paid at 80% of the level of the state fiscal year 1997 reimbursement in state fiscal year 1999.

Item 5c includes funds for 3.5 FTE. Funds for the FTE may not be included in the adjusted base budget for the 2005 biennium unless federal funds or private revenue is available to fund the position.

Funds in item 5d may be used only to purchase equipment to transmit or to facilitate the transmission of medical images and x-rays from rural hospitals to medical specialists. The funds may be granted only to rural hospitals or groups of rural hospitals to purchase the equipment.

The department shall provide to the legislative finance committee each year of the biennium an analysis of the number of medicaid hospital projects completed and associated cost savings because of funding for claims adjudication specialists as approved by the 2001 legislature.

Item 6 includes increases of $211,082 of general fund money in fiscal year 2002 and of $218,916 of general fund money in fiscal year 2003 and reductions of $204,359 of state special revenue in fiscal year 2002 and of $205,400 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes increases of $1,044,768 of general fund money in fiscal year 2002 and of $1,070,319 of general fund money in fiscal year 2003 and reductions of $1,037,443 of state special revenue in fiscal year 2002 and of $1,055,626 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes a reduction in general fund money of $158,038 in fiscal year 2002 and $158,038 in fiscal year 2003. This reduction is the equivalent of a 15% reduction in fiscal 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 7 includes a reduction in fiscal year 2003 of $107,796 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 7 includes a reduction of $257,261 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 7 includes a reduction of $1.46 million of general fund money in fiscal year 2003. This reduction is the equivalent of a 0.65% reduction in the fiscal year 2003 general fund appropriation for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 7 includes a reduction of $542,660 in fiscal year 2002 and $544,550 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

The department shall make every effort to achieve an unqualified opinion in the financial compliance audit issued by the legislative audit division for the 2 years ending June 30, 2003. The legislature expects the department to take action to ensure that this achievement occurs, including exempting the fiscal bureau from vacancy savings requirements, exempting the fiscal bureau from reductions in staffing, establishing clear and appropriate fiscal policies and processes, and any other management actions that may reasonably be expected to result in the achievement of an unqualified audit opinion.

The developmental disability program is directed to use existing general fund appropriations within the developmental disabilities program budget to refinance services, if possible. General fund money made available through refinancing efforts may be used to:

(1) reduce the developmental disability program waiting list;

(2) improve wages paid by community providers to direct care workers;

(3) provide a provider rate increase to community services providers; and

(4) fund existing plans of care for individuals waiting for residential services.

The developmental disabilities program will report to the legislative fiscal division semiannually in January and July:

(1) the amount of general fund money that was made available through refinancing efforts;

(2) the amount, scope, and nature of services provided by funds made available through refinancing;

(3) the number of consumers, providers, and direct care worker staff benefiting from initiatives funded through refinancing efforts; and

(4) the amount of additional state special and federal funds obtained through refinancing efforts.

Item 8 includes a $1,965,199 general fund decrease in fiscal year 2003 for the disability services division replaced by a like amount of employment security account state special revenue funds administered by the department of labor and industry.

Item 8c includes $3,996,613 in general fund money and $3,861,209 in federal funds to begin equalization of wages paid to direct care workers employed by developmental disability community providers with direct care worker wages paid to employees at Eastmont human services center and the Montana developmental center.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The disability services division shall complete a report on the impact that applying income criteria to determine eligibility for developmental disabilities program services and benefits would have on individuals, the waiting list for services, and the budget for the developmental disabilities program. The report must be presented to the legislative finance committee by June 30, 2002. The report to the legislative finance committee should include by age group (0-3, 4-5, 6-18, 18-21, and over 21 years of age) and by residential setting (recipient home, group home, institution, etc.):

(1) the number of nonmedicaid-eligible recipients and the value of services, by funding source, provided to individuals and families with income at or below 200% of the federal poverty level; and

(2) the number of nonmedicaid-eligible recipients and the value of services, by funding source, provided to individuals and families with income at or below 150% of the federal poverty level.

The fiscal year 2003 funds in items 8, 8a, and 8b may not be expended until the report has been presented to the legislative finance committee.

Included in item 8b is general fund money of $1,400,277 in fiscal year 2002 and $1,400,224 in fiscal year 2003. This funding is one time only. The combined population at the two institutions (Eastmont human services center and Montana developmental center) may not exceed 88 individuals at the end of the 2003 biennium. If the disability services division has a population of more than 88 individuals at the two institutions at the end of the 2003 biennium, the division shall certify that a community residential setting was not available for the individuals remaining in the two institutions.

Funds in item 9a may be used only to make one-time payments to nursing homes based on the number of medicaid services provided. State special revenue in item 9a may be expended only after the office of budget and program planning has certified that the department has received $2 million each year from counties participating in the intergovernmental transfer program for nursing homes.

The department shall distribute funds in items 8c and 9c in a way that provides reasonable assurance that the funds are used solely for direct care wage and benefit increases. Not all providers or types of direct care workers must receive the same rate increase for the biennium. Funds appropriated in items 8c and 9c may be used only for direct care worker wage increases. Funds in items 8c and 9c may not be used to fund other programs. In the event that the department finds it necessary to institute program reductions, it is the intent of the legislature that funds in items 8c and 9c be the last items eliminated.

The senior and long-term care division is authorized to pursue up to $2 million in federal special revenue in item 9d over the biennium to enhance or improve division services or programs. This additional federal special revenue may be expended by the division on services as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated for the 2003 biennium by the legislature to the division in [this act].

Pursuant to 17-7-140, item 9e is exempt from spending reductions because of a projected general fund budget deficit.

The department shall post on the senior and long-term care division website the staffing levels provided in Montana nursing facilities.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department shall require that area agencies on aging provide a written assessment of the need for increased funding in their nutrition program prior to expending the additional Title III of the Older Americans Act of 1965 grant funds appropriated in [this act].

The appropriation in item 10 is contingent on the department developing a management plan to:

(1) ensure that the department staff tracking the census of residential treatment of children in Montana communicate in-state service availability to appropriate staff; and

(2) negotiate or issue requests for proposals in compliance with 52-2-306 and 52-2-307 for placement of children with in-state providers in lieu of placing the child in out-of-state treatment. The department shall submit the plan to the children, families, health, and human services interim committee and the legislative finance committee by July 1, 2001.

Item 10 is contingent on the department maintaining $3,539,842 of federal block grant contracts to state-approved chemical dependency programs for treatment and rehabilitation each year of the 2003 biennium.

Item 10 includes $559,560 in general fund money in fiscal year 2002 and $713,907 in fiscal year 2003 that must be used to fund mental health services for persons eligible for the mental health services plan. At least $480,000 of these general fund appropriations must be used for grants to one or more local children's mental health provider coalitions to prevent placement of emotionally disturbed children in out-of-home services.

Item 10 must be increased by $1 million in general fund money and must be reduced by $1 million in state special revenue in fiscal year 2003 unless Senate Bill No. 1, August 2002 Special Session, is passed and approved in a form that:

(1) maintains at least a $1 million distribution to state-approved chemical dependency programs to provide treatment, rehabilitation, and prevention of chemical dependency pursuant to 53-24-208; and

(2) requires the department to distribute in the same proportion as provided in 53-24-206(3)(b) at least $730,000 of the $1 million in funds referenced in item 1 to the state-approved chemical dependency programs.

Funds in item 10a must be used to fund services at Montana state hospital and for staff and utilization review activities to reduce the use of institutional services. Any funds not spent for staff and utilization review activities must be used to fund community services, which will reduce the need for inpatient and institutional care. The funds may not be used for any other purpose.

Funds in item 10b must be used to fund mental health services for low-income children. Funds in item 10b may not be used for any other purpose or transferred to any other program.

Funds in item 10d must be used to contract with the Montana consensus council.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION B											
262,958,169	28,923,811	~~72,336,948~~	0	0	~~1,015,719,464~~	~~273,103,341~~	~~31,563,758~~	~~733,544,396~~	0	0	~~1,038,210,495~~
		72,1 07 5,8 17			*1,0 12,964,903*	*268,420,277*	*56,156,698*	*756,12 1,056*			*1,080,698,031*

Funds in item 10e must be used to pay one-time increases in reimbursement for services provided in frontier counties by county-funded mental health medicaid service providers.

Item 10f includes $26,000 in contracted services in fiscal year 2003 funded equally from state special revenue and federal special revenue.

Funds in item 10g must be used for:

(1) activities related to training and educating law enforcement personnel, judicial personnel, and persons instrumental to the commitment process in recognizing serious mental illness and appropriate approaches to and treatment for persons who exhibit symptoms of mental illness; and

(2) development of screening tools to help identify whether a person may be mentally ill.

Item 10j is contingent upon passage and approval of Senate Bill No. 26, August 2002 Special Session.

Item 10k is contingent upon passage and approval of Senate Bill No. 26, August 2002 Special Session.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				C. NATURAL RESOURCES AND COMMERCE							
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)											
1. Administration and Finance Division (01)											
0	5,683,118	1,199,741	0	0	6,882,859	0	5,715,736	1,196,547	0	0	6,912,283
a. Legislative Audit (Restricted/Biennial)											
0	62,028	10,946	0	0	72,974	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)											
0	0	75,000	0	0	75,000	0	0	75,000	0	0	75,000
2. Field Services Division (02)											
0	6,601,552	724,700	0	0	7,326,252	0	6,651,474	729,488	0	0	7,380,962
a. Public Wildlife Interface (Biennial)											
0	65,000	0	0	0	65,000	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)											
0	0	60,000	0	0	60,000	0	0	60,000	0	0	60,000
c. SB 285 — Revise Conservation License Laws (OTO)											
0	0	0	0	0	0	0	803,000	0	0	0	803,000
3. Fisheries Division (03)											
0	3,314,986	3,786,792	0	0	7,101,778	0	3,338,044	3,799,927	0	0	7,137,971
a. Fishing Access Assistance (Restricted OTO)											
0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
b. Recreation Conflict Coordinator (OTO)											
0	15,874	37,039	0	0	52,913	0	15,874	37,039	0	0	52,913
c. Legislative Contract Authority (Restricted/OTO)											
0	0	1,851,019	0	0	1,851,019	0	0	1,651,019	0	0	1,851,019
d. Echo Lake Fish Planting (OTO)											
0	7,500	22,500	0	0	30,000	0	7,500	22,500	0	0	30,000
4. Law Enforcement Division (04)											

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	5983.160	277.002	0	0	6360.162	0	6057.818	280.150	0	0	6337.968
a. Alternative Livestock Environmental Review (Biennial/OTO)											
0	96.000	0	0	0	96.000	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)											
0	0	10.000	0	0	10.000	0	0	10.000	0	0	10.000
c. HB 419 — Create Natural Resources Enforcement Program in Attorney General's Office											
0	41.600	0	0	0	41.600	0	41.600	0	0	0	41.600
5. Wildlife Division (05)											
0	3641.942	3432.582	0	0	7074.524	0	3682.843	3434.308	0	0	7117.151
a. Mountain Lion Research (Restricted/OTO)											
0	38.992	116.978	0	0	155.970	0	38.992	116.978	0	0	155.970
b. Black Bear Research (OTO)											
0	14.830	44.490	0	0	59.320	0	14.830	44.490	0	0	59.320
c. Sage Grouse Monitoring (OTO)											
0	22.500	67.500	0	0	90.000	0	22.500	67.500	0	0	90.000
d. Legislative Contract Authority (Restricted/OTO)											
0	0	533.798	0	0	533.798	0	0	533.798	0	0	533.798
6. Parks Division (06)											
279.255	4518.599	244.914	0	0	5043.169	~~279.255~~ *274.929*	4564.968	244.896	0	0	~~5089.119~~ *5.084.793*
a. Motorboat Site Maintenance (Restricted)											
0	11.000	40.000	0	0	51.000	0	11.000	40.000	0	0	51.000
b. Snowmobile Equipment (Biennial)											
0	298.000	0	0	0	298.000	0	0	0	0	0	0
c. Continue Chief Plenty Coups (Restricted/Biennial/OTO)											
0	214.155	0	0	0	214.155	0	0	0	0	0	0
d. Legislative Contract Authority (Restricted/OTO)											
0	0	50.000	0	0	50.000	0	0	50.000	0	0	50.000

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
7. Conservation Education Division (08)												
	2.562	1,699,295	499,461	0	0	2,201,338	2.562	1,711,770	499,472	0	0	2,213,804
a. Aquatic Education/Family Fishing (Restricted)												
	0	0	200,000	0	0	200,000	0	0	200,000	0	0	200,000
b. Shooting Range Grants (Biennial)												
	0	120,000	0	0	0	120,000	0	0	0	0	0	0
c. Shooting Range Grants Enhancement (Biennial/OTO)												
	0	60,000	0	0	0	60,000	0	0	0	0	0	0
d. Legislative Contract Authority (Restricted/OTO)												
	0	0	35,000	0	0	35,000	0	0	35,000	0	0	35,000
8. Department Management (09)												
	0	2,586,380	862,199	0	0	3,448,579	0	2,595,545	680,521	0	0	3,276,066
a. Office Maintenance and Small Equipment (Restricted/OTO)												
	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
b. Cadastral Database (Restricted)												
	0	9,000	0	0	0	9,000	0	9,000	0	0	0	9,000
c. Native Species Conservation (Restricted/OTO)												
	0	0	511,437	0	0	511,437	0	0	511,437	0	0	511,437
d. Hunting and Fishing License Research (Restricted/OTO)												
	0	15,000	0	0	0	15,000	0	10,000	0	0	0	10,000
e. Legislative Contract Authority (Restricted/OTO)												
	0	0	200,000	0	0	300,000	0	0	300,000	0	0	300,000
Total												
	281.818	35,195,921	14,913,108	0	0	50,390,847	~~281.817~~ *277.491*	35,366,484	14,920,060	0	0	~~50,568,361~~ *50,564,058*

The appropriations for legislative contract authority are subject to all of the following provisions:

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) Legislative contract authority applies only to federal funds.

(2) Legislative contract authority expenditures must be reported on the state's accounting system, and the records must be separate from present law operations. In preparing the 2005 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the department to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a list of projects with the related amount of expenditures and FTE for each project.

The department is to report to the natural resources and commerce appropriations subcommittee on the projects funded with federal Sikes Act money and state matching money. The report is to include an analysis of the viability for continuance of the program and a list of projects funded with the money.

If the department is required to adjust personal services expenditure costs between state and federal accounts, the approving authority shall adjust the state special revenue appropriation and the federal appropriation by like amounts. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning.

The department shall determine and quantify any efficiencies generated as a result of incorporating the Smith River drawing process into the automated license system and report its findings to the 2003 legislature.

Item 1b legislative contract authority (LCA) is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 2b LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 3 includes $19,726 in state special revenue funds each fiscal year and $59,178 in federal special revenue funds each fiscal year that are restricted to equipment purchases in the fisheries division and payouts of leave accruals because of retirements in the fisheries division.

Item 3c LCA is subject to all LCA provisions stated in the agency's language. LCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. LCA applies only to federal funds.

Item 4 includes a reduction in general fund money of $18,339 in fiscal year 2002 and $18,339 in fiscal year 2003. This reduction is the equivalent of a 25% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 4a contains a biennial appropriation of $96,000 for game farm environmental assessment/environmental impact statements.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 4b ! CA is subject to all ! CA provisions stated in the agency's language. ! CA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ! CA applies only to federal funds.

Item 4c is contingent upon passage and approval of House Bill No. 419.

Item 5a is a restricted and one-time-only appropriation for mountain lion research.

Item 5d ! CA is subject to all ! CA provisions stated in the agency's language. ! CA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ! CA applies only to federal funds.

Item 6 includes a reduction of $224 in fiscal year 2002 and $225 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 6 includes a reduction of $2,817 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 6 includes a reduction in fiscal year 2003 of $1,609 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The agency may allocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 6a is a restricted appropriation for motorboat site maintenance.

Item 6b includes a biennial appropriation of $298,000 for snowmobile equipment.

The department may expend from the appropriation in item 6c no more than one-half of the unspent 2001 biennium appropriation made for this purpose. It is the intent of the legislature for the department to use any funds reverted from the 2001 biennium for the purpose of carrying out various maintenance and construction projects described in the management plan for Chief Plenty Coups state park. Further, the department may pursue up to $214,155 of lodging facility use tax funds appropriated to the department for state park maintenance in addition to the $214,155 appropriated in [this act] for purposes of completing the maintenance and construction projects at Chief Plenty Coups state park. The department shall develop a tracking and reporting method for amounts spent from the lodging facility use tax for this purpose. The department shall report to the legislative finance committee at its June 2002 (or nearest) meeting on factors such as projects completed, dollars spent, and a timeline for completion of the remainder of the projects.

Item 6d ! CA is subject to all ! CA provisions stated in the agency's language. ! CA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. ! CA applies only to federal funds.

Item 7a is a restricted appropriation for aquatic education program/family fishing.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 7b is a biennial appropriation of $120,000 for shooting range grants.											
Item 7c is a biennial and one-time-only appropriation of $60,000 for shooting range grants enhancement.											
Item 7d FCA is subject to all FCA provisions stated in the agency's language. FCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. FCA applies only to federal funds.											
Item 8 includes a total of $138,780 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.											
Item 8b is a restricted appropriation for the cadastral database.											
Item 8e FCA is subject to all FCA provisions stated in the agency's language. FCA is restricted and a one-time-only item in [this act] and must be requested as a new proposal to be continued into the 2003 biennium. FCA applies only to federal funds.											
DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)											
1. Central Management Program (10)											
16,918	0	3,381	0	0	20,299	16,926	0	3,381	0	0	20,307
a. Database Development (Restricted/Biennial/OTO)											
150,000	0	0	0	0	150,000	0	0	0	0	0	0
b. Legal Challenges (Biennial/OTO)											
150,000	0	0	0	0	150,000	0	0	0	0	0	0
2. Planning, Prevention, and Assistance Division (20)											
2,152,156	1,063,532	8,703,501	0	0	11,919,191	~~2,143,601~~ *2,036,055*	1,068,511	8,637,953	0	0	~~11,849,065~~ *11,731,497*
a. Technical Assistance to Tribal Air Quality (OTO)											
0	0	108,464	0	0	108,464	0	0	103,773	0	0	103,773
b. Particulate Matter (2.5) Monitoring (Restricted)											
0	0	250,784	0	0	250,784	0	0	249,099	0	0	249,099
c. One-Stop Grant for Database (Biennial/OTO)											
0	0	460,000	0	0	460,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Flathead Lake Biological Monitoring Station											
0	0	100.000	0	0	100.000	0	0	0	0	0	0
e. SB 506 — Alternative Energy Revolving Loan Account											
0	60.000	0	0	0	60.000	0	60.000	0	0	0	60.000
3. Enforcement Division (30)											
537.765	179.013	372.896	0	0	1,089.663	525.799	180.035	374.997	0	0	1,080.831
4. Remediation Division (40)											
0	3,313.136	7,164.215	0	0	10,376.950	0	3,244.983	7,173.433	0	0	10,418.416
a. Enterprise Database Development (OTO)											
0	300.000	0	0	0	300.000	0	35.000	0	0	0	35.000
b. Cleanup Lockwood Solvent (Biennial)											
0	0	680.450	0	0	680.450	0	0	513.206	0	0	513.206
c. Contracted Services — Legal Support (Restricted/Biennial/OTO)											
0	150.000	0	0	0	150.000	0	0	0	0	0	0
d. Leaking Underground Storage Tank Trust — Truck Replacement (OTO)											
0	3.000	27.000	0	0	30.000	0	0	0	0	0	0
e. Orphan Share Reimbursement (Restricted/Biennial/OTO)											
0	3,500.000	0	0	0	3,500.000	0	0	0	0	0	0
f. Aboveground Storage Tank Survey (Restricted/OTO)											
0	25.000	0	0	0	25.000	0	35.000	0	0	0	35.000
g. Petroleum Tank Release Compensation Board Fund Liability Study (Restricted/OTO)											
0	75.000	0	0	0	75.000	0	0	0	0	0	0
h. Database Development (Restricted/OTO)											
0	18.306	34.294	0	0	52.600	0	18.306	34.294	0	0	52.600
i. Leaking Underground Storage Tank Trust Contracted Services (Restricted/OTO)											
0	30.000	270.000	0	0	300.000	0	30.000	270.000	0	0	300.000
5. Permitting and Compliance Division (50)											
1,317.914	8,382.151	3,716.638	0	0	13,416.703	1,185,231	8,342.531	3,701.871	0	0	13,229.633

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Junk Vehicle Database Conversion (Restricted/OTO)											
0	60,000	0	0	0	60,000	0	18,000	0	0	0	18,000
b. Asbestos Compliance (Restricted OTO)											
28,300	56,700	0	0	0	85,000	28,300	56,700	0	0	0	85,000
c. Hazardous Waste Contract Service (Restricted/Biennial/OTO)											
0	150,000	0	0	0	150,000	0	0	0	0	0	0
d. Bond Forfeitures (Restricted/Biennial)											
0	30,500,000	0	0	0	30,500,000	0	0	0	0	0	0
e. Montana Environmental Policy Act Projects (Restricted/Biennial)											
0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0
f. Hard-Rock Federal Funds (Restricted/Biennial/OTO)											
0	0	3,000,000	0	0	3,000,000	0	0	0	0	0	0
g. SB 449 — Environmental Rehabilitation and Response (Restricted/Biennial)											
0	125,000	0	0	0	125,000	0	0	0	0	0	0
h. Major Facility Siting Act Projects (Restricted/Biennial/OTO)											
0	300,000	0	0	0	300,000	0	0	0	0	0	0
i. Abandoned Vehicle Operating Costs (Restricted/OTO)											
0	173,230	0	0	0	173,230	0	173,230	0	0	0	173,230
j. Public Water Supply Equipment (Restricted/OTO)											
0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
k. Hard-Rock Equipment (Restricted/OTO)											
0	8,990	0	0	0	8,990	0	0	0	0	0	0
l. Solid Waste Database Conversion (OTO)											
50,000	50,000	0	0	0	100,000	15,000	15,000	0	0	0	30,000
m. Zortman Landusky Long-Term Water Treatment Trust (Restricted/OTO)											
0	0	0	0	0	0	0	540,000	0	0	0	540,000
n. SB 484 — Hard-Rock Mining Reclamation, Operation, and Maintenance (Restricted/Biennial)											
0	4,000,000	0	0	0	4,000,000	0	0	0	0	0	0

	Fiscal 2002					Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
o. SB 167 — Sanitation in Subdivision Grants to Counties (Restricted)											
0	204,000	0	0	0	204,000	0	204,000	0	0	0	204,000
Total											
4,303,046	53,440,656	24,781,622	0	0	82,525,324	~~3,914,957~~ *5,256,259*	14,005,396	21,053,008	0	0	~~38,983,161~~ *55,975,695*

Items 2, 4, and 5 include a total of $177,855 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 2 includes a reduction in fiscal year 2003 of $6,146 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 2 includes a reduction of $13,278 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2 includes a reduction of $39,144 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2d is contingent upon receipt of environmental protection agency 104b(3) ecosystem protection grant funds for the purposes of water quality monitoring and assessment activities. Upon receipt, the department shall contract with the Flathead Lake biological monitoring station for up to $100,000 of these funds in support of department priority total maximum daily load monitoring and assessment projects.

Item 2e is contingent upon passage and approval of Senate Bill No. 506. The funds appropriated in item 2d are from the alternative energy revolving loan account created in Senate Bill No. 506. The funding must be spent for administration of the loan program subject to restrictions provided in Senate Bill No. 506.

Item 5 includes a reduction in general fund money of $7,328 in fiscal year 2002 and $7,328 in fiscal year 2003. This reduction is the equivalent of an 8% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 5 includes a reduction of $21,608 in fiscal year 2002 and $21,683 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 5g is contingent upon passage and approval of Senate Bill No. 449.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 5m includes a restricted, one-time-only appropriation of up to $540,000 from state special revenue funds in fiscal year 2003 that have been transferred from the resource indemnity trust fund. The appropriation is contingent upon the state treasurer's certification to the office of budget and program planning and to the legislative finance committee that the trust balance is in excess of $100 million. Upon meeting the contingency in fiscal year 2003, the office of budget and program planning is authorized to transfer up to $540,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used to purchase federal debt obligation securities that mature in June 2017 to partially fund the long-term water treatment trust for the former Zortman and Landusky mines.											
Item 5n is contingent upon passage and approval of Senate Bill No. 484.											
Item 5o is contingent upon passage and approval of Senate Bill No. 167.											
The department is authorized to decrease federal special revenue in the pollution control and the drinking water revolving fund loan programs and increase state special revenue by a like amount within the special administration account.											
DEPARTMENT OF LIVESTOCK (5603)											
1. Centralized Services Program (01)											
14.748	1,028,523	116,009	0	0	1,159,680	~~17,415~~ *16,575*	1,054,776	87,157	0	0	~~1,159,349~~ *1,158,508*
a. Legislative Audit (Restricted/Biennial)											
2,734	26,653	4,768	0	0	34,055	0	0	0	0	0	0
b. Laboratory Information System Equipment/Installation (OTO)											
0	96,300	10,000	0	0	106,300	0	0	0	0	0	0
c. Board of Horseracing											
0	237,913	0	0	0	237,913	0	241,877	0	0	0	241,877
d. Legislative Audit — Board of Horseracing (Restricted/Biennial)											
0	450	0	0	0	450	0	0	0	0	0	0
2. Diagnostic Laboratory Program (03)											
190,933	1,144,465	11,115	0	0	1,346,513	~~190,949~~ *134,860*	1,212,404	17,371	0	0	~~1,420,724~~ *1,414,635*
3. Animal Health Program (04)											
0	680,445	0	0	0	680,445	0	710,510	0	0	0	710,510

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Bison Federal Cooperative Agreement (Restricted/OTO)												
	0	0	651,310	0	0	651,310	0	0	651,310	0	0	651,310
b. Disease Outbreak (Restricted/OTO)												
	0	177,823	0	0	0	177,823	0	177,823	0	0	0	177,823
c. Greater Yellowstone Interagency Brucellosis Committee (Restricted/OTO)												
	0	0	127,600	0	0	127,600	0	0	143,211	0	0	143,211
4. Milk and Egg Program (05)												
	0	342,143	24,758	0	0	366,901	0	346,775	24,762	0	0	371,537
5. Inspection and Control Program (06)												
	0	3,608,699	39,244	0	0	3,647,943	0	3,564,838	39,381	0	0	3,604,219
a. Brand Rerecord (Restricted/OTO)												
	0	45,654	0	0	0	45,654	0	0	0	0	0	0
6. Predator Control Program (08)												
	0	435,235	0	0	0	435,235	0	442,716	0	0	0	442,716
7. Meat and Poultry Inspection Program (10)												
	396,716	1,756	397,475	0	0	794,947	400,683	1,756	402,441	0	0	804,880
8. Milk Control Bureau (37)												
	0	186,643	0	0	0	186,643	0	186,801	0	0	0	186,801
Total												
	604,121	6,962,912	1,382,269	0	0	8,949,312	~~609,048~~ *602,113*	6,869,978	1,355,633	0	0	~~8,944,659~~ *8,957,729*

The department shall record separately all personal services, operating expenses, equipment, and capital expenditures related to bison control for all programs in which any resources are expended for that purpose on the state accounting, budgeting, and human resources system in a manner so that those expenditures may be readily derived and shall create a summary report. The department shall provide an annual report by program to the legislative fiscal analyst and the office of budget and program planning of all expenditures related to bison control.

Item 1 includes a reduction of $4,398 in fiscal year 2002 and $4,413 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 1 includes a reduction in fiscal year 2003 of $841 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.											
Items 1c and 1d are contingent upon passage and approval of Senate Bill No. 445.											
Item 2 includes a reduction of $16,089 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.											
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)											
1. Centralized Services (21)											
1,542,276	425,067	105,000	0	0	2,072,343	~~1,563,631~~ *1,111,630*	433,259	105,000	0	0	~~2,091,890~~ *1,649,889*
a. Legislative Audit (Restricted/Biennial)											
80,373	0	0	0	0	80,373	0	0	0	0	0	0
b. Missoula Office Rewiring (Restricted/OTO)											
0	0	25,750	0	0	25,750	0	0	0	0	0	0
c. Debt Service to Reimburse Montana Science Institute (Restricted)											
0	0	0	0	0	0	38,000	0	0	0	0	38,000
2. Oil and Gas Conservation Division (22)											
0	1,132,006	0	0	0	1,132,006	0	1,143,052	0	0	0	1,143,052
a. Operating Adjustments (OTO)											
0	84,343	0	0	0	84,343	0	89,708	0	0	0	89,708
3. Conservation and Resource Development Division (23)											
1,823,646	1,497,854	161,651	0	0	3,483,353	~~1,741,762~~ *741,762*	~~1,584,972~~ *1,584,972*	161,651	0	0	~~3,488,385~~ *3,488,385*
a. Irrigation Assistance (OTO)											
140,000	0	0	0	0	140,000	160,000	0	0	0	0	160,000
b. Dry Prairie Rural Water Project (OTO)											
0	99,720	0	0	0	99,720	0	99,720	0	0	0	99,720

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. North Central Montana Regional Water Authority (OTO)												
	125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
d. Eastern Plains Resource Conservation and Development (OTO)												
	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
e. Gallatin Resource Conservation and Development (OTO)												
	15,000	0	0	0	0	15,000	15,000	0	0	0	0	15,000
f. Sheridan County Conservation District (OTO)												
	0	0	0	0	0	0	35,000	0	0	0	0	35,000
g. Coal Tax Allocation to Conservation Districts (Biennial)												
	0	100,000	0	0	0	100,000	0	0	0	0	0	0
h. Grass Conservation Commission (Biennial)												
	45,000	51,606	0	0	0	96,606	0	0	0	0	0	0
i. Regional Water System Coordinator (OTO)												
	0	52,054	0	0	0	52,054	0	52,054	0	0	0	52,054
4. Water Resources Division (24)												
	5,930,059	1,016,253	160,035	0	0	7,106,357	5,991,483	1,019,340	160,733	0	0	7,171,556
a. State Water Project Rehabilitation (Restricted/Biennial/OTO)												
	0	3,600,000	0	0	0	3,600,000	0	0	0	0	0	0
b. Dam Safety Improvement (Restricted/OTO)												
	0	0	81,845	0	0	81,845	0	0	83,177	0	0	83,177
c. Water Well Litigation (Restricted)												
	0	16,000	0	0	0	16,000	0	16,000	0	0	0	16,000
d. Water Right Permit Verification (OTO)												
	0	170,000	0	0	0	170,000	0	145,000	0	0	0	145,000
e. Flood Damage Reduction (Restricted/OTO)												
	0	0	169,748	0	0	169,748	0	0	169,786	0	0	169,786
f. Broadwater Hydropower Facility (OTO)												
	0	63,000	0	0	0	63,000	0	33,000	0	0	0	33,000

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
g. HB 357 — Clark Fork River Task Force (OTO)											
0	0	0	0	0	0	0	120,000	0	0	0	120,000
5. Reserved Water Rights Compact Commission (25)											
724,261	0	0	0	0	724,261	726,624	0	0	0	0	726,624
a. Equipment Replacement (OTO)											
6,000	0	0	0	0	6,000	10,500	0	0	0	0	10,500
6. Forestry and Trust Lands (35)											
6,056,464	10,923,550	1,055,209	0	0	18,034,223	6,093,328	11,034,040	1,064,587	0	0	18,191,955
a. Fire Protection Assessment Software Rewrite (Restricted/OTO)											
79,200	40,800	0	0	0	120,000	0	0	0	0	0	0
b. Federal Fire Reimbursement (Restricted)											
0	0	229,684	0	0	229,684	0	0	229,684	0	0	229,684
c. Phase II/Slash Programming (OTO)											
23,600	0	0	0	0	23,600	0	0	0	0	0	0
d. Remote Weather Station (OTO)											
8,710	4,290	0	0	0	13,000	0	0	0	0	0	0
e. Forest Health Monitoring Program (Restricted/OTO)											
0	0	78,000	0	0	78,000	0	0	78,000	0	0	78,000
f. Forest Rehabilitation (OTO)											
0	177,500	0	0	0	177,500	0	140,500	0	0	0	140,500
g. Replacement Equipment (OTO)											
0	15,000	0	0	0	15,000	0	17,000	0	0	0	17,000
h. Habitat Conservation Plan (Restricted/Biennial/OTO)											
0	0	200,000	0	0	200,000	0	0	0	0	0	0
i. Homeowner Defensible Space Audits (Biennial/OTO)											
0	0	200,000	0	0	200,000	0	0	0	0	0	0
j. Private Forest Landowner Assistance (Restricted/Biennial/OTO)											
0	0	350,000	0	0	350,000	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
k. SB 31 — Revise State Trust Land Laws											
0	5,000	0	0	0	5,000	0	5,000	0	0	0	5,000
l. SB 354 — Full Compensation for School Trust for Natural Areas											
0	0	0	0	0	0	0	35,000	0	0	0	35,000
m. SB 495 — Purchase of Public School Fund Mineral Production Rights (Restricted/Biennial/OTO)											
75,000,000	0	0	0	0	75,000,000	0	0	0	0	0	0
Total											
91,598,702	19,496,647	2,816,922	0	0	113,912,471	~~16,480,318~~	~~15,961,645~~	2,051,618	0	0	~~34,523,581~~
						16,058,877	*16,941,645*				*34,051,640*

All remaining proceeds in excess of $100 million in the resource indemnity trust *fund*, up to $100,000, must be appropriated in fiscal year 2003 to the department based upon a split of two-thirds for conservation district grant projects and one-third for irrigation grants. The appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. ~~Upon meeting~~ *If* the contingency *is met* in fiscal year 2003, the office of budget and program planning is authorized to transfer up $100,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used for these purposes. Further, the cash for ~~these purposes~~ *this purpose* cannot be transferred until ~~$500,000~~ *$1 million has been transferred for a fund switch in item 3. $300,000* has been transferred for the purpose of weed eradication, $540,000 has been transferred for the purpose of purchasing securities for water treatment at the former Zortman and Landusky mines, and $120,000 has been transferred ~~to conduct~~ *for* the Clark Fork *River* study.

Item 1 includes a reduction in fiscal year 2003 of $28,167 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $250,840 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $162,934 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction in general fund money of $33,468 in fiscal year 2002 and $33,468 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction of $107,169 in fiscal year 2002 and $107,543 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 2 includes a total of $98,310 for the 2003 biennium for the Montana natural resources information system. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

The department is authorized to decrease state special revenue in the underground injection control program and to increase federal special revenue by a like amount when the amount of federal EPA funds available for the program becomes known. Any federal special revenue funds are to be spent before state special revenue funds.

The department is appropriated up to $600,000 for the 2003 biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as provided in 85-1-618.

During the 2003 biennium, up to $100,000 of excess loan loss reserve money in the water pollution control state revolving fund is appropriated to make grants to aid in the feasibility of projects as authorized in 75-5-1113(3)(b).

During the 2003 biennium, up to $100,000 of excess loan loss reserve money in the drinking water state revolving fund is appropriated to make grants to aid in the feasibility of projects as authorized in 75-6-224(3)(b).

The department is authorized to decrease federal special revenue in the pollution control and the drinking water revolving fund loan programs and to increase state special revenue money by a like amount within the special administration account.

During the 2003 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2003 biennium, up to $70,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2003 biennium, up to $500,000 of funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

The department shall report back to the 2003 legislature to provide an update on the progress of the flood damage reduction project.

The department is appropriated up to $20,000 for the 2003 biennium from the bond proceeds provided for in 76-13-408 for hazard reduction bonds during the 2003 biennium.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3 includes a fund switch in fiscal year 2003 of $1 million from the general fund to the state special revenue fund, which is the first $1 million in proceeds in excess of $100 million in the resource indemnity trust fund, contingent upon passage and approval of House Bill No. 9, August 2002 Special Session.

Item 3 includes a reduction of $50,000 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

It is the intent of the legislature that the agency not use general fund money in items 3 and 6 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

~~Item 4g is contingent upon passage and approval of House Bill No. 397.~~ Item 4g is an appropriation from state special revenue funds in fiscal year 2003 that have been transferred from the resource indemnity trust fund. The appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. ~~Upon meeting~~ *If* the contingency *is met* in fiscal year 2003, the office of budget and program planning is authorized to transfer the $120,000 in cash from the resource indemnity trust fund to a state special revenue fund to be used for this purpose. ~~The~~ *Further, the* cash for this purpose cannot be transferred until ~~$500,000~~ *$1 million has been transferred for a fund switch in item 3. $300,000* has been transferred for the purpose of weed eradication, and $540,000 has been transferred for the purpose of purchasing securities for water treatment at the former Zortman and Landusky mines.

State special revenue appropriations in item 6 may be used for firefighting costs. It is the intent of the legislature to replace any state special revenue expenditures with a general fund supplemental appropriation in the next legislative session.

Item 6b includes funds received from nonstate entities for the use of department personnel and equipment to assist them in managing emergency incidents, such as fire suppression activities. Only funds up to $100,000 received as reimbursement of personnel expenses credited against the department's operational budget and up to $250,000 of funds received as payment under equipment use agreements are considered fire reimbursement funds. All other funds received must be deposited in the general fund. Funds reimbursed for the use of department equipment must be expended for the repair, maintenance, and replacement of equipment that supports the state-county cooperative fire program. The department shall report fire reimbursement expenditures on state accounting records, and the records must be separate from present law operations.

Item 6k is contingent upon passage and approval of Senate Bill No. 31.

Item 6l is contingent upon passage and approval of Senate Bill No. 354.

Item 6m is limited to the amount borrowed from the coal tax permanent fund and may be used only for the purpose of purchasing public school fund mineral production rights from the trust and legacy account.

DEPARTMENT OF AGRICULTURE (6201)

1. Central Management Division (15)

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
165,498	446,473	68,813	48,893	0	729,676	~~188,249~~	431,837	68,655	50,973	0	~~739,714~~
						168,184					*719,619*
a. Legislative Audit (Restricted/Biennial)											
34,055	0	0	0	0	34,055	0	0	0	0	0	0
b. Electronic Transactions Strategic Planning Consulting Services (OTO)											
0	79,000	0	39,000	0	118,000	0	30,414	0	4,000	0	34,414
2. Agricultural Sciences Division (30)											
96,116	4,554,865	421,963	0	0	5,073,003	97,137	4,537,373	423,377	0	0	5,057,786
a. Federal Special Grants (OTO)											
0	0	100,000	0	0	100,000	0	0	100,000	0	0	100,000
b. Organic Certification Program (Restricted/OTO)											
41,567	0	0	0	0	41,567	41,680	0	0	0	0	41,680
c. Federal Special Grants (Biennial)											
0	0	2,000,000	0	0	2,000,000	0	0	0	0	0	0
d. Weed Control Program (Restricted)											
101,341	0	0	0	0	101,341	101,337	0	0	0	0	101,337
e. SB 326 — Weed Control Program (Restricted/OTO)											
0	0	0	0	0	0	0	~~500,000~~	0	0	0	~~500,000~~
							500,000				*500,000*
3. Agricultural Development Division (50)											
353,765	3,184,193	45,710	267,869	0	3,851,537	355,635	~~3,147,491~~	45,710	268,174	0	~~3,817,010~~
							2,964,491				*3,634,010*
a. Rail Transportation Technical Assistance (Restricted/Biennial/OTO)											
0	50,000	0	0	0	50,000	0	0	0	0	0	0
Total											
791,394	8,315,131	2,636,485	355,751	0	12,098,761	~~485,068~~	~~8,647,014~~	637,742	323,147	0	~~10,392,971~~
						764,945	*7,754,014*				*9,979,846*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that the department use sources other than the general fund to fund operations of the organic certification program in the 2005 biennium.

Item 1 includes a reduction in general fund money of $4,827 in fiscal year 2002 and $4,827 in fiscal year 2003. This reduction is the equivalent of a 13% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 1 includes a reduction of $2,715 in fiscal year 2002 and $2,725 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 1 includes a reduction in fiscal year 2003 of $3,208 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $9,069 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $7,843 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2 contains $100,000 each year of the 2003 biennium from the department of transportation highway state special revenue fund for use in the weed control program. This appropriation is contingent upon passage and approval of Senate Bill No. 326.

The funds in item 2d are to be granted to governmental entities through an application process, to mitigate the impact of noxious weeds on private and state lands, except department of fish, wildlife, and parks lands, as a result of the activities of the department of fish, wildlife, and parks.

Item 2e contains a ~~$500,000~~ *$300,000* appropriation in fiscal year 2003 from state special revenue funds that are to be transferred from the resource indemnity trust fund. The ~~$500,000~~ *$300,000* appropriation is contingent upon the governor's certification that the trust balance is in excess of $100 million. ~~Upon meeting~~ *If* the contingency *is met* in fiscal year 2003, the office of budget and program planning is authorized to transfer the ~~$500,000~~ *$300,000* in cash from the resource indemnity trust fund to a state special revenue fund to be used for this purpose. ~~Item 2e is contingent upon passage and approval of Senate Bill No. 326.~~

Item 3 includes a reduction of $193,000 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

DEPARTMENT OF COMMERCE (6501)

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~1. Weights and Measures Bureau (02)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~2. Banking and Financial Division (35)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~3. Professional and Occupational Licensing Bureau (39)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
4. *1.* Board of Research and Commercialization (50)											
119,300	0	0	0	0	119,300	130,469	0	0	0	0	130,469
a. Legislative Audit (Restricted/Biennial)											
340	0	0	0	0	340	0	0	0	0	0	0
5 *2.* Economic Development Division (51)											
1,179,577	247,344	4,069,728	0	0	5,496,649	~~1,186,368~~ *1,165,949*	247,339	4,070,115	0	0	~~5,503,822~~ *5,456,406*
a. Legislative Audit (Restricted/Biennial)											
7,051	0	0	0	0	7,051	0	0	0	0	0	0
6 *3.* Montana Promotion Division (52)											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
a. Legislative Audit (Restricted/Biennial)											
0	15,149	0	0	0	15,149	0	0	0	0	0	0
7 *4.* Community Development Division (60)											
430,411	1,885,393	8,179,207	0	0	10,495,011	~~436,204~~ *450,563*	~~1,945,408~~ *1,760,403*	8,179,673	0	0	~~10,560,285~~ *10,570,449*
a. Legislative Audit (Restricted/Biennial)											
4,930	915	0	0	0	5,845	0	0	0	0	0	0
b. Hard-Rock Mining Impact Account Reserve (Restricted)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
~~8. Local Government Services Division (62)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
~~9. Building Codes Bureau (65)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~10~~ 6. Housing Division (74)											
0	0	53,450,673	0	0	53,450,673	0	0	55,320,247	0	0	55,320,247
a. Legislative Audit (Restricted/Biennial)											
0	0	11,973	0	0	11,973	0	0	0	0	0	0
~~11. Montana State Lottery (77)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~12. Board of Horseracing (78)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~13. Consumer Affairs (79)~~											
~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~	~~0~~
~~14~~ 7. Director's Office/Management Services Division (81)											
a. Department Server/Hardware Replacement (OTO)											
14,389	1,701	18,566	0	0	34,656	0	0	0	0	0	0
b. Federal Building Rent											
0	0	0	0	0	0	0	57,838	55,038	0	0	112,876
c. Federal Building/Move (OTO)											
0	0	18,000	0	0	18,000	0	30,000	6,000	0	0	36,000
Total											
1,755,586	3,000,512	65,748,147	0	0	70,504,647	~~1,743,041~~	~~3,130,585~~	68,631,076	0	0	~~73,503,702~~
						1,719,736	*2,946,638*				*75,296,447*

~~The reduction in funding for items 1, 2, 3, 8, 9, 11, 12, and 13 are contingent upon passage and approval of Senate Bill No. 445. If Senate Bill No. 445 is not passed and approved, the department is appropriated $746,325 in general fund money, $11,179,874 in state special revenue, and $8,927,921 in proprietary authority in fiscal year 2002 and $745,771 in general fund money, $11,104,944 in state special revenue, and $8,904,330 in proprietary authority in fiscal year 2003. The allocation among divisions and the realignment of language associated with the reallocation will be outlined in the Legislative Fiscal Division's 2003 Biennium Legislative Fiscal Report if Senate Bill No. 445 is not passed and approved.~~

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that the money allocated in item 1 to the board of research and commercialization and other money allocated to the board from statutory appropriations and other sources be allocated by the board in a manner that gives preferences to applications that advance projects that have a positive impact on homeland security technologies, such as the R.A.V.E project that is developing and commercializing technologies for national airport security and is using Montana airports as pilot projects and Montana companies as vendors.

Item 5 2 includes a reduction of $13.252 in fiscal year 2002 and $13.298 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 2 includes a reduction of $17.419 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4 includes a reduction in fiscal year 2003 of $4.836 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 4 includes a reduction of $186.000 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

It is the intent of the legislature that the department use lodging facility use taxes to fund $515,961 in fiscal year 2002 and $511,677 in fiscal year 2003 for the Montana historical society. This would be expended as follows:

	2002	2003
MHS Lewis and Clark Bicentennial	$116,477	$111,134
MHS Scriver Curator	28,484	25,553
MHS Scriver Rent Storage		96,000
MHS Lewis and Clark Bicentennial Commission	300,000	200,000
MHS Historical Interpretation	75,000	75,000

TOTAL SECTION C											
99,335,069	136,411,979	113,278,563	365,751	0	339,391,363	~~13,813,149~~ *22,269,004*	~~84,011,002~~ *84,525,002*	108,668,137	323,147	0	~~346,315,435~~ *346,653,290*

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				D. CORRECTIONS AND PUBLIC SAFETY							
CRIME CONTROL DIVISION (4107)											
1. Justice System Support Service (01)											
678,812	0	595,213	0	0	1,274,145	~~691,889~~ *669,676*	0	893,355	0	0	~~1,585,244~~ *1,563,031*
a. Regional Juvenile Detention (Biennial)											
1,114,942	0	0	0	0	1,114,942	1,114,942	0	0	0	0	1,114,942
b. Federal Pass-Through Grants (Biennial)											
0	0	9,625,213	0	0	9,625,213	0	0	9,625,213	0	0	9,625,213
c. Computer Crime Unit (Biennial)											
0	0	149,670	0	0	149,670	0	0	0	0	0	0
Total											
1,793,614	0	10,270,196	0	0	12,063,970	~~1,806,831~~ *1,784,618*	0	10,518,568	0	0	~~12,325,399~~ *12,303,186*

All remaining federal pass-through grant appropriations, including reversions, for the 2001 biennium are authorized to continue and are appropriated in fiscal year 2002 and fiscal year 2003.

Item 1 includes a reduction in general fund money of $2,352 in fiscal year 2002 and $2,352 in fiscal year 2003. This reduction is the equivalent of an 11% reduction in fiscal year 2000 base budget travel expenses.

Item 1 includes a reduction in fiscal year 2003 of $2,671 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The division may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $1,575 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $18,067 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the division.

The board of crime control shall update juvenile crime statistics from the child and adult protective services system on the board's web page semiannually.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF JUSTICE (4110)											
1. Legal Services Division (01)											
2,672,641	327,095	149,660	0	0	3,149,622	~~2,689,485~~ *2,649,477*	328,436	150,137	0	0	~~3,168,058~~ *3,128,050*
a. Major Litigation (Restricted/Biennial)											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
b. Crime Victim Benefits (Biennial)											
579,398	0	225,000	0	0	804,398	581,300	0	225,000	0	0	806,300
c. HB 419 — Natural Resources Enforcement Program											
0	41,600	0	0	0	41,600	0	41,600	0	0	0	41,600
d. Amber Alert System (Restricted/OTO)											
0	*0*	*0*	*0*	*0*	*0*	*76,000*	*0*	*0*	*0*	*0*	*76,000*
2. Gambling Control Division (07)											
380,000	2,368,635	0	611,103	0	3,349,738	~~380,000~~ *342,000*	2,368,893	0	613,766	0	~~3,362,659~~ *3,324,659*
3. Motor Vehicle Division (12)											
8,191,905	432,194	0	0	0	8,624,099	~~8,240,751~~ *1,479,842*	~~432,194~~ *7,068,993*	0	0	0	~~8,672,945~~ *8,548,835*
a. HB 577 — Motor Vehicle IT Account (Biennial)											
0	960,000	0	0	0	960,000	0	0	0	0	0	0
b. SB 334 — Driver Rehabilitation and Improvement Program											
0	33,146	0	0	0	33,146	0	32,778	0	0	0	32,778
4. Highway Patrol Division (13)											
1,039,779	17,050,446	964,494	0	0	19,054,719	~~1,072,796~~ *1,040,260*	17,349,960	971,207	0	0	~~19,393,963~~ *19,361,427*
a. SB 358 — Access to Traffic Accident Reports											
0	16,574	0	0	0	16,574	0	13,946	0	0	0	13,946

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. HB 256 — Reckless or Careless Driving												
	12,073	0	0	0	0	12,073	12,073	0	0	0	0	12,073
5. Division of Criminal Investigation (18)												
	2,307,312	317,557	1,340,519	0	0	3,965,388	~~2,321,541~~ *2,271,544*	318,802	1,346,416	0	0	~~3,986,759~~ *3,736,862*
6. County Attorney Payroll (19)												
	1,695,751	0	0	0	0	1,695,751	~~1,749,594~~ *1,659,694*	0	0	0	0	~~1,749,594~~ *1,659,694*
7. Law Enforcement Academy Division (22)												
	1,104,721	50,000	199,607	0	0	1,354,328	1,089,970	50,000	199,723	0	0	1,339,693
8. Central Services Division (28)												
	276,527	364,448	0	13,888	0	654,863	275,326	353,914	0	13,831	0	641,071
a. Legislative Audit (Restricted/Biennial)												
	36,149	33,447	0	1,316	0	60,813	0	0	0	0	0	0
9. Information Technology Services Division (29)												
	2,700,396	656,401	771,611	10,199	0	4,138,606	~~2,714,182~~ *2,471,569*	655,357	~~771,594~~ *771,696*	10,199	0	~~4,152,352~~ *3,910,040*
10. Forensic Sciences Division (32)												
	2,085,304	303,305	185,613	0	0	2,574,182	~~2,074,816~~ *2,054,816*	303,305	185,973	0	0	~~2,563,994~~ *2,543,994*
a. HB 359 — Expand Collection of DNA Evidence												
	24,160	0	0	0	0	24,160	24,160	0	0	0	0	24,160
Total												
	32,396,321	23,834,740	3,835,584	635,406	0	60,603,051	~~33,425,984~~ *16,056,671*	~~23,149,115~~ *23,726,914*	~~3,850,049~~ *5,260,060*	635,796	0	~~80,061,944~~ *49,569,451*

The appropriations for legislative contract authority are subject to all of the following provisions:

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on the state accounting records and kept separate from present law operations. In preparing the 2005 biennium executive budget, the office of budget and program planning may not include expenditures from this item in the present law base.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year, listing legislative contract authority grants received and the amount of expenditures and FTE for each grant.

The legislature recognizes that the costs associated with litigation in which the legal services division is required to provide representation to the state of Montana may exceed the appropriation provided. In that event, the department will need to request a supplemental appropriation from the 2003 legislature to adequately represent the state.

Item 1 includes a reduction in fiscal year 2003 of $40,008 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 1c is contingent upon passage and approval of House Bill No. 419.

The appropriation for the gambling control division contains funding for the automated accounting and reporting system (AARS). The general fund appropriation of $380,000 in each year of the 2003 biennium reflects continuation of a 5-year general fund commitment for this project through the 2005 biennium. It is the intent of the legislature that an annual general fund commitment of $236,250 be continued in each year of the 2007 biennium. If the long-range building program committee bill, to use intercap funding for AARS implementation, is passed by the 2001 legislature, a portion of these appropriations may be used to make debt service payments.

The department is appropriated up to $2,800,000 for the biennium from state special revenue funds for the purchase of system interface boards to be used for the implementation of the AARS.

Item 2 includes a reduction in fiscal year 2003 of $38,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 2 includes a reduction of $567,203 in general fund money in fiscal year 2002 and $569,866 in fiscal year 2003 and an increase in proprietary funds of $611,103 in fiscal year 2002 and $613,766 in fiscal year 2003. These reductions and increases are contingent upon passage and approval of House Bill No. 399.

Item 3 includes a reduction in general fund money of $31,502 in fiscal year 2002 and $31,502 in fiscal year 2003. This reduction is the equivalent of a 10% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes $5,738 of general fund money in fiscal year 2002 that is contingent upon passage and approval of House Bill No. 124.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Fiscal year 2003 state special revenue in item 3 includes $6,636,799 of the fund balance from revenue sources not restricted to certain purposes by the Montana constitution.

Item 3 includes a reduction in fiscal year 2003 of $220,438 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 3a is contingent upon passage and approval of House Bill No. 577 and is for:

(1) debt service payments or repayment of any loan incurred for the creation of a new information technology system for motor vehicles; or

(2) payment of costs directly incurred in the creation and support of the new motor vehicle information technology system.

Item 4 includes a reduction in fiscal year 2003 of $32,646 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 4a is contingent upon passage and approval of Senate Bill No. 358.

Item 4b is contingent upon passage and approval of House Bill No. 256.

There is appropriated from the highway patrol retirement clearing account for payments to the Montana highway patrol pension fund the amount required for this transfer, not to exceed $1,500,000 for each fiscal year.

Item 5 includes a reduction in fiscal year 2003 of $200,197 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

It is the intent of the legislature that the agency not use general fund money in item 5 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

Item 6 includes a reduction in fiscal year 2003 of $60,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 9 includes a reduction of $127,892 in fiscal year 2002 and $128,336 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 9 includes a reduction in fiscal year 2003 of $31,972 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

	Fiscal 2002					Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 9 includes a reduction of $68,506 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses in all divisions of the department except the forensic sciences division. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 9 includes a reduction of $151,846 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 10 includes a reduction in fiscal year 2003 of $40,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

If Senate Bill No. 328 is not passed and approved, the extradition and transportation of prisoners program will remain in the department of justice as program 30 and there is appropriated $177,724 of general fund money in fiscal year 2002 and $178,936 of general fund money in fiscal year 2003. In addition, if Senate Bill No. 328 is not passed and approved, the amendment to the reference copy of [this act] striking the language accompanying the extradition and transportation of prisoners program in the department of justice is void.

Item 10 includes $12,000 in general fund money for fiscal year 2002 for lab accreditation. The use of the funds for accreditation is contingent on passage of a federal requirement that a lab needs to be accredited to receive federal funds.

Item 10a is contingent upon passage and approval of House Bill No. 359.

PUBLIC SERVICE REGULATION (4201)

1. Public Service Regulation Program (01)											
0	2,525,654	13,667	0	0	2,539,321	0	2,505,913	13,666	0	0	2,519,578
a. Legislative Audit (Restricted/Biennial)											
0	17,027	0	0	0	17,027	0	0	0	0	0	0
b. Consultants (Biennial)											
0	100,000	0	0	0	100,000	0	0	0	0	0	0
c. Universal Access Program (Biennial)											
0	683,454	0	0	0	683,454	0	0	0	0	0	0
Total											
0	3,326,135	13,667	0	0	3,339,802	0	2,505,913	13,666	0	0	2,519,578

DEPARTMENT OF CORRECTIONS (6401)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Administration and Support Services (01)												
	14,797,935	4,321	0	67,057	0	14,869,314	~~14,406,654~~ *14,076,515*	1,368	0	65,151	0	~~14,473,193~~ *14,142,587*
a. Legislative Audit (Restricted/Biennial)												
	91,947	0	0	0	0	91,947	0	0	0	0	0	0
b. Establishment of Criteria and Treatment of Hepatitis C												
	103,510	0	0	0	0	103,510	557,909	0	0	0	0	557,909
2. Community Corrections (02)												
	32,621,208	573,690	428,967	0	0	33,624,065	34,345,320	573,690	428,967	0	0	35,348,197
3. Secure Facilities (03)												
	48,134,474	1,152,279	533,362	0	0	49,820,115	47,083,654	1,152,595	556,968	0	0	48,793,217
4. Montana Correctional Enterprises (04)												
	1,014,403	0	0	516,831	0	1,531,234	1,016,834	0	0	518,341	0	1,535,075
Total												
	96,763,478	1,730,490	962,349	583,888	0	100,040,205	~~97,420,371~~ *97,090,085*	1,727,643	985,935	583,492	0	~~100,717,591~~ *100,387,255*

Because the percentage of American Indians in our state's correctional system ranges from 17% in the men's prison to up to 40% in the women's prison, it is important that the department maintain open communications and liaisons with the Montana tribes. Therefore, the department shall designate one of its current full-time equivalent employees in the administration and support services division to have included as a part of the employee's job responsibilities the duty to serve as a liaison with the Montana tribes and the department regarding American Indian inmate issues and concerns in all correctional facilities, including contracted bed facilities.

The department is encouraged to use telemedicine technology to the fullest extent possible to effect savings within the department.

The legislature encourages the department to use the authority that it possesses under current statute to allow early discharge of offenders subject to the jurisdiction of the department for the purpose of relieving the projected cost overrun caused by high prison populations.

Item 1 includes a reduction of $401,402 in fiscal year 2002 and $402,801 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction in fiscal year 2003 of $111,748 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $218,589 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2 includes a reduction in general fund money of $107,057 in fiscal year 2002 and $107,057 in fiscal year 2003. This reduction is the equivalent of a 24% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

It is the intent of the legislature that the agency not use general fund money in items 2 and 3 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

If Senate Bill No. 489 is not passed and approved, general fund money in item 2 is reduced by $667,156 in fiscal year 2002 and by $2,165,633 in fiscal year 2003.

If Senate Bill No. 489 is not passed and approved, general fund money in item 3 is increased by $4 million in fiscal year 2003.

The department shall negotiate with the department of public health and human services and the Montana food bank for any costs incurred by the Montana correctional enterprises in operating the food bank program.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1. Job Service Division (01)

691,355	6,701,113	24,354,444	6,832	0	31,753,744	~~693,782~~	~~6,735,551~~	~~24,371,112~~	6,832	0	~~31,807,247~~
						17,861	*5,516,547*	*23,432,127*			*31,322,382*

a. Legislative Audit (Restricted/Biennial)

955	58,073	6,543	0	0	65,573	0	0	0	0	0	0

b. Research and Analysis Bureau Additional FTE (OTO)

0	0	82,903	0	0	82,903	0	0	63,194	0	0	63,194

c. Displaced Homemaker Program

235,605	0	0	0	0	235,605	~~235,605~~	~~0~~	0	0	0	~~235,605~~
						18,425	*219,764*				*238,189*

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. SB 322 — Natural Resource Worker Education and Retraining											
0	0	0	0	0	0	0	150,000	0	0	0	150,000
2. Unemployment Insurance Division (02)											
0	288,653	6,186,716	0	0	6,475,369	0	288,653	6,236,208	0	0	6,524,861
a. Legislative Audit (Restricted/Biennial)											
0	0	30,506	0	0	30,506	0	0	0	0	0	0
b. Unemployment Insurance Modified FTE to Permanent (OTO)											
0	0	108,306	0	0	108,306	0	0	108,583	0	0	108,583
3. Commissioner's Office/Centralized Services Division (03)											
149,746	530,587	445,678	52,540	0	1,178,951	150,348	535,048	447,431	53,819	0	1,186,636
a. Legislative Audit (Restricted/Biennial)											
196	3,164	0	0	0	3,360	0	0	0	0	0	0
4. Employment Relations Division (04)											
886,698	5,815,940	761,902	0	0	7,464,540	~~691,317~~ *550,441*	5,849,545	765,250	0	0	~~7,306,112~~ *7,196,236*
a. Legislative Audit (Restricted/Biennial)											
2,990	14,813	2,660	0	0	20,463	0	0	0	0	0	0
b. Human Rights Workload (Restricted/OTO)											
21,159	0	0	0	0	21,159	21,227	0	0	0	0	21,227
5. Professional and Occupational Licensing (05)											
0	5,272,276	0	0	0	5,272,276	0	5,202,573	0	0	0	5,202,573
a. Legal Contingency (Restricted/OTO)											
0	70,000	0	0	0	70,000	0	70,000	0	0	0	70,000
6. Weights and Measures Bureau (06)											
0	678,238	0	0	0	678,238	0	619,843	0	0	0	619,843
a. Legislative Audit (Restricted/Biennial)											
0	1,573	0	0	0	1,573	0	0	0	0	0	0
7. Montana Community Services (07)											

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
34.895	28.191	3.964.714	0	0	3.017.800	34.895	28.300	3.966.472	0	0	3.019.667
a. Legislative Audit (Restricted/Biennial)											
0	0	863	0	0	863	0	0	0	0	0	0
8. Building Codes Bureau (08)											
0	3.278.316	0	0	0	3.278.316	0	3.295.263	0	0	0	3.295.263
a. Legislative Audit (Restricted/Biennial)											
0	6.427	0	0	0	6.427	0	0	0	0	0	0
b. Building Codes Vehicle Replacement (OTO)											
0	46.118	0	0	0	46.118	0	46.118	0	0	0	46.118
9. Workers' Compensation Court (09)											
0	423.967	0	0	0	423.967	0	438.938	0	0	0	438.938
a. Legislative Audit (Restricted/Biennial)											
0	1.034	0	0	0	1.034	0	0	0	0	0	0
Total											
2.013.602	23.216.890	34.935.134	59.372	0	60.224.998	~~2.017.144~~	~~23.310.732~~	~~34.678.240~~	59.651	0	~~60.365.767~~
						1.112.896	*20.111.293*	*39.089.240*			*60.313.079*

It is the intent of the legislature that the rates charged for centralized services functions be agreed to by the United States department of labor federal cost negotiator. It is anticipated that the assessment will be approximately 9% and 10% of a program's actual personal service costs incurred in fiscal year 2002 and fiscal year 2003.

Item 1 includes a $672,609 reduction in general fund money for fiscal year 2003 for the job service division to be replaced by employment security account state special revenue funds in the amount of $691,796 administered by the department. The increased amount includes the House Bill No. 13, Chapter 553, Laws of 2001, allocation. Item 1 also includes a $4,111,000 reduction in the employment security account state special revenue funds to be replaced by "Reed Act" (a part of the Employment Security Administrative Financing Act of 1954) federal special revenue funds.

Item 1 includes a reduction in fiscal year 2003 of $3,582 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1c includes a $217,182 reduction in general fund money for fiscal year 2003 for the displaced homemaker program to be replaced by employment security account state special revenue funds in the amount of $219,765 administered by the department. The increased amount includes the House Bill No. 13, Chapter 553, Laws of 2001, allocation.

Item 1d is contingent upon passage and approval of Senate Bill No. 322.

Item 3 includes a reduction in general fund money of $923 in fiscal year 2002 and $923 in fiscal year 2003. This reduction is the equivalent of a 1% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 3 includes a reduction of $7,635 in fiscal year 2002 and $7,661 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 4 includes a reduction of $10,876 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

The professional and occupational licensing staff and operating budget designated as proprietary will transfer into this department with professional and occupational licensing (05).

Items 5, 5a, 6, 6a, 8, 8a, and 8b are contingent upon passage and approval of Senate Bill No. 445.

It is the intent of the legislature that the internal service rates charged for program 05, program 06, and program 08 will be approximately 9% and 10% of a program's actual personal services costs incurred in fiscal year 2002 and fiscal year 2003.

The department shall report to the 2003 legislature on options for a fleet management plan to stabilize vehicle replacement costs within the building codes division.

Item 8 contains state special revenue authority of $70,389 in fiscal year 2002 and $52,889 in fiscal year 2003, including funding for 1.5 full-time equivalent employees each year, that is contingent upon passage and approval of House Bill No. 437.

Item 8 contains state special revenue authority of $100,925 in fiscal year 2002 and $151,950 in fiscal year 2003, including funding for 1.5 full-time equivalent employees in fiscal year 2002 and 3 full-time equivalent employees in fiscal year 2003, that is contingent upon passage and approval of Senate Bill No. 242.

DEPARTMENT OF MILITARY AFFAIRS (6701)

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Operations Support (01)												
	367,042	0	45,697	0	0	412,739	366,807	0	50,448	0	0	416,255
a. Legislative Audit (Restricted/Biennial)												
	414	0	0	0	0	414	0	0	0	0	0	0
b. Operations Support Compliance Specialist (OTO)												
	0	0	36,648	0	0	36,648	0	0	37,153	0	0	37,153
2. Challenge Program (02)												
a. Legislative Audit (Restricted/Biennial)												
	4,135	0	6,203	0	0	10,338	0	0	0	0	0	0
b. Youth Challenge Program (OTO)												
	1,114,027	0	1,671,040	0	0	2,785,067	~~1,118,162~~ *34,809*	~~0~~ *1,125,240*	1,677,243	0	0	~~2,795,405~~ *2,836,292*
3. Scholarship Program (03)												
a. National Guard Scholarship Program (Biennial/OTO)												
	250,000	0	0	0	0	250,000	0	0	0	0	0	0
4. Army National Guard Program (12)												
	1,181,699	124,400	3,640,929	0	0	4,947,028	~~1,240,481~~ *1,198,147*	222,800	3,736,366	0	0	~~5,201,647~~ *5,164,313*
a. Legislative Audit (Restricted/Biennial)												
	6,410	0	16,746	0	0	23,156	0	0	0	0	0	0
5. Air National Guard Program (13)												
	200,334	0	2,020,763	0	0	2,221,097	208,550	0	2,016,840	0	0	2,225,390
a. Legislative Audit (Restricted/Biennial)												
	931	0	4,446	0	0	5,377	0	0	0	0	0	0
b. Firefighters Retirement (Restricted/Biennial)												
	0	0	5,686	0	0	5,686	0	0	0	0	0	0
6. Disaster Coordination Response (21)												

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
505.769	21.891	1.766.785	0	0	2.294.151	503.463	21.891	1.321.478	0	0	1.856.832
a. Legislative Audit (Restricted/Biennial)											
630	0	630	0	0	1.340	0	0	0	0	0	0
b. Disaster and Emergency Services Server Replacement (OTO)											
0	0	0	0	0	0	12.679	0	4.651	0	0	17.330
7. Veterans' Affairs Program (31)											
689.897	161.513	0	0	0	851.410	685.468	161.614	0	0	0	847.082
a. Legislative Audit (Restricted/Biennial)											
827	0	0	0	0	827	0	0	0	0	0	0
b. Veterans' Affairs Copier Replacement (OTO)											
4.000	0	0	0	0	4.000	0	0	0	0	0	0
Total											
4.326.105	307.510	9.215.463	0	0	13.849.078	~~4.139.609~~ *5.008.916*	~~406.011~~ *1.529.761*	8.652.179	0	0	~~13.397.799~~ *15.590.546*

The terrorism/weapons of mass destruction program and the associated 1 FTE are terminated when federal funding for the program is terminated.

The general fund appropriation in item 2b may be used only for matching funds for Montana residents.

Item 2b includes a $1.083.359 reduction in general fund money in fiscal year 2003 for the youth challenge program to be replaced by employment security account state special revenue funds in the amount of $1.123.240, which are administered by the department of labor and industry. The increased amount includes the House Bill No. 13, Chapter 553, Laws of 2001, allocation.

Item 4 includes a reduction in general fund money of $14.018 in fiscal year 2002 and $14.018 in fiscal year 2003. This reduction is the equivalent of a 13% reduction in fiscal year 2000 base budget travel expenses. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans.

Item 4 includes a reduction of $20.312 in fiscal year 2002 and $20.331 in fiscal year 2003 of general fund money. The department may reallocate this reduction in funding among divisions when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 4 includes a reduction in fiscal year 2003 of $3,736 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The department may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.											
Item 4 includes a reduction of $13,389 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.											
Item 4 includes a reduction of $30,210 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the agency. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.											
Item 5b is contingent upon passage and approval of Senate Bill No. 289.											
TOTAL SECTION D											
138,193,330	61,415,165	59,233,353	1,378,666	0	240,121,104	~~138,689,933~~ *119,083,136*	~~89,999,613~~ *84,660,213*	~~58,496,688~~ *62,909,649*	1,319,869	0	~~288,968,879~~ *287,952,876*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					E. EDUCATION						
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)											
1. OPI Administration (06)											
4,338,810	181,100	0	73,133	0	4,593,043	~~4,333,867~~ *4,168,320*	181,178	0	73,133	0	~~4,578,198~~ *4,422,651*
a. Advanced Placement Administration (OTO)											
0	0	27,557	0	0	27,557	0	0	39,841	0	0	39,841
b. Emergency Renovation (OTO)											
0	0	54,837	0	0	54,837	0	0	54,837	0	0	54,837
c. Federal Funds (Biennial)											
0	0	7,537,147	0	0	7,537,147	0	0	7,548,601	0	0	7,548,601
d. National Board Certification Stipends											
30,000	0	0	0	0	30,000	~~30,000~~ *5,000*	0	0	0	0	~~30,000~~ *5,000*
2. Distribution to Public Schools (09)											
0	0	82,994,320	0	0	82,994,320	0	0	84,576,071	0	0	84,576,071
a. BASE Aid (Restricted/Biennial)											
440,776,000	0	0	0	0	440,776,000	443,890,000	0	0	0	0	443,890,000
b. Special Education (Restricted/Biennial)											
33,899,850	0	0	0	0	33,899,850	34,916,846	0	0	0	0	34,916,846
c. Transportation Aid (Restricted/Biennial)											
10,787,993	0	0	0	0	10,787,993	~~10,887,993~~ *10,499,489*	0	0	0	0	~~10,887,993~~ *10,499,489*
d. School Facility Reimbursement (Restricted/Biennial)											
4,350,000	0	0	0	0	4,350,000	~~4,400,000~~ *4,450,000*	0	0	0	0	~~4,400,000~~ *4,450,000*
e. In-state Treatment (Biennial)											

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
974,897	0	0	0	0	974,897	974,897	0	0	0	0	974,897
f. Secondary Vocational Education (Biennial)											
715,000	0	0	0	0	715,000	715,000	0	0	0	0	715,000
g. Adult Basic Education (Biennial)											
275,000	0	0	0	0	275,000	275,000	0	0	0	0	275,000
h. Gifted and Talented (Biennial)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
i. School Food (Biennial)											
648,653	0	0	0	0	648,653	648,653	0	0	0	0	648,653
j. School District Audits (Biennial)											
145,025	0	0	0	0	145,025	149,425	0	0	0	0	149,425
k. Traffic Safety Distribution											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
l. Reduced Class Size (Biennial)											
0	0	7,605,780	0	0	7,605,780	0	0	9,493,513	0	0	9,493,513
m. Advanced Placement Incentive (Biennial)											
0	0	194,900	0	0	194,900	0	0	238,600	0	0	238,600
n. Comprehensive School Reform (Biennial)											
0	0	963,061	0	0	963,061	0	0	963,061	0	0	963,061
o. Emergency School Renovation (Biennial)											
0	0	5,428,913	0	0	5,428,913	0	0	5,428,913	0	0	5,428,913
p. SB 390 — Transfer to School Flexibility Account (Restricted/Biennial/OTO)											
0	0	0	0	0	0	~~5,000,000~~ *2,200,000*	0	0	0	0	~~5,000,000~~ *2,200,000*
q. School Flexibility Account (Restricted/Biennial/OTO)											
0	0	0	0	0	0	0	~~5,063,000~~ *4,500,000*	0	0	0	~~5,063,000~~ *4,500,000*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
497,081,228	931,100	104,806,515	73,133	0	602,891,976	~~$96,661,701~~	~~6,914,178~~	108,342,447	73,133	0	~~621,091,459~~
						$03,055,100	*$2,51,175*				*$16,654,555*

It is the intent of the legislature that the advanced driver education program be funded through a proprietary account.

Item 1 includes a reduction in general fund money of $19,069 in fiscal year 2002 and $19,069 in fiscal year 2003. This reduction is the equivalent of a 13.5% reduction in fiscal 2000 base budget travel expenses.

Item 1 includes a reduction of $24,236 in fiscal year 2002 and $24,322 in fiscal year 2003 of general fund money. The office may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 1 includes $37,500 of general fund money in fiscal year 2002 and $12,500 of general fund money in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 1 includes a reduction in fiscal year 2003 of $4,104 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The office may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $25,067 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction in fiscal year 2003 of $128,896 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 1c is a biennial appropriation.

Item 1d is to provide up to 10 teachers each fiscal year who obtain certification by the national board for professional teaching standards with a one-time stipend of $3,000.

Item 1d includes a reduction in fiscal year 2003 of $27,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Items 2a through 2j and items 2l through 2o are biennial appropriations.

Item 2a is reduced to $392,189,000 in general fund money only if both House Bill No. 4 and House Bill No. 7, August 2002 Special Session, are passed an approved. If only House Bill No. 7 is passed and approved, item 2a is reduced to $396,039,000 in general fund money.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 2c includes a reduction in fiscal year 2003 of $388,634 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 2d includes a reduction in fiscal year 2003 of $250,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Money deposited in the general fund for fiscal year 2001 under 20-9-343(3)(a)(ii) must be transferred to the school technology account in the state special revenue fund in fiscal year 2002.

If House Bill No. 41 is not passed and approved in the form that statutorily appropriates timber harvest funds to schools for technology acquisitions, there is a restricted, biennial general fund appropriation of $1,250,000 in fiscal year 2002 and $1,600,000 in fiscal year 2003. In addition, if House Bill No. 41 is not passed and approved, the amendment to the reference copy of [this act] striking the language accompanying the timber harvest appropriation and inserting language is void.

The office of public instruction may distribute funds from the appropriation in item 2e to public school districts for the purpose of providing educational costs of children with significant behavioral or physical needs.

If Senate Bill No. 495 is enjoined before April 1, 2002, items 2p and 2q are void.

Item 2p includes a reduction in fiscal year 2003 of $134,000 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

It is the intent of the legislature that $200,000 in item 2q be used to pay for costs that would otherwise be incurred by districts to meet the board of public education student testing requirements.

Any cash balance remaining in the school flexibility account must be transferred to the general fund by June 30, 2003.

BOARD OF PUBLIC EDUCATION (5101)

1. Administration (01)												
170,135	13,041	0	0	0	183,166	~~170,501~~ *168,192*	13,041	0	0	0	~~183,542~~ *181,233*
a. Legislative Audit (Restricted/Biennial)												
1,703	0	0	0	0	1,703	0	0	0	0	0	0
2. Advisory Council (03)												
0	161,433	0	0	0	161,433	0	161,994	0	0	0	161,994
a. Legislative Audit (Restricted/Biennial)												
0	1,703	0	0	0	1,703	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
171.838	175.176	0	0	0	347.004	~~170.507~~ *168.192*	174.035	0	0	0	~~344.542~~ *342.227*

Item 1 includes a reduction in fiscal year 2003 of $610 in general fund money and represents the equivalent of 2.6% of office supplies expenditures funded with general fund money in fiscal year 2002. The board of public education may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $1.705 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the board of public education. The board of public education may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)											
302.064	0	0	0	0	302.064	300.387	0	0	0	0	300.387
a. Legislative Audit (Restricted/Biennial)											
28.127	0	0	0	0	28.127	0	0	0	0	0	0
2. General Services Program (02)											
314.060	0	0	0	0	314.060	315.497	0	0	0	0	315.497
3. Student Services (03)											
918.708	0	25.000	0	0	943.708	922.187	0	25.000	0	0	947.187
4. Education (04)											
1,891.051	235.065	63.898	0	0	2,190.014	~~1,891.657~~ *1,356.709*	~~235.065~~ *546.063*	63.898	0	0	~~2,190.620~~ *2,266.672*
a. *MTAP Transfer to General Fund (Restricted)*											
0	*0*	*0*	*0*	*0*	*0*	*66.996*	*0*	*0*	*0*	*0*	*66.996*
Total											
3,454.030	235.065	88.898	0	0	3,777.993	~~3,429.738~~ *3,451.775*	~~235.065~~ *546.063*	88.898	0	0	~~3,753.691~~ *3,826.738*

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that the agency not use general fund money in item 3 for the purchase of new or replacement automobiles unless an existing vehicle becomes inoperable to the point at which replacement is warranted.

Item 4 includes a reduction of $26,189 in fiscal year 2002 and $26,279 in fiscal year 2003 of general fund money. The school may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 4 includes $111,000 in fiscal year 2003 of state special revenue. The school may reallocate this funding among programs as necessary.

Item 4 includes $26,000 in fiscal year 2003 of general fund money. The school may reallocate this funding among programs as necessary.

Item 4 includes a reduction in fiscal year 2003 of $6,453 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The school may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 4 includes a reduction of $19,201 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 4 includes a reduction of $34,294 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the school. The school may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)

314,039	140,629	477,500	0	0	932,168	~~302,551~~ *289,019*	137,416	477,500	0	0	~~917,467~~ *904,935*

a. Legislative Audit (Restricted/Biennial)

19,460	0	0	0	0	19,460	0	0	0	0	0	0

Total											
333,499	140,629	477,500	0	0	951,628	~~302,551~~ *289,019*	137,416	477,500	0	0	~~917,467~~ *904,935*

All federal funds in item 1 are biennial appropriations.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 1 includes a reduction in general fund money of $1,132 in fiscal year 2002 and $1,132 in fiscal year 2003. This reduction is the equivalent of a 16% reduction in fiscal year 2000 base budget travel expenses.												
Item 1 includes a reduction in fiscal year 2003 of $507 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002.												
Item 1 includes a reduction of $3,025 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the Montana arts council.												
MONTANA STATE LIBRARY COMMISSION (5115)												
1. State Library Operations (01)												
1,790,071	177,710	1200,694	0	0	3,168,475	~~1,581,278~~ *1,510,559*	~~147,710~~ *117,614*	150,694	0	0	~~2,459,682~~ *2,378,647*
a. Legislative Audit (Restricted/Biennial)												
17,027	0	0	0	0	17,027	0	0	0	0	0	0
b. Periodical Electronic Database (OTO)												
82,500	117,500	0	0	0	200,000	82,500	117,500	0	0	0	200,000
2. Natural Resources Information System (07)												
84,838	470,348	30,000	0	0	585,186	88,980	495,341	30,000	0	0	614,321
a. Stable Natural Resources Information System Funding (OTO)												
4,513	140,487	0	0	0	145,000	4,513	115,487	0	0	0	120,000
b. Legislative Contract Authority (Biennial/OTO)												
0	25,000	475,000	0	0	500,000	0	0	0	0	0	0
Total												
1,978,949	931,045	1,705,694	0	0	4,615,688	~~1,497,271~~ *1,536,552*	~~905,038~~ *846,942*	180,694	0	0	~~3,364,003~~ *3,383,963*
Item 1 includes biennial appropriations of $251,138 in general fund money and $889,102 in federal funds for grants to local libraries.												

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction in general fund money of $4.561 in fiscal year 2002 and $4.561 in fiscal year 2003. This reduction is the equivalent of a 16% reduction in fiscal year 2000 base budget travel expenses. The commission may reallocate this reduction in funding between programs when developing 2003 biennium operating plans.

Item 1 includes a reduction in fiscal year 2003 of $3.868 in general fund money and represents the equivalent of 25% of office supplies expenditures funded with general fund money in fiscal year 2002. The commission may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Item 1 includes a reduction of $60,096 in state special revenue, which is contingent upon passage and approval of House Bill No. 10, August 2002 Special Session.

Item 1 includes a reduction of $17,071 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the commission. The commission may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 2b includes $500,000 for legislative contract authority as a biennial appropriation, subject to the following provisions:

(1) Legislative contract authority applies only to state special revenue funds received from the Montana university system, federal funds, and private funds.

(2) Legislative contract authority expenditures must be reported on the state accounting system. The records must be separate from present law operations. In preparing the 2005 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the state library commission to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

(4) Legislative contract authority may be transferred between state and federal special revenue, depending upon the contract received by the Montana state library.

MONTANA HISTORICAL SOCIETY (5117)

1. Administration Program (01)

796,334	317,473	55,796	70,000	0	1,140,493	~~809,573~~ *774,822*	313,116	51,616	70,000	0	~~1,140,305~~ *1,114,554*

a. Legislative Audit (Restricted/Biennial)

26,767	0	0	0	0	26,767	0	0	0	0	0	0

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Lewis and Clark Bicentennial (OTO)												
	31,847	0	0	0	0	31,847	31,715	0	0	0	0	31,715
2. Library Program (02)												
	585,835	2,606	0	59,447	0	648,091	588,810	2,808	0	59,518	0	651,136
a. Equipment to Read and Print Microfilm (Biennial/OTO)												
	6,000	0	0	0	0	6,000	0	0	0	0	0	0
3. Museum Program (03)												
	282,162	351,533	0	7,618	0	641,333	284,383	353,151	0	7,618	0	645,152
4. Publications (04)												
	53,652	0	0	710,135	0	763,787	53,652	0	0	711,646	0	765,298
5. Historical Sites Preservation (06)												
	47,361	0	805,461	0	0	852,862	44,451	0	807,864	0	0	852,315
6. Lewis and Clark Bicentennial (08)												
a. Grant Funding (Restricted)												
	0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
Total												
	1,829,879	571,814	862,277	847,200	0	4,111,170	~~1,803,584~~ *1,777,585*	568,075	865,480	848,782	0	~~4,085,921~~ *4,060,170*

Item 1 includes a reduction in general fund money of $5,278 in fiscal year 2002 and $5,278 in fiscal year 2003. This is a reduction in travel funding. The agency may reallocate this reduction in funding among programs when developing 2003 biennium operating plans.

Item 1 includes a reduction of $9,453 in fiscal year 2002 and $9,483 in fiscal year 2003 of general fund money. The society may reallocate this reduction in funding among programs when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

Item 1 includes a reduction in fiscal year 2003 of $2,421 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002. The society may reallocate this reduction in funding among programs when developing fiscal year 2003 operating plans.

Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction of $6,297 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the fiscal year 2003 budget for equipment expenses. The agency may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

Item 1 includes a reduction of $18,033 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 budget for the society. The society may reallocate this reduction in funding among programs in its fiscal year 2003 operating plans.

The legislative intent of item 2a is to acquire equipment based on the newest available technology within the available funding limit at the time of purchase.

It is the intent of the legislature that the department of commerce use lodging facility use taxes to fund $515,961 in fiscal year 2002 and $511,677 in fiscal year 2003 for the Montana historical society. This would be expended as follows:

	2002	2003	
Lewis and Clark Bicentennial	$116,477	$111,134	
Scriver Curator	28,484	25,553	
Scriver Rent Storage	96,000	100,000	
Lewis and Clark Bicentennial Commission		200,000	200,000
Historical Interpretation	75,000	75,000	

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

1. OCHE — Administration (01)

1,226,557	0	0	0	0	1,226,557	~~1,343,480~~ *1,090,258*	0	0	0	0	~~1,343,480~~ *1,090,258*

a. Legislative Audit (Restricted/Biennial)

35,514	0	0	0	0	35,514	0	0	0	0	0	0

2. OCHE — Student Assistance (02)

8,299,390	0	151,531	0	0	8,450,921	~~8,477,208~~ *8,352,791*	0	151,531	0	0	~~8,628,739~~ *8,504,322*

3. OCHE — Dwight D. Eisenhower Mathematics and Science Education Act (03)

0	0	312,744	0	0	312,744	0	0	312,744	0	0	312,744

4. OCHE — Community College Assistance (04) (Biennial)

5,551,748	0	0	0	0	5,551,748	~~5,579,546~~	0	0	0	0	~~5,579,546~~

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
						6,410,220					*6,410,220*
a. Legislative Audit (Restricted/Biennial)											
33,930	0	0	0	0	33,930	0	0	0	0	0	0
5. OCHE — Talent Search (06)											
92,846	0	2,993,405	0	0	3,086,251	~~93,340~~	0	3,129,072	0	0	~~3,222,421~~
						59,846					*3,215,418*
6. OCHE — C.D. Perkins Administration (08)											
78,748	0	7,765,831	0	0	7,844,579	78,746	0	6,125,761	0	0	6,204,507
7. OCHE — Appropriation Distribution Transfers (09)											
99,801,741	13,232,248	0	0	0	113,033,989	~~100,312,988~~	13,400,460	0	0	0	~~113,713,448~~
						91,174,717					*105,575,177*
a. Legislative Audit (Restricted/Biennial)											
228,503	0	0	0	0	228,503	0	0	0	0	0	0
b. Increase State Support $100 per Resident Student per Year											
3,500,000	0	0	0	0	3,500,000	5,000,000	0	0	0	0	5,000,000
c. Agricultural Experiment Station *(Restricted)*											
9,830,460	0	0	0	0	9,830,460	~~9,866,810~~	0	0	0	0	~~9,866,810~~
						9,244,584					*9,244,584*
d. Institute for Biobased Products and Food Science											
200,000	0	0	0	0	200,000	200,000	0	0	0	0	200,000
e. Extension Service *(Restricted)*											
4,087,026	0	0	0	0	4,087,026	~~4,102,993~~	0	0	0	0	~~4,102,993~~
						5,296,586					*5,296,586*
f. Montana Beef Network (Restricted/Biennial/OTO)											
90,000	0	0	0	0	90,000	90,000	0	0	0	0	90,000
g. Forestry and Conservation Experiment Station *(Restricted)*											
897,428	0	0	0	0	897,428	~~900,784~~	0	0	0	0	~~900,784~~
						867,776					*867,776*

	Fiscal 2002						Fiscal 2003					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
h. Bureau of Mines and Geology (*Restricted*)												
	1,533,607	600,000	0	0	0	2,133,607	~~1,538,621~~ *1,462,876*	666,000	0	0	0	~~2,204,621~~ *2,128,876*
i. Fire Services Training School (*Restricted*)												
	497,630	0	0	0	0	497,630	~~504,250~~ *488,155*	0	0	0	0	~~504,250~~ *488,155*
j. Flathead Lake Biological Station — University of Montana-Missoula (Restricted/Biennial/OTO)												
	100,000	0	0	0	0	100,000	~~100,000~~ *96,800*	0	0	0	0	~~100,000~~ *96,800*
8. Tribal College Assistance Program (11) (Biennial)												
	~~100,000~~ *96,800*	0	0	0	0	~~100,000~~ *96,800*	0	0	0	0	0	0
9. OCHE — Guaranteed Student Loan (12)												
	0	0	34,668,909	0	0	34,668,909	0	0	37,373,404	0	0	37,373,404
a. Legislative Audit (Restricted/Biennial)												
	0	0	4,379	0	0	4,379	0	0	4,378	0	0	4,378
10. OCHE — Board of Regents (13)												
	43,631	0	0	0	0	43,631	43,631	0	0	0	0	43,631
Total												
	~~135,338,949~~ *135,527,449*	13,833,348	45,896,799	0	0	~~194,069,996~~ *194,086,496*	~~138,335,485~~ *127,849,205*	13,066,460	47,096,890	0	0	~~198,396,835~~ *187,711,555*

Items 1 through 3 and 5 through 7b are a single biennial lump-sum appropriation.

Total audit costs of the office of the commissioner of higher education are estimated to be $35,514.

Item 1 includes a reduction in general fund money of $11,255 in fiscal year 2002 and $11,255 in fiscal year 2003. This reduction is the equivalent of a 17% reduction in fiscal year 2000 base budget travel expenses. The agency may reallocate this reduction in funding among programs when developing 2003 biennium operating plans.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 1 includes a reduction of $99,292 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the programs.

Item 1 includes a reduction in fiscal year 2003 of $53,930 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Item 2 includes a reduction in fiscal year 2003 of $144,417 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Total Summitnet costs are estimated to be $25,000 each year for the community colleges. The general fund appropriation for the community colleges provides 53% of the total Summitnet costs. The remaining 47% of these costs must be paid from funds other than those appropriated in item 4. Summitnet costs for each year may not exceed $8,000 each for Dawson and Miles community colleges and $9,000 for Flathead Valley community college.

The general fund appropriation in item 4 is calculated to fund education in the community colleges for an estimated 2,030 resident FTE students in fiscal year 2002 and 2,040 resident FTE students in fiscal year 2003. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $2,792 in general fund money to the state for each estimated FTE student who did not enroll.

Item 4 includes a reduction of $56,795 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the programs.

Item 4 includes a reduction in fiscal year 2003 of $212,631 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Total audit costs are estimated to be $64,000 for the community colleges for the biennium. The general fund appropriation for each community college provides 53% of the total audit costs in fiscal year 2002. The remaining 47% of these costs must be paid from funds other than those appropriated in item 4a. Audit costs for the biennium may not exceed $20,000 each for Dawson and Miles community colleges and $24,000 for Flathead Valley community college.

Item 6 includes a reduction in fiscal year 2003 of $4,003 in general fund money and represents the equivalent of 2.5% of office supplies expenditures funded with general fund money in fiscal year 2002.

Item 7 includes a reduction of $779,826 in fiscal year 2002 and $782,537 in fiscal year 2003 of general fund money. The board of regents may reallocate this reduction in funding among university system units, as defined in 17-7-102(13), when developing 2003 biennium operating plans. The office of budget and program planning shall provide a report that details reallocation to the legislative finance committee by October 15 of each fiscal year.

The decision of the legislature to deny funds for initiatives or budget requests proposed by the governor and the board of regents for the 2003 biennium does not imply an intent to prohibit the board of regents from implementing those initiatives unless specifically stated otherwise in [this act].

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The general fund and millage appropriation in item 7 is calculated to fund education in the 4-year units and the colleges of technology for an estimated 25,004 resident FTE students in fiscal 2002 and 25,207 resident FTE students in fiscal 2003. If actual resident student enrollment is greater than the estimated number for the biennium, the university system shall serve the additional students without a state general fund contribution. If actual resident student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $1,914 in general fund money to the state for each estimated FTE student who did not enroll.

Revenue appropriated to the Montana university system units and colleges of technology includes:

(1) state special revenue from interest earnings of $1,913,590 each year of the 2003 biennium;

(2) tuition revenue of $110,420,878 in fiscal year 2002 and $109,775,339 in fiscal year 2003; and

(3) other revenue of $1,013,738 each year of the 2003 biennium.

These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in item 7.

Item 7 includes $428,660 in each year of the biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $201,100; Montana tech of the university of Montana, $28,000; Montana state university-northern, $97,000; Montana state university-Billings, $91,800; and western Montana college of the university of Montana, $10,760.

Item 7 includes a total of $44,253 of general fund money for the 2003 biennium for the Montana natural resources information system (NRIS). The Montana university system shall pay an additional $44,253 for the 2003 biennium in current funds in support of NRIS. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Item 7 includes increases of $194,088 of general fund money in fiscal year 2002 and of $194,088 of general fund money in fiscal year 2003 and reductions of $194,088 of state special revenue in fiscal year 2002 and of $194,088 of state special revenue in fiscal year 2003 that are contingent upon passage and approval of House Bill No. 124.

Item 7 includes a reduction of $3.4 million in fiscal year 2003 of general fund money. Although the legislature acknowledges the constitutional power of the board of regents to manage and control the Montana university system, it is the intent of the legislature that state support of intercollegiate athletics be reduced and that replacement funding, if desired, be from nonstate sources.

Item 7 includes a reduction in fiscal year 2003 of $149,466 in general fund money and represents the equivalent of 25% of state-funded office supplies expenditures in fiscal year 2002.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 7 includes a reduction of $1,064,130 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7 includes a reduction in fiscal year 2003 of $4,076,966 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Total audit costs are estimated to be $681,092 for the university system other than the office of the commissioner of higher education. Each unit shall pay a percentage of these costs from funds other than those appropriated in item 7a.

Item 7b is intended by the legislature to be used to increase state support for resident student FTE at the university units each year of the 2003 biennium.

University system unit is defined in 17-7-102(13). For all university system units, except the office of the commissioner of higher education, all funds (other than plant funds appropriated in House Bills No. 5 and 14, relating to long-range building, and current unrestricted operating funds) are appropriated contingent on approval of the comprehensive program budget by the board of regents by October 1 of each year. For all university system 4-year units and colleges of technology, all funds, other than funds appropriated in House Bills No. 5 and 14 for long-range building programs, are appropriated as a lump sum for the biennium contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The board of regents shall allocate the appropriations to the individual units according to board policy. The budget must contain detailed revenue and expenditure and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justifications must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

All university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the standards of accounting and reporting, as described by the national college and university business officers, as a minimum for achieving consistency.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall allow the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, including data warehouses, except:

(1) the ability to change data;

(2) portions of the banner information system that are the property of third parties (such as alumni associations or foundations); and

(3) information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

Subsections (1) through (3) in no way limit the power of the legislative fiscal analyst or the budget director to receive and examine copies of any state government information, including confidential records, in accordance with 5-12-303 and 17-1-132.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

All financial data recorded in the various funds in banner must agree with the financial data as recorded on the statewide accounting, budgeting, and human resources system (SABHRS), including:

(1) all statutory and restricted appropriations must be clearly segregated on SABHRS; and

(2) the budgeted personal services for current unrestricted operating funds on banner must tie to the operating plan for expenditure of funds appropriated in [this act] and other bills, as approved by the board of regents.

The Montana university system shall provide the electronic data required to upload human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

Revenue appropriated to the agricultural experiment station includes:

(1) state special revenue from interest earnings and other revenue of $184,239 in fiscal year 2002 and $184,705 in fiscal year 2003;

(2) federal revenue of $2,022,369 in fiscal year 2002 and $2,030,499 in fiscal year 2003; and

(3) proprietary revenue from sales of $937,627 in fiscal year 2002 and $942,135 in fiscal year 2003. These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7c.

Item 7c includes a reduction in fiscal year 2003 of $17,548 in general fund money and represents the equivalent of 25% of state-funded office supplies expenditures in fiscal year 2002.

Item 7c includes a reduction of $124,432 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the state portion of fiscal year 2002 equipment expenditures.

Item 7c includes a reduction of $100,668 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7c includes a reduction in fiscal year 2003 of $879,805 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

The general fund money in item 7d is appropriated with the condition that, prior to the expenditure of the general fund money, the Montana agricultural experiment station collect $140,000 of private, nonpublic money each year of the 2003 biennium for the purpose of supporting the institute for biobased products and food science.

Revenue appropriated to the extension service includes:

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) state special revenue from interest earnings of $46,892 in fiscal year 2002 and $47,070 in fiscal year 2003; and

(2) federal revenue of $2,268,928 in fiscal year 2002 and $2,278,065 in fiscal year 2003. These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7e.

Item 7e includes a reduction in fiscal year 2003 of $3,883 in general fund money and represents the equivalent of 26% of state-funded office supplies expenditures in fiscal year 2002.

Item 7e includes a reduction of $41,930 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7e includes a reduction in fiscal year 2003 of $161,824 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

General fund money of $90,000 each year of the 2003 biennium in item 7f is a biennial, one-time-only appropriation for one staff person and for expenses for the Montana beef network within the extension service.

Interest revenue of $4,923 in each year of the 2003 biennium is appropriated to the forestry and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in item 7g.

Item 7g includes a reduction in fiscal year 2003 of $604 in general fund money and represents the equivalent of 26% of state-funded office supplies expenditures in fiscal year 2002.

Item 7g includes a reduction of $9,008 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.

Item 7g includes a reduction in fiscal year 2003 of $33,496 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.

Proprietary revenue of $27,310 each year of the 2003 biennium is appropriated to the bureau of mines and geology for current unrestricted operating expenses. This amount is in addition to that shown in item 7h.

Item 7h includes a reduction in fiscal year 2003 of $3,401 in general fund and represents the equivalent of 26% of state-funded office supplies expenditures in fiscal year 2002.

Item 7h includes a reduction of $374 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 66.67% reduction in the state portion of fiscal year 2002 equipment expenditures.

	Fiscal 2002						Fiscal 2003					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 7h includes a reduction of $15,386 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the bureau.											
Item 7h includes a reduction in fiscal year 2003 of $57,085 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
Interest revenue of $4,097 each year of the 2003 biennium is appropriated to the fire services training school for current unrestricted operating expenses. This amount is in addition to that shown in item 7i.											
Item 7i includes a reduction in fiscal year 2003 of $413 in general fund money and represents the equivalent of 25% of state-funded office supplies expenditures in fiscal year 2002.											
Item 7l includes a reduction of $6,073 in fiscal year 2003 of general fund money. This reduction is the equivalent of a 1% reduction in the fiscal year 2003 appropriation for the unit.											
Item 7l includes a reduction in fiscal year 2003 of $18,631 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
Item 7j includes a reduction in fiscal year 2003 of $3,500 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
Item 8 includes a reduction in the 2003 biennium of $3,500 in general fund money and represents the reductions ordered by the governor pursuant to 17-7-140.											
TOTAL SECTION E											
~~640,180,382~~	15,817,277	153,837,663	920,333	0	~~810,755,655~~	~~652,310,748~~	~~21,101,267~~	157,650,909	921,915	0	~~831,984,839~~
640,176,382					*810,752,144*	*657,970,484*	*20,569,171*				*816,927,449*
TOTAL STATE FUNDING											
~~1,156,216,635~~	409,945,692	~~1,370,312,465~~	13,458,781	933,055	~~2,961,006,728~~	~~1,132,513,329~~	~~373,711,500~~	~~1,384,282,333~~	13,402,745	933,055	~~2,907,843,962~~
1,156,212,635		*1,367,877,904*			*2,977,746,690*	*1,102,206,771*	*331,436,959*	*1,393,670,054*	*152,747*		*2,891,567,844*

Section 17. Rates. Internal service fund type fees and charges established by the legislature for the 2003 biennium in compliance with 17-7-123(6)(b) are as follows:

	Fiscal Year 2002	Fiscal Year 2003
Sec re tary of State - 3201		
1. Ad min is tra tive Rules of Montana Fees		
a. Ad min is tra tive Rules of Montana (per set)	$350.00	$350.00
b. Quar terly Up dates of ARM (per year)	$250.00	$250.00
c. Ex tra Ti tles (per book)	$50.00	$50.00
d. Quar terly Up dates of Ex tra Ti tles (per year per ti tle)	$50.00	$50.00
e. Montana Ad min is tra tive Regis ter (per sub scrip tion)	$300.00	$300.00
f. Agency Fil ing Fee for Pages of Reg is ter Pub li ca tion (per page)	$40.00	$40.00
g. Binders (per binder)	$5.00	$5.00
h. Lapsed Sub scrip tion Fee ARM (per sub scrip tion)	$50.00	$50.00
i. Lapsed Sub scrip tion Fee Ex tra Ti tle (per ti tle)	$10.00	$10.00
j. Fax Fee - 10 Pages or Less (first 10 pages)	$3.00	$3.00
k. Fax Fee - Ad di tional Pages Over 10 Pages (per page)	$0.25	$0.25
l. Re search Fee (per hour)	$12.00	$12.00
m. Set Cleanup Fee (per hour)	$12.00	$12.00
n. Missing Page Fee (per page up to cost of set)	$0.50	$0.50
o. Rule Edit Fee (per hour)	$15.00	$15.00
p. Late Fil ling Fee (less than 2 hours) (per oc cur rence)	$5.00	$5.00
q. Late Fil ling Fee (2 hours to 4 hours) (per oc cur rence)	$10.00	$10.00
r. Late Fil ling Fee (more than 4 hours) (per oc cur rence)	$25.00	$25.00
2. Records Man age ment Fees (based on 2-6-203)		
a. 16MM Microfilm		
Less than 250,000	$38.58	$38.58
Nontypical ex treme weight and size	$38.58	$38.58
8" x 11"; 8" x 14" pa per work	$30.00	$30.00
8" x 11"; 8" x 14" com puter print out	$30.00	$30.00
Ex treme size and weight vari ance	$31.50	$31.50
Cards - fixed weight and color	$15.75	$15.75
Cards - mixed weight and color	$26.25	$26.25
b. 35MM Microfilm		
L (per 12" x 12") ae rial pho tos	$68.25	$68.25
16" x 20" bound books	$63.00	$63.00
24" x 34" news pa pers	$115.50	$115.50
24" x 34" bound news pa pers	$136.50	$136.50
48" x 48" blue prints/maps	$288.75	$288.75
c. 105MM Mi cro film		
8" x 11" pa per work	$68.25	$68.25
8" x 11"; 8" x 14" com puter print out	$77.17	$77.17

	Cards (per 1,000)	$77.17	$77.17
	Minimum filing charge	$37.50	$37.50
d.	Film Processing		
	16mm, 100 foot roll	$3.62	$3.62
	16mm, 215 foot roll	$7.10	$7.10
	35mm, 100 foot roll	$6.35	$6.35
	16mm, 3M cartridges	$4.73	$4.73
e.	Film Inspecting		
	100 foot roll inspection (per roll)	$3.65	$3.65
	215 foot roll inspection (per roll)	$5.23	$5.23
	Film splicing	$0.79	$0.79
	3M cartridge loading	$2.25	$2.25
f.	Duplication		
	16mm, 100 foot roll (per roll)	$6.81	$6.81
	16mm, 215 foot roll (per roll)	$13.03	$13.03
	35mm, 100 foot roll (per roll)	$9.21	$9.21
	105mm, microfiche or jackets	$0.16	$0.16
	Reader/printer copies	$0.50	$0.50
	Photocopies/own labor	$0.10	$0.10
	Photocopies/our labor	$0.50	$0.50
	16mm, 100 foot roll (per roll)	$9.92	$9.92
	35mm, 100 foot roll (per roll)	$14.54	$14.54
g.	Jacket Loading		
	16mm, 5 channel jacket	$0.3150	$0.3150
	Agency's own jacket	$0.2887	$0.2887
	35mm, 1 and 2 channel jacket	$0.3150	$0.3150
	Loading 16mm aperture card	$0.2625	$0.2625
	Jacket title	$0.2625	$0.2625
	Jacket notching	$0.0525	$0.0525
h.	Miscellaneous		
	Fiche title (per title)	$0.2625	$0.2625
	Indexing and document prep/hour (per hour)	$18.00	$18.00
	Camera rental (per day)	$95.00	$95.00
i.	Supplies		
	NMI reader bulbs (per bulb)	$10.75	$10.75
	16mm, 100 foot roll film (per roll)	$6.68	$6.68
	16mm, 215 foot roll film (per roll)	$12.95	$12.95
	35mm, 100 foot roll film (per roll)	$13.95	$13.95
j.	Records Center Services		
	Storage (per square foot per month)	$0.2565	$0.2565
	Storage (per cubic foot per month)	$0.295	$0.295
	Retrievals (per occurrence)	$1.50	$1.50
	Emergency retrievals (per occurrence)	$6.25	$6.25

Large retrievals, delivery, interfiling (per occurrence)	$22.50	$22.50
Records disposal (per hour)	$22.50	$22.50
Shredding confidential records (per hour)	$23.05	$23.05
k. Records Center Boxes		
Records storage boxes: standard size A (per box)	$1.34	$1.34
Drawing and map storage boxes: size C (per box)	$1.34	$1.34
l. Imaging Services		
Imaging (per image)	$0.055	$0.055
Indexing and document preparation (per hour)	$18.00	$18.00
Department of Transportation - 5401		
1. State Motor Pool		
a. Class 02 (small utilities)		
per hour assigned	$1.597	$1.600
per mile operated	$0.022	$0.022
b. Class 04 (large utilities)		
per hour assigned	$2.116	$2.335
per mile operated	$0.056	$0.056
c. Class 06 (passenger cars)		
per hour assigned	$1.501	$1.643
per mile operated	$0.054	$0.054
d. Class 07 (small and standard size pick ups)		
per hour assigned	$1.270	$1.260
per mile operated	$0.030	$0.030
e. Class 11 (large 4X4 pick ups)		
per hour assigned	$1.832	$2.334
per mile operated	$0.056	$0.056
f. Class 12 (vans)		
per hour assigned	$1.449	$1.632
per mile operated	$0.071	$0.071
2. Equipment Program		
a. 60-Day Working Capital		
Department of Revenue - 5801		
1. Customer Service Center		
a. Delinquent Account Collection Fee (percent of amount collected)	10.0%	10.0%
Department of Administration - 6101		
1. Accounting and Management Support		
a. Legal Services Unit	Share (percent) of Total Revenue Each Program or Division Will Pay	
Teachers' Retirement	20%	20%
Employee Benefits Program	26%	26%
Risk Management and Tort Defense	2%	2%
General Services Division	7%	7%
Architecture and Engineering	18%	18%

Information Services Division	27%	27%
Total	100%	100%

b. Network Support Unit

Programming cost	60-day working capital reserve	
Computer support (per computer)	$714	$732
Server support (per server)	$1,072	$1,098

c. Warrant Writing (per warrant)

Mailer warrants	$0.6170	$0.6145
Nonmailers	$0.2080	$0.2055
Emergency warrant	$4.1329	$4.1320
Duplicate warrant	$5.6632	$5.6624
Direct deposits	$0.1671	$0.1660
Externals - printed from an outside system	$0.1850	$0.1825

d. Personnel Unit

Allocation to supported divisions (per FTE basis)	$88,262	$92,691

e. SB 445 In direct Costs - The department is authorized to spend up to $294,208 in fiscal year 2002 and $296,509 in fiscal year 2003 (proprietary funds) to implement the reorganization specified in Senate Bill No. 445.

2. Procurement and Printing

a. Publications and Graphics	60-day working capital reserve	
b. Central Stores	60-day working capital reserve	
c. Natural Gas Procurement	break-even (no reserve)	
d. Statewide Fueling Network (per cent of gross purchases)	5.0%	5.0%
e. Statewide Procurement Card Program (per card)	$1.00	$1.00

3. Information Services Division

a. Data Network Fee (per connected terminal per month)	$72.60	$72.60
b. Statewide Accounting, Budgeting, and Human Resources System (SABHRS) Allocation to Agencies	$4,168,460	$4,211,734
c. All Remaining Operations of the Division	45-day working capital reserve	

4. General Services Division

a. Office Space Rent (per square foot)	$4.77	$4.88
b. Warehouse Space Rent (per square foot)	$2.12	$2.12

5. Mail and Distribution Bureau

a. Interagency Mail (total amount allocated to agencies)	$171,655	$171,655
b. All Other Operations Except for Interagency Mail	60-day working capital reserve	

6. State Personnel Division

a. Intergovernmental Training (per hour)	$113	$113
b. State Payroll Unit (total amount allocated to agencies)	$356,958	$366,248

c. Employee Benefits Program - Because state employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of the premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to meet the

requirements of 2-18-812(1) to maintain state employee group benefit plans on an actuarially sound basis, the legislature defines "rates and fees" for state employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to meet the requirements of 2-18-812(1).

7. Risk Management and Tort Defense		
a. General Liability (total allocation to agencies)	$5,362,500	$5,775,000
b. Automobile Liability (total allocation to agencies)	$1,137,500	$1,225,000
c. Property (total allocation to agencies)	$1,200,500	$1,270,930
d. Airport/Aircraft (total allocation to agencies)	$116,567	$128,222
e. All Other Lines (total allocation to agencies)	$239,413	$258,508
Fish, Wildlife & Parks - 5201		
1. Administration and Finance (% markup)		
a. Warehouse Overhead	14%	14%
2. Vehicle Account Rates Per Mile		
a. Sedans	$0.20	$0.24
b. Suburban - 4x4	$0.33	$0.35
c. Vans 1/2 Ton	$0.18	$0.21
d. Vans 1/2 Ton Window	$0.27	$0.32
e. Pickup 1/2 Ton 2x4	$0.33	$0.34
f. Pickup 3/4 Ton 4x4 V8	$0.20	$0.22
g. Grounds Maintenance	$0.75	$0.85
h. Bronco 4x4	$0.24	$0.28
i. Pickup 1/2 Ton 4x4	$0.27	$0.34
j. Pickup 3/4 Ton 4x4 HD	$0.30	$0.35
k. Pickup 3/4 Ton 4x4 HD XC	$0.35	$0.38
l. Pickup 1 Ton 4x4	$0.33	$0.37
m. Pickup 3/4 Ton 4x4 MD	$0.24	$0.27
n. Pickup 3/4 Ton 4x4 MD XC	$0.29	$0.33
o. Pickup 1/2 Ton 4x4 LD XC	$0.29	$0.33
3. Aircraft Per Hour Rates		
a. Two-Place Single Engine	$ 54.02	$ 56.72
b. Partnavia	$257.24	$270.10
c. Turbine Helicopters	$313.58	$329.26
4. Parks – Capitol Grounds Maintenance	$0.3696/sq. ft.	$0.3696/sq. ft.
5. Duplicating – Number of Copies (includes paper)		
a. 1-20	$0.045	$0.050
b. 21-100	$0.030	$0.035
c. 101-1000	$0.025	$0.030
d. 1001-5000	$0.020	$0.025
6. Bindery		
a. Collating (per sheet)	$0.005	$0.005
b. Hand Stapling (per set)	$0.015	$0.015
c. Saddle Stitch (per set)	$0.030	$0.030

d. Folding (per sheet)	$0.005	$0.005
e. Punching (per sheet)	$0.001	$0.001
f. Cutting (per minute)	$0.550	$0.550
Department of Environmental Quality - 5301		
1. Central Management		
a. Expenses Against Personal Services	24%	24%
Department of Natural Resources and Conservation - 5706		
1. Air Operations Program		
a. Fixed Wing	$95	$95
b. Bell 206A Helicopter	$355	$355
c. UH-1 Huey Helicopter	$875	$875
Department of Commerce - 6501		
1. Local Government Services Bureau		
a. Local Government Assistance Administration Recharge	1.70%	1.70%
2. Board of Investments		
For purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:		
a. Administration Charge (total)	$2,860,200	$2,805,200
3. Director's Office/Management Services		
a. Management Services Indirect Charge Rate	15.50%	15.50%
Department of Justice - 4110		
1. Agency Legal Services		
a. Attorney (per hour)	$70	$70
b. Investigator/Paralegal (per hour)	$38	$38
Department of Corrections - 6401		
1. Secure Facilities		
a. Cook/chill rate to MSP	$1.80/meal	$1.78/meal
b. Cook/chill rate to MSH	$1.83/meal	$1.82/meal
c. Cook/chill rate to TSCTC	$1.83/meal	$1.81/meal
d. Cook/chill rate to Riverside	$2.79/meal	$2.86/meal
e. Cook/chill rate to DUI facility	$1.86/meal	$1.84/meal
f. Cook/chill rate to Helena prerelease	$2.43/meal	$2.47/meal
2. Montana Corrections Enterprises		
a. Laundry rate to MSP	$0.39/lb	$0.39/lb
b. Laundry rate to MSH	$0.38/lb	$0.38/lb
c. Laundry rate to MDC	$0.46/lb	$0.46/lb
Department of Labor and Industry - 6602		
1. Centralized Services Division		
a. Cost Allocation Plan	9.44%	10.14%
2. Professional and Occupational Licensing		
a. House Bill No. 2 Programs Recharge Rate	38%	38%
Office of Public Instruction - 3501		
1. OPI Indirect Cost Pool	17%	17%

2. Advanced Driver Education

a. Work shop Fees	
Full-day work shop/per son	$175.00 - $200.00
Half-day refresher/per son	$115.00 - $125.00
b. Facility Usage Fees	
Montana state government/day	$85.00
High school driver ed u ca tion	
Per year when track not in use	$500.00
Per day af ter hours and not in use	$25.00
Private non profit/day	$200.00
Com mercial use/day	$1,500.00 - $2,000.00

MONTANA UNI VER SITY SYS TEM - 5100

Because certain employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to maintain employee group benefit plans on an actuarially sound basis, the legislature defines rates and fees for Montana university system employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to maintain the employee group benefit plans on an actuarially sound basis."

Section 2. Effective date. *[This act] is effective on passage and approval."*

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to August 26, 2002.

Ap proved Sep tem ber 13, 2002

SES SION LAW TO CODE

Ch.	Sec.	MCA
1	1	Ch. 23, Sp. L. Au gust 2002
	2	Effective date—retroactive applicability

SES SION LAWS AF FECTED

Laws Affected	Action	Chapter	Bill Number
Spe cial Laws of Au gust 2002			
Ch. 23	amended	Ch. 1	HB 1